

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

No. 743066

DIVISION ONE

MARIANE GLIGOR, MA Ed

DBA EVERGREEN SEASONS AFH

Appellant,

V.

STATE OF WASHINGTON,

DEPARTMENT OF SOCIAL & HEALTH SERVICES,

Respondent

BRIEF OF APPELLANT

FILED: March 7, 2016

CR
FILED
COURT OF APPEALS
STATE OF WASHINGTON
2016 MAR - 7 PM 12:27

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INTRODUCTION

Opening statement

Your Honors, my name is Mariana S. Gligor, Master's Degree in Teaching and Master's Degree in Education, Certified Nursing Assistant, and provider of Evergreen & Evergreen Seasons Adult Family Homes since year 2000. Prior to opening my home for business I taught thousands of students from kinder garden to High School in Seattle, Renton, Mercer Island, Ann Arbor Michigan and Phoenix Arizona. I took care of hundreds of residents in "Sunrise," "Kirkland Lodge," and "Issaquah Nursing home."

In 2000 I opened Evergreen AFH. In 2007 I opened my second home to Evergreen Seasons. In 2009 DSHS revoked my "Evergreen Seasons" license due to one complaint **only**, Ms. Valery Larson (V.L.) daughter of subject resident, Mr. Richard Jacome, (R.J.) out of jealousy and revenge, as I had to send home a male caregiver due to long visits of V.L. with this man. This is unreal, a pact of evil doers to destroy me, a witch hunt. Since 2009, to the present time, I am placed in a position to defend my hard work, and quality of professionalism, just because of 1 (one) complaint, V.L. The investigator, Liz Frost (LF), magnified every small detail, making sure she writes me up for as many WACS as possible, so that license revocation is out of question. This is unprecedented, and clearly exemplifies how people abuse power at the cost of others, using precious time, and creating much unnecessary stress.

After exhausting all administrative remedies filed documents in the Superior Court pursuant to RCW 34.05.570 (3). Honorable Judge Jim Roger has reversed a portion of the findings of fact and conclusion of law and reversed the adult family home license revocation decision on April 18, 2013, as being "arbitrary and capricious."

The Department appealed the Superior Court decision to the Court of Appeals of the State of Washington. On October 20, 2014, Division One of the Court of Appeals agreed with the Superior Court decision, as the Department “being arbitrary and capricious, reversed the license revocation.”

NATURE OF ACTION

This is the petitioner brief in the Courts of Appeal Division One. It is a *de novo* brief at the Courts of Appeal, Division One.

In the following I will address all the issues Judge Conant has addressed in the Decision On Order of Remand. The issues were brought to the Superior Court, judge Rietschel’s assigned, on October 31, 2015. Due to the long battle with the Department to clear the license revocation of Evergreen Seasons, and being harassed by many visits of investigators, I relinquished the Evergreen License as of 1/2014. The department wasted precious time, for **one** complaint only, daughter of resident RJ. During the nine years being a provider, I never had such a controversial and complex situation as I had with the resident R.J. and his daughter, V.L.

On 1/29/2015, the department review judge, Judge Conant on decision on remand, writes a \$10,700.00 with civil penalty, on a retro 2009 license revocation, which was reversed by the Superior Court & Appellate’ s Courts Judges: Honorable Rogers, Spearman, Verellen, and Trickey.

In 2009 the Department **did not have** a system in place, in writing, either in WAC, or in other written format, that brought to providers’ s acknowledgement on fines. Furthermore, there is the licensor’s investigations, and inspections that is enough **evidence** that the Care Plans and Assessments were fine. Mr. Leary, the defense attorney asked Ms. Silvester at the ALJ Hearing if she had concerns about these issues. The response was, per Ms. Silvester, “checked them, and we never had any problems with these,”

either before 2009, nor after 2009 till 2014 when I continued to take care of the same residents at my Evergreen AFH Home.

It is my **Constitutional** right to know when breaking the law, what penalty is to be paid for at that time, **if truly**, there is evidence on breaking the law, and not after six years later; after the fact. License revocation is a quasi -criminal case procedure, and entitles providers to all applicable Constitutional rights. A double punishment is not a Procedural due process. In 2012, the Department introduced new fines. In 2015, the Department added financial penalties to something after the fact, from 2009. The drastic punishment taken in 2009 is arbitrary and capricious. The punishment exceeded any reasonable standard, if truly, there was evidence for such, since the licenser who knew and read all documents clearly stated at the ALJ Hearing that she **had no** problems with assessments and care plans.

Both the Washington Supreme Court and the Federal Court embrace the Constitution.

To do something without a financial penalty at all, and many years later, in 2015, to assess financial penalties, after the department punished drastically by revoking the license, in 2009, is NOT Procedural Due process. A “double jeopardy” is not accepted by the law.

The Dementia, Mental health and Disability Specialties on the license were reversed by both the Superior Court and the Courts of Appeals, Division One. The Courts of Law found, legally, that the department was arbitrary and capricious, licensed was **reversed** with all Specialties: **Dementia, Mental health and disability.**

The case went back to the Superior Court, as de novo, to clear the fines and taking off the specialties from the license.

On 10/30/2015 Judge Rietschel on Order affirming in part and reversing in part, reversed the fines to \$2,000, as arbitrary and capricious. Judge Rietschel ruled “the amount of the fines strike this court as

punitive” (Hearing Proceeding, (HP) page 26, line 18). Continues: “there is no setting forth in this decision about a history of prior failures, warnings, and suspensions.” On the first go – round, the Department went **straight to revocation.**” (HP, pg. 26, line 11).

The opposing council insisted in court, the Mental Health, Specialties, and Disabilities Specialties be prohibited from the Evergreen Seasons License, as means to give provider a lesson. The judge verbally ruled that is arbitrary and capricious to do so, since nor before 2009 or after 2009, till 2014 when the same residents were moved to Evergreen house, provider had no consistent problems of such matter.

The department twist is the more arbitrary and capricious. I have proved myself to be a first class caring and compassionate provider. It is arbitrary and capricious to assess punitive fines, and to forcefully, deny the specialties on the license, earned since 2000 to 2014. Are the department habits not arbitrary and capricious? This is unprecedented!

Respectfully, I ask the Appellate Court Judges to deny the Department the \$2,000 punitive fines, as under any court of law, any new RCW or WAC, the law is never applied retroactive, but **proactive.**

The three specialties were earned through classes and exams passed by the department and its approved trainers, and it is only fair to be on the Evergreen Seasons License, consistent with your opinion of license being reversed, in 2014. Your honors reversed the Evergreen Seasons license, with original designations: Mental Health, Dementia, and Developmental Specialties.

II. FINDINGS OF FACT, TIME LINE OF EVENTS SINCE 2009

Here are the facts prior to the license revocation. R.J. was admitted to “Evergreen Seasons” on September 22, 2009, after he changed a few facilities from Kirkland Lodge (about five days), and Kirkland Nursing Home (about two months). He was diagnosed with Advanced Alzheimer, Dementia,

Diabetes Type II, and wandering behavior. The Assessment concealed, by his daughters, the many extra diagnosis soon to be discovered: Sleep walker, Sun Downer, Agitated, Anxiety Fits, Exit Seeker and Hypersexual.

Ms. Larson (V.L.) was attracted for months to a male caregiver that worked for me at the Evergreen Seasons Adult Family Home. She would come day and night to talk with him for hours. When asking V.L what she is talking with my caregiver about for hours, she would say that “We talk about Dad’s care.” After months of endurance, I had to ask the caregiver to take a vacation with his wife and four children, as he previously mentioned that they would like to do. Coupled with this situation, was the ever increasing care of the resident. He gradually became very difficult to handle. With no significant help from his daughters, doctor, case manager, the resident was left alone, in my total care.

Ms. Larson threatened to call the Department on me if I don’t keep the resident in my home, as he “likes his bedroom very much.” She turned the phone off during nights, not to be disturbed by her father, who, would ask to talk with her, as means to calm him down when hallucinating, and having scenarios of acute fear.

Gradually, about six month after admission “the resident R.J. became a threat to himself and other people.” Per WAC this is a reason for immediate discharge.

In an attempt to help R.J., out of extra compassion, I hired a new caregiver, Ms. Dinisiuc. R.J. was running with his cane to hit her, as she was trying to reorient him to his bedroom.

Per Notes in Discovery of Mss. Frost, DSHS Investigator, character assassination and professional suitability to do the caregiving job were under attack. Ms. Larson degraded my professional work. I **never** had a professional suitability assassination.

Quote from Ms. Frost from Discovery of what Ms. Larson attacked:

“MG is worst caregiver I’ve ever seen,” and “screams at both of us,” “we never knew her personality, **bi polar**, much worse” “is Hostile,” etc.

With the goal of the license revocation, in a panic mode, the investigator looked at all details and magnified all faults, with a preconceived mind-set.

The allegations were incorrect, and were nothing but a pact out of jealousy and envy to destroy me and my amazing hard work. This situation with license revocation is been going on since 2009.

My approach to health care has always been about being helpful and generous to the extreme. My good work should not be confused or diminished to the discounted line of **not** being capable of taking care of residents.

Ms. Roth’s negative statements in the Introduction about my conducting the adult family home business cannot stand since there is no merit in her allegations to support her statements. There is absolutely no evidence that I have reprimanded residents R.J., and Yetta (Y), and the care plans were not updated. The family, doctors, case managers and nurse delegator were involved and asked to help with new health changes of the residents, ample evidence was provided at ALJ Hearing. R.J. was discharged by his daughter, as she admitted at the Formal hearing that “it was her choice alone to take him out.”

Immediately after I asked her to find him a home as he became a danger to himself and others, she took him out, right away. I did not even have time to type a thirty day discharge letter. The puppy dog was brought in the home at resident Y’s request and pleadings for months. Proper steps to take care of Y.B.

's dog scratch followed, her POA called, and Ms. Sykes, the case manager took her to her doctor, and there are documents pertaining to this issue filed with her doctor, nurse and case manager. Practically, at the first doctor's visit, the doctor saw the scratch, washed it, and told case manager to keep it clean only. There was no documentation if her foot was properly washed at doctor's office. DSHS rushed to judgment by degrading provider that is "lacking understanding, ability and emotional stability to care for vulnerable adults," by only looking at one complaint that had its roots in hate and revenge of V.L., daughter of R.J. There was absolutely no damage to any of the two residents involved during the stay in my care. V.L. had no doctor's order that provider was lacking emotional stability. This in turn, speaks volumes on how people abuse power at the cost of other people's lives!

After all, during the lapse of about 5 years, I continued to prove myself as a capable and clear professional, like an open book before all people, and everybody who deals with me respects me for my hard work and compassion to help so many people. The department allowed new providers to be trained in my home before opening their homes, and I did it wholeheartedly, for years. Yet, V.L. was outraged by guilt, hate and jealousy, and stirred up Ms. Frost, and here we are today, six years later. Today it is a fact that provider is capable, and had been handling many mental health and dementia residents in "Evergreen AFH," in a sustainable and appropriate care, abiding by the WACS, and new rules and regulations. Justice prevailed for the first time, as His Honorable Judge Jim Rogers at the Superior Court has ruled, from a neutral point of view, on April 18, 2013, that the "license revocation for Evergreen Seasons BE REVERSED AND REMANDED."

The department appealed to only find that the Court of Appeals Division One, decision to be the same as the Superior Court, as License revocation being "arbitrary and capricious."

On January 29, 2015, the Review of Department Board of Appeals, Judge Conant, responded by placing conditions on the Evergreen Seasons license, already reversed, and six years later, after the fact, an imposition of civil penalties, of \$10,700. Evergreen AFH license was already relinquished on 12/2014, at my free will. Even if the license revocation was reversed by the Courts during a five years trial, at this time I relinquish the first license, the Evergreen AFH. Recently, at a WSRCC Meeting, with the Department's officials in Everett, I had the great opportunity to voice my opinions, and concerns, and how the department dealt with providers like myself at the cost of everything: health, time, and work. The newly assigned director of the department apologized and promised to work together to reverse damages. A flood of applauses went up, as providers only agreed with my complaints, and the courage to stand up and voice fed-back that spoke the voice of many providers.

II. THE SUPERIOR COURT FINDINGS ON 2/18/2013

1. The superior court reversed the review judge's decision, as justice has finally prevailed. The License revocation and Stop placement were reversed! Though the monitoring by the state after that date, 4/15/09, followed in earnest, we have been conducting professional care at the other licensed "Evergreen home," and continued to have a good reputation with both, the licensors, the residents, and the new investigators.
2. The superior court was right when it found that the stop placement and the license revocation were capricious.

3. The superior court was right when it reversed the review judge findings that I did not fail to protect one resident from another, as both residents Yetta Brenner (Y.B.) and Mr. Richard Jacome (R.J.) had no more direct contact with one another, except talking around the table when having lunch or dinner. Those activities were supervised by me or my staff.
4. The superior court was right when it reversed the review judge's findings that resident Mr. Richard Jacome was taken by his daughter to another home, as Ms. Larson clearly stated that it was her decision to move him. Minutes after I told Ms. Larson that Mr. Jacome ran with his cane in an attempt to hit my caregiver, she and Ms. Cantu went out, right away to find and select another adult family home for Mr. Jacome, the resident. The home where Ms. Cantu placed the resident charged a fee of \$5,000 per month, and yet, in my home he was assessed State paid, at a rate of about \$1,500 per month.
5. The superior court was right when concluding that DSHS authorized the relocation of the residents from Evergreen Seasons to Evergreen adult family home.

III. ISSUES PERTAINING TO ASIGNMENTS OF ERROR

1. The superior court was right when concluding that License revocation was capricious and arbitrary, since the same residents, except resident Mr. Richard Jacome who was moved out right away, were allowed to be moved to my other home, Evergreen adult family home.

2. The residents did not suffer any injuries one from another, as a result of my protection and having a system in place like bells on doors and alarms that would give notice of any resident coming in and going out, night and day.
3. The review Superior Court Judge's decision was correct since there was no evidence that resident Mr. Richard Jacome was discharged disorderly, as his own daughter testified in ALJ Hearing that "it was her own decision to take resident out."
4. Judge Conqlin has ruled on a new allegation that was not in the original department's allegations that I endangered to protect resident Y. from sexual, potential advances of resident R. It is a Constitutional right for an accused person has the right to defend herself, and address the new issue brought in the ALJ Hearing by Judge Conqlin. This Constitutional right was not provided; therefore the amendment 14 to the Constitution prevails in provider's favor.

IV.STATEMENT OF THE CASE

A. Factual Basis for the Final order

1. **Evergreen adult family home open in 2000. Evergreen Season open in 2007. Only Evergreen Seasons had enforcement letters.** Tr. 25; AR 293.

The enforcement action that is the subject of these proceedings was only taken against Evergreen Seasons. Evergreen, the other business, was not subject to any enforcement actions. Tr. 261, 295-296.

2. The vulnerable adults

R.J., 81 years old, moved in September 22, 2009 as he changed facilities, Kirkland lodge 5 days, Kirkland Nursing Home, about two months. On 9/23/09 I called a geriatric nurse specialist, for assessment and care plan, done by Bonnie Sykes, RN & Case Manager. Tr. 607, 623; AR 312-336. He was diagnosed with Alzheimer, Dementia, Diabetes Type II, and wandering behavior, easily worried or anxious. Tr. 31-33; AR 327, 333, 335. His daughters concealed the many extra diagnostics that, a few days after being admitted, were discovered: Sleep walk, sun downer, agitated, anxiety fits, exit seeker, and hyper sexual behavior exhibited towards females, as “he would also make comments to female out on the street, “this was a “change in behavior for him,” per Mr. Hamby, friend of R.J. (Tr. 426).

Continued, in Tr. 427 “At first it was like lost, you know, he was ... Theresa (daughter) told me that he was trying to get in bed with other women which is a big no, no.” R.J. tried “to get in bed with this other woman (at second adult family home), and the fellow almost had a heart attack trying to keep him out of there, and Theresa interpreted it was trying to sleep with another woman.” Mr. Leary cross examination continued, “More than just I don’t know where my bed is? Mr. Hamby? Yeah.” Tr. 428. For the past 10 years I took care of residents with Dementia. I never claimed to have “awake” staff at night. Tr.144, 163, 336. We had 24-H care, again, this implies residents rest during nights.

On 10/14/09 I have asked doctor to help with resident’s check-up and medications, a THS Test was done and Thyroid Medication Prescribed along with Doss, Snoot, Glipizide, Seroquel. On 10/16/09 Levothyroxine Sodium was prescribed, in attempts to help him.

10/23/10 Check with Doctor Anderson –follow-up appointment. Doctor increases Seroquel from 50 - 100mg for Agitation. 10/29/09 Called doctor – Buspar is ordered

“Spoke with home, they have difficulty with patient. Patient gets up 3-5 times a night, family says he does sleep walk, also when he awakes during the night as a lot of anxiety” (from Doctor’s faxed back to us page. 11/24/09 Called doctor to see if Advil PM could be ordered. The resident used to take this medication in the past, as resident gets up 5-6 times a night.”

Called ER a few times for a Geropsychiatric evaluation by RN and Mental health doctors. The ER team called a few places, and there was no vacancy, so he was taken to Evergreen hospital and brought back the same day with no extra medications for mental health.

GUIDELINES with Blood sugar Levels for less than 70 or more than 240 and Vital signs is established with Ms. Hudson’s direction. On 2/16/10 Faxed doctor asking to help with Medication to lower sex drive. I also requested that Mr. Richard Jacome be checked by an RN Dementia Specialist and a Dementia Doctor in order to get help with a Mental Health assessment. This was recommended by the RN Delegator, Valery Hudson, when she used the Glucometer at the house to verify that Mr. Richard Jacome had diabetes. On 3/9/10 Doctor Order changed Seroquel to 25mg, Ativan, D/C Buspar @ urinalysis were done, followed by 3 /17/10, when Levothyroxine Prescription, new prescription for Thyroid was added to the pile. On 3/17/10 Resident Doctor’s office to check Thyroid Gland. NEW ASSESSMENT and CAREPLAN: I called and requested that Bonnie Sykes, a Registered Nurse, prepare an Updated Assessment with new Care Plan.

3/22/10-3/24/10 Silvia Dinisiuc, new caregiver, has helped me as I was available on the phone, in town, in meetings. Silvia called me to come home to help with Mr. Richard Jacome:

“Richard was nervous. He spit, called me names, and he would run after me with his walker to hit me. I ran in my bedroom and locked my door, and then I called Mariana”

29. **IMMEDIATE WRITTEN NOTICE - WAC 70-129.110 (4) (b)**

The SAFETY of the individuals in the AFH would be endangered,

The health of the individuals in the AFH would otherwise be endangered

R.J. had toilet inside his bedroom, with a light on 24x7, so he could not wander around the house for toileting. When he wandered in the house, **he was exit seeker**. I asked everybody to help: the doctor, RN delegator, RN case manager, licenser, daughters, etc. with R.J. heavy load. When resident is up 24x7 and resident needs a night awake staff, then at any level of pay, private or state, additional funds have to be allocated. At a \$1,500 per month, as a state paid, was absolutely not enough to cover the day shift, let alone the night one. Even so, I made best efforts to hire Ms. Dinisiuc, in a final attempt to help him. R.J. However, we had a loud alarm installed on his bedroom door that would let us know anytime he was getting out of his bedroom, 24x7. On February 4, 2010, around 7:00PM I found R.J. naked in Y.B. bed, under covers. Tr. 36-37, 67-68, AR 385, 455. My concerns only intensified about R.J.'s hyper sexuality, and how there was no WAC on how to respond in helping, no Medication available with this specific issue. Dr. Anderson admitted my fax was enough to put him on notice, Tr. 435 line3 -17 “I

believe to the best of my knowledge, we received this fax, yes.” I asked M. Hudson, RN Delegator, Ms. Sykes, Ms. Davis, state case manager, and the family of R.J. to help R.J. manage the hyper sexuality, with no avail. All the time, my caregiver(s) and I, we knew where he roaming, and heard his footsteps pretty loud on hardwoods flooring, when not sleeping. That is the pure evidence how we protected Y.B.; she was not the one to find R.J. in her bed under covers at nighttime. Tr. 115, 117; 516-517. That was the only time R.J. was found naked. Yetta told both Ms. Sykes and me that R.J. enters her bedroom, which was his habit to do often while being an exit seeker. This was during the day, mainly, and Y.B. was always watching TV in the living room area, from 9AM to 7:00 PM or latter sometimes. Ms. Sykes visited briefly when needed only for professional reasons; however she was not on the premises 24x7 to report that Y.J. was walking naked in Y.B.’s bedroom. Tr. 625-626, 653-655, 674-675. Ms. Sykes says one time R.J. was seen at 3:00AM by Y.B. in her bedroom, then another time she says “she does not remember,” whatever Y.B. told her. “Yetta just said he came into her bedroom, but he was clothed.” Tr. 625 line 17. But I know, I have been there 24x7. V.L.’s response to this issue was “he is sweet, he is impotent.” This clearly exposes V.L.’s mindset, giving “glaring, spine-chilling stares “Tr. 624 line 11, to both Ms. Sykes and provider. Ms. Sykes also asked if the state has some training dealing with hyper sexuality combined with dementia Tr.656 line 20. When Ms. Petersen asked Ms. Sykes, a geriatric nurse if she would have called the hotline after dealing with hyper sexuality, the response was “No, as provider works with doctor, family, etc. to redirect, and monitor.” Tr. 658. Continued Ms. Sykes, “I think, though—again, you can’t anticipate, you know a demented person and what they are doing in the moment.” Tr. 669, line 9 and 10. And yet, continued Ms. Sykes, demented people **have lucid moments** when they remember things, (long term memory), as with R.J. remembering his wife. Tr. 670, line15-20. In this context, Mr. Leary’s stated “he may be confused about certain parts, acting intentionally in terms of thinking that he want to have sex with Yetta, or it could be a part of dementia, or it could be a

combination of all the various factors; is that accurate? Ms. Sykes, response: "Yes." Tr. 670. This response is transparent in my provider's dealings with R.J., and yes, I have been dealing with demented residents for over 10 years. This is enough evidence to conclude that Provider is capable to deal with dementia patients. Ms. Sykes has not seen provider say anything demeaning towards R.J. or inappropriate about him in front of him or anything like that, tr. 661, line 20, 21. The incident with R.J. when he peed on the floor, intentionally, was a lucid moment of dementia. And I am his nurse, as he needs medical help. Tr. 178, 180. R.J. exhibited daily anxiety, paranoid, acute fear, which at times, made him visibly shaking, as dementia and the other ailments progressed. Ms. Larson resisted taking her father to the Dementia RN & Doctor specialists, or talking to him during nights when needed.

Ms. Frost, got my words mischaracterized again, when she said that I humiliated R.J. in the front of the residents, however, Y.B. was watching loud TV (deaf in an ear), and Doug Mitchell, was hard of hearing, and very laid back, spending most of the times in his bedroom. I had to reorient R.J. and be firm with him and his unexpected behaviors, which I did countless times, stating that I am not interested in his sexual approaches, and the phrase "wouldn't you do that?," would be only appropriate to say in this situation. Tr. 136

In January 2010, Ms. Hudson, RN delegator was asked for help with R.J.'s behaviors and progression of dementia. At my insistence, she recommended and I faxed to Dr. Anderson the request to have an in-home dementia and mental health RN, and doctor to help. Tr. 464-467, 469, 476. It is a fact that the daughters resisted and did not want to have an in home mental health services for R.J., and not that "I did not obtain them." as Ms. Roth writes. Providers cannot diagnose residents, as the family was in denial that their dad needs mental health in the home to better address his magnifying issues. When Judge Conklin asked Ms. Sykes, geriatric nurse what would have been the appropriate way in handling

R.J.'s hyper sexual behavior, Ms. Sykes's response was "to redirect him, to call the doctor, the family, monitor the situation. The family did not engage my services. Tr. 666

Dr. Anderson saw R.J. five in person visits during the stay. Faxes and follow-up phone calls increased progressively. Tr. 436, 442-443. He had a referral to evaluate R, J. by a licensed mental health counselor and a psychiatric nurse practitioner, per my continual request. Tr. 437, 447, 455, 459. However, the daughters did not want to pay for the services, in denial that" the dad does not need that." Tr.448 after R.J. became a threat to Ms. Dinisiuc, on 3/21/09, as she was trying to redirect him to his bedroom He spited on her, and run after her to hit her with his cane. At this point, as I told her that we cannot provide for him anymore, as he became a danger for my caregiver, he was immediately discharged immediately by his daughter, V.L., who admitted at the ALH that it was "her decision to immediately remove her dad out."

Ms. Davis, a nursing consultant for state, has done an assessment for R.J. on February 8, 2010. At that time I have asked Ms. Davis for help with a night caregiver, as provider "did not sleep 5 hours of sleep during an eight -hour period, and the answer is no." D6, page 7. Correct, that's the answer down? Correct." Tr. 408, line 19-22. Ms. Davis denied I advised her about R.J.'s sleep-walk during night, as dementia with sundowners, and hyper sexuality issues have escalated his level of care. Ms. Davis shrugged her shoulders, and moved on to another page in assessment, leaving the raised issue melt in complete silence. Or else, how could I ask Ms. Hudson, Ms. Sykes, and Dr. Anderson for help with R.J. Hyper sexuality and sleep disorders, and not tell Ms. Davis at the assessment about these ardent issues? Ms. Davis said at the records examination at the ALH, on 10/5/09 that provider has tried only one medication with the resident Tr.417, line 16 A. Tr. 417, 21-23. This feed-back ignores completely the dynamics of caregiving, from one person's point of view, without practical experience. Ms. Davis said that she could not change the assessment unless the condition changed, yet not updating the assessment

neither at that time nor at a later date, after my calls put her to notice. Ms. Davis also mentioned that **“people with dementia have periods of lucidity and therefore, R.J. was able to understand some things we were talking about, at the table when initial consultation was done”** Tr. 379, 22A.

Dealing with a delayed system with no significant help from doctors, and case manager on one hand, and defiance and resistance from resident’s family members, who practically refused to help, on the other hand, R.J. arrived to the conclusion of being a danger to others, spitting on Ms. Dinisiuc, and running to hit her with his cane. I could have called the police right away, but I decided to wait till the next day, in the morning, to advise his daughter, V.L. that she has to find him another home as soon as possible. Within twenty – five minutes after that, Ms. Cantu came to the house, went out with V.L., and R.J., and found another home, where he was placed the very same day. Instantly! I had no time to write a thirty day notice, and practically, I did not have to do it, since he became a danger to us, per WAC .70-129.110 (4) (b). Tr. 602-603, 710. I told V.L. that I was firm and R.J. must move out of the home imminently, as Ms. Dinisiuc told V.L., daughter, on how R.J. spit and ran to hit her with his cane. She had to run and hide in her bedroom and, lock herself there, to be safe. Tr. 685 He was placed for a \$5,000 monthly fee, yet the same month that he was state assessed in my home for \$1,500 per month.

As was her habit, after the male caregiver was sent home, V.L. would give chilly looks, and scream at me for no reason. Per Ms. Cantu at ALJ hearing, “Ms. Gligor did not yell at Ms. Larson. Ms. Larson yelled, defending herself to a statement that was made.” Tr.242

The second adult family home placed R.J. in a lock unit in a nursing home, because of sexual misconduct, being found under bed covers in a female resident’s bed, as Mr. Hamby testified.

Ms. Larson blew the details out of proportion and made a mountain out of a mole hill. However, Ms. Larson's words did not match her self-declared good will to help or to be awakened during nights to talk to her own father who would have acute fear attacks, and would constantly ask to talk with Ms. Larson. She chose, instead, to turn her phone off during night time and reminded "me" that to deal with him at night was "my" job. After that she felt guilty for not helping her own father and for not cooperating, but she then dealt with her guilt by attacking me and my provider's services.

Resident Yetta's care was under control. I recommended Ms. Sykes to help with mood swings, and behavior. Both the RN and I, we took Yetta to DR. Rappaport, who prescribed Abilify 10 mg, and had regular visits to his office. Yetta's behavior has drastically improved as Dr. Rappaport stated in his letter, "doing good under provider's care." Ms. Yetta Brenner's assessment and updates with about three hundred pages are loaded with plans on how to address her manic and impulsive health issues, has pages of direct study from Specialty books, and directions from RN, Case Manager. And even when resident Mr. Richard Jacome's assessment was not immediately updated, as his daughters did not pay Ms. Sykes, I went ahead and paid Ms. Sykes myself for updating. Mr. Richard Jacome's doctor and I were in constant communication to help him as his Alzheimer and additional health problems progressed.

Ms. Yetta Brenner, per her POA, wrote her note at her own free will, and she continued to write daily notes, as means of being appreciated and to get attention:

"She told me that day that writing in the journal made her feel better, and it did."

Her POA from New York was always informed about Y.B.'s journaling, and stages of caustic behavior, Ms. Sykes classified at ALH 43-44, 121, 644-646; AR 378-380. For out of control behaviors, I called doctors, re-direct, and increase personal attention. She was seeking attention, and gratification,

most of the times. I dealt with this by giving her small gifts almost daily, and having her write her feelings. It always worked with Y.B. After that she would unload the acoustic feelings, and we would talk about her feelings. The dementia residents were not interested about reading notes, of facility's notebooks, as even when having a lucid moment; they are simply not interested in doing this. Only providers who have practical knowledge would agree with this, observing the dynamics of the caregiving. Y.B. would have daily many **outburst attacks**, and screaming at everything for no reason. I asked the case manager, Ms. Sykes to locate a psychiatrist, to help us with her screaming, mood-swings, and foul language, swearing. We went to Dr. Rappaport, and Abilify has helped improve moods, making her feel good, along with having a puppy, Sparky. "I've never seen her happier. I have never seen her as well-balanced. And I have never seen her as tranquil at this time of her life," per Ms. Sykes, Tr. 638. Yetta's foot was under professional care, directly by Ms. Sykes, RN, who was available during the entire time, when needed. Everything was under control. Ms. Sykes was informed, and she went and bought a journal for Y.B. to write her feelings in order to ventilate her feelings, most of them caused by her trauma in the car accident. Tr.663 Ms. Sykes, a Geriatric RN "thinks provider does a very good job," Tr. 639. The same qualification was given by Dr. Rappaport in his letter of reference, "provider does a good job with re-directing," as patient moods improved. The same attributes were expressed by the POA, Claire O'Connor in her three letters of recommendation. When Mr. Leary asked Ms. Sykes, "would you agree or disagree with the statement that Mariana is incapable of caring for people with dementia? The response was "I would disagree with that." Tr. 640 Continued: "She is a good provider. I have faith in her. I think she does a very good job." Tr. 640 "She's very loving, she's very outgoing, and she has a zest for life." Tr. 641 and yes, Y.B. writing her feelings helped her improve her behavior. It actually worked very well. The three month old puppy, Sparky, was a joy for all residents and family members. The puncture in Y.B. foot was washed by the doctor. We don't know how it was washed.

Y.B. continued to stay with us for about three more years after that, and Sparky behaved well, and we had no more problems of this sort. Our approach to help Y.B., as providers are not doctors to diagnose and have therapeutic sessions, was to take her to doctors, like Dr. Rappaport, and to her other two regular doctors, who continued to see her as needed, or every three months. Also, we called 911 for about five times during her stay, when Y.B. had to see immediately a licensed doctor. Y.B. was directly seen and treated by her Case Manager, RN, Ms. Sykes. This is quite rare for a resident to have so much professional attention and help. Therefore, Ms. Sykes took care of her. The specific mental health approaches for Y.B. were directed by her Psychiatrist, Dr. Rappaport, whom I called many times during her stay. It all boils down to Y.B. thriving under my care, per Ms. Sykes, and Dr. Rappaport. AR 302-303. Our assessments were updated, most of the times, right away. And even when we did not immediately make changes on the papers, we did administer the medications and addressed the needs as prescribed by the doctors. The safety of the residents was always delivered in the care we provided. Sparky was trained commands by both Ms. Sykes and me, and he is an adorable doggy, gentle, small, and good with people. My techniques to manage Y.B.'s behavior were easily assimilated, as we always find practical ways that work with at a specific time with a resident. There is no technique that fits all, like a glove. Tr.47-48; AR 358-380 My techniques were praised by a specialist doctor, Dr. Rappaport, and Dr. Fernando, who thought Y.B. was thriving in my care.

3. The enforcement action

The DSHS license revocation was, per Judge Rogers and defensive attorney Mr. Leary, arbitrary and capricious. After all the hard and challenging work we did at a fraction of a cost, for V.L's dad, "glaring, spine chilling stares" TR 624 (Ms. Sykes), have materialized in pressing and manipulating

The dog scratch was completely healed and under control. The house was always clean, per a host of witnesses at the ALH: Ms. Sykes, RN, Ms. Hudson, RN, Mr. Gustafson, Ms. Cantu, Ms. Mitchell, Mr. Mitchell, and all visitors.

R.J. was not reprimanded, was redirected, there were no witnesses to prove that I yelled, screamed and reprimanded him.

Patients with dementia were not treated like children. Children don't need assessments, doctors, or medications. It was an unartful comment only, and not a practical application. Tr. 398, 533-534, 588-589, 591-592. Dementia residents have moments of lucidity, as agreed by Ms. Davis, RN, case manager. R.J. was sexually aggressive, as evidenced being transferred in a nursing home, and not scolded and reprimanded, but redirected. The home was clean, professional, and not chaotic. Yes, I was talking loudly, as all residents were hard of hearing or deaf in one year. The three months old puppy has a good temperament with people. The POA and case manager of Y.B., were advised after the incident, and Y.B. continued to play with Sparky about three years later, with no more incidents. In this context, there were no more future bites. AR 301

The negotiated care plans were updated, and practically, providers who are not doctors to administer medications, etc., can resort to the same measurements, such as redirections, firm limits, and engaging

all parties involved in the care. Ms. Sykes has made changes to address assessments, and she came almost daily when needed and took care of paper work.

Residents have the right to exercise their rights and sleep in their attires at night. AR 302. Y.B. assessment and care plan was all in one, and addressed from the very beginning approaches to deal with her, and was seen and acknowledge by Ms. Sylvester, our licensor. AR 302 Y.B.'s approach to ventilate her caustic feelings in notebooks, was working well with her, that why she "thrived in my care," per Ms. Sykes. We actually had lots of activities, taking the residents for birthday out, for tea or coffee, to restaurants, and they were thriving physically. Ms. Cantu "had no concerns about her ability as a provider." Tr. 254 "I saw joy in the residents' interaction with the dog" Tr240 Again, with R.J. care plan and reorientation at any hour during night and day, we called daughter(s), and offered food. This approach was on the assessment, and care plan. R.J. s case manager, Ms. Davis was advised about all his needs, and she did not either offer advice, or any plan of action.

Procedural History

On April 15, 2009 DSHS issued a stop placement and license revocation for Evergreen Seasons,

Citing the following WACS:

1. WAC 388-76-10020 (1) License ability to provide care and services
2. WAC 388-76-10220 (2) (3) Incident log
3. WAC 388-76-10230 (2) Pets
4. WAC 388-76-10380 (2) Negotiated care Plans – reviews and revisions

5. WAC 388-76-10400 (2) (3) (a) (b) Care and services

6. WAC 388-76-10615 (2) (a) (3) (6) Resident rights- Transfer and discharge

At the administrative Hearing in October 2010, Judge Conklin ruled on a new allegation that **was not an** initial allegation of the department that, “resident Y was endangered by not being protected from sexual advances of resident R.” In this context, I did not have the Constitutional right to address this new allegation, at the A L Hearing, yet the license revocation was finally addressing this new issue, as the witnesses help clear the big part of the allegations.

On December 8, 2010, and September 7, 2011 filed petitions for review of initial finding with DSHS Board of Appeals, to follow the steps of the legal system provided.

Furthermore, continued the process, at the judicial review at the King County Superior Court. On April 18, 2013, the Superior Court Judge James Rogers reversed initial judge’s findings as I was not given notice of the allegations that I failed to protect one resident from another resident, and that I failed to provide discharge notice to a resident, as he had to immediately be discharge, per WAC. His daughter firmly stated at the ALJ hearing it was her choice to remove R.J. CP 1-4. Judge Rogers also reversed the license revocation.

V.ARGUMENT

A. Standard of Review

The appellant stresses that this is an adjudicative proceeding under the Administrative Procedure Act (APA) under RCW 34.05 limited to Appeal Review Judge entered on September 7, 2011. Appellant also argues with regards to the Superior court judge findings, when the license revocation was reversed by Judge Rogers, on 2/18/13.

The appellant, at that point in time, has failed to demonstrate by clear and convincing evidence or by preponderance of the evidence that provider failed, was professionally unfit, after eleven years of working and managing as a provider. So far the department failed to convince, though it goes to repeat details during many briefs. It is a fact that the DSHS allowed the transfer of the residents from Evergreen Seasons to Evergreen adult family home. If I truly was emotionally unfit, why would the State allow me to keep my Evergreen license till 2014 when I relinquished it? Ms. Frost did not represent the voice of the two licensors and many investigators who have made many unannounced investigators, and visits to my home during the five years period when battling in court, and found no reasons to revoke my Evergreen license. For a few years after the incident, I hired a live-in LPN, and latter had for a few months a RN live-in, (PRN). In my case justice prevailed when Honorable Judge Rogers, at The Superior Court, has reversed the license revocation on April 18, 2013. His Honor has ruled from a neutral point of view! Today, I ask, respectfully, the Courts of Appeals to further on, reverse the \$2,000 with fines, and all specialties to be on the ES license, consistent with your opinion in 2014.

WAC 388-76-10940 states that

Remedies—Generally.

The department may take one or more of the following actions in any case which the department finds that an adult family home failed or refused to comply with the applicable requirements of chapters 70.128, 70.129, or 74.34 RCW or this chapter:

- (1) Denial of an application for a license;
- (2) Impose reasonable conditions on a license;
- (3) Impose civil penalties;
- (4) Order stop placement; and/or (5) Suspension or revocation of a license

RCW 70.128.160(1) WAC 388-76-10940.

Department authority to take actions in response to noncompliance or violation if provider

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter.

Per Mr. Leary, in “Closing Argument of the Appellant” page 5:

The Department is required to impose one of the aforementioned remedies when the violation “pose a serious risk to any resident, are recurring or are uncorrected.” WAC 388-76-10945. Nowhere in the regulation is there a requirement that the Department resort to license revocation in her situation. In evaluating the allegations made by the Department it is important to recognize that hindsight provides a biased perspective. When the outcome is known, it is easy to analyze and dissect a series of events and say what could have been done, what should have been done. Such a retrospective analysis ignores the

realities of and the dynamics of caregiving. The testimony of complaint investigator, Ms. Frost, and the questions raised by judge Conklin highlight how individuals look at the same set of facts and raise opposing questions. Ms. Frost concluded that there was not a basis for Ms. Gligor to conclude that R.J. was acting sexually and that there was not a basis to discharge him from the home. At the conclusion of the testimony, Judge Conklin questioned whether Ms. Gligor waited too long to discharge R.J. given his behaviors. The scrutiny applied at a later date to analyze the propriety of a provider's response must consider what information was available at the time of the incident, not what was learned later. Further, the analysis must account for the role of the provider. The provider cannot make diagnoses and is dependent on the resident's medical provider and decision makers to respond and help address the resident's conditions.

The court, in APA, has a neutral position, unlike the DSHS Board of Appeals review Decision and Final Order, who is biased, and follows the department's findings in a way to affirm license revocation. The Appellate Court may grant relief from an agency order in this case based on RCW 34.05.570(3), as the rule was unconstitutional, the agency erroneously interpreted the law, the order is not supported by evidence "that is substantial evidence in light of the whole record before the court," and the order is arbitrary and capricious." *Tapper*, 122 Wn.2d at 407.1.

Review of factual matters

The administrative record bases its findings on "Judicial review of facts confined to record." RCW 34.05.558.

The Court affirms challenged findings that are “evidence substantial when viewed in light of the whole record before the Court.” *Bond v. dep’t of Social & Health Svcs.*, 111 Wn. App.566, 572, 45 P.3d 1087 (2002).

Substantial evidence is that which is sufficient “to persuade a fair-minded person of the truth or correctness of the order.” *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn. 2d 38, 46, P.2d 1091 (1998)

The appellate Court determines only if the evidence to the prevailing party supports the challenged finding. *Dep’t of Rev. v. Sec. pacific Bank*, Wn. App. 795, 803, 38 P.3d 354 (2002).

RCW34.05.464 (4) requires the reviewing court to give “due regard to ALJ’s to observe the witnesses. *Kabbae v. dept’s of Social and Health Services*, 144 Wn. App.432, 192 P.3d 903 (2008)

Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional record.

“Evidence that is substantial when viewed in light of the whole record before the court.”

RCW 34.05.570 ... (3) reviews with fresh eyes the “Review of agency orders in adjudicative proceedings. ... **(e)** “that the order is not supported by evidence that is substantial when viewed in light of the whole record.”

2. Review of questions of law

The RCW 34.05.570(3) (d) states that the Judicial review formed by the Appellate Court, reviews to weather the (d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained because, the (d) The agency has erroneously interpreted or applied the law, and (i) The order is arbitrary or capricious.

Issues of law are subject to *De Novo* review by the Court. *Bond*, 111 Wn. App. At 572.

The Court reviews *de novo* both the agency's conclusions of law and its applications to facts vs. hearsays. The Court can modify conclusions of law when the ALJ judge or department "erroneously interpreted or applied the law." RCW 34.05.570(3) (d), *Heinmiller*, 127 Wn. 2d at 601

3. Substantial evidence supports that the department decision to revoke license was arbitrary and capricious and not supported by the evidence.

The APA standards allow a reviewing Court to reverse an agency decision when it was arbitrary and capricious. *Bond*, 111 Wn. App. At 572; RCW 34.05.570 (3) (i). A clear showing of abuse is evidenced by the ALJ records. When action by an agency is willful and unreasoning and taken without regards to the attending facts and circumstances." *Hillis*, 131 Wn.2d at 383. When an accused person is not given the Constitutional rights to defend herself, this along with many other infringed upon rights clearly constitute abuse of powers and there is absolutely no room for two opinions, therefore, the Review Court

could only view the initial order followed by departments biased, review judges' orders nothing but arbitrary and capricious.

1. DSHS has failed to demonstrate that there was an adequate basis to revoke the Evergreen Seasons AFH license. As noted in Closing arguments of the appellant -12, Mr. Leary states that the Ms. Conklin had the authority to review the department decision only based on the Department allegations originated on 4/15/09.

2. The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied RCW 34.05.570

Mr. Leary in Closing Argument of the Appellant -8 states:

It is a fundamental provision in the Constitution that an accused person must be informed of the charge he is to meet at trial and cannot be tried for an offense not charged. Const. art. I #22 (in criminal prosecutions the accused shall have the right to demand the nature and cause of accusations against him). Failure to put the accused person at notice of what charges he must face so he can answer the charge and prepare his defense requires dismissal of the charge. *State v. Rhinehart*, 92 Wn. 2d 923, 928, 602 P.2d 1188(1979). The court dismissed the charges as the accused was charged with possession of a stolen car when he had in possession only a car part.

Per Honorable Judge Rogers at the King County Superior Court:

Ms. Gligor was not afforded due process on the allegation that she endangered a resident Y, by not protecting her from sexual advances of resident R. The Court reverses Conclusion of law 5&9 as Ms. Gligor was not given notice of the allegation. The defense was clearly surprised, as noted in closing argument and appeal briefing by Mr. Leary.

3. The agency has erroneously interpreted or applied the law (RCW 34.05.570)

Per Honorable Judge Rogers:

The Court reverses Findings 20 and Conclusion 17 that Ms. Gligor failed to give a 30 day notice letter as not supported by evidence. R's daughter Valerie Larson clearly testified that it was her idea to move her Father on the same day that Ms. Gligor stated that she had intended to have R move, and thus Ms. Gligor never had a chance to issue a 30 day letter. Report of Proceedings at 198; 204. The findings completely ignore this evidence, which is contrary to the finding, and makes no attempt to reconcile it.

The Review Order attempted to address this other evidence on the 30 day notice, but in part by citing (at 16) the February incident, as if this could be considered for why Ms. Gligor failed to give notice in March. But the Department did not charge Ms. Gligor with failure to give R's family notice to move him in February 2010 (even though it was in the report attached to the Notice, Ex2), and as a result the Administrative Judge declined to even consider it as a basis for revocation. Conclusion of Law 16. The Review Order nowhere addresses this issue of notice.

Per Mr. Leary in Appeal to the Board of Appeals-6:

According to Mrs. Larson, the person who made the decision to remove the resident R from the home, there was no discharge. Without a discharge, there can be no violation of the notice requirements. The Department failed to prove its alleged violation of WAC 388-76-10615.

4. The two subject residents had Negotiated Care Plans and Updated Negotiated care Plans that addressed their ever developing health needs. Resident Y's care plan was updated per her private RN & Case Manager, who had her foot scratch under control, and came to see and monitor Y' s every other day. Both the Case manager and provider kept a daily notebook with progress notes. I followed up with all prescribed directions form the RN. At the first visit, doctor's assistant washes Y's foot and sent her home without any medications. It was not determined how the doctor's assistant washes her foot.

The Nurse Delegator, Ms. Valery Hudson, RN, MSN came and delegated R's medication and provided extra pages on diabetes and related areas. At my request and disclosure of the facts about R's hyper sexuality, and Alzheimer's progression, she has recommended a mental health RN to come to the house to prescribe medications and monitor the resident. The doctor was informed by faxing about 25 pages, overall, however, it was again, the daughters who did not follow doctor's orders. Mr. Richard Jacome was sent to ER for a geropsychiatric evaluation and medications review by a specialized psychiatric doctor. The 911 made a few calls, and there was no room available, however, he was sent to Evergreen hospital, and brought back the same day, without any additional prescriptions or medications.

Per Dr. Rappaport, we took Y to a psychiatrist and specialist who helped improve the mental and behavioral responses in Y, by prescribing Abilify. Every month I called the office, reported how Y is doing, and together with the doctor continued to increase or decrease the dosages.

We managed to help Y improve her overall reactions and her feelings of feeling good increased in a remarkable progression. There no evidence of the alleged violation of WAC 388-76-10380(2), since we have kept the documents up to date, with exception of a few occasions when even if not immediately updated in the book, we have administer the proper support, and advised all parties involved in the caregiving of the residents about the new needs and their progression. Per Ms. Silvester at ALJ Hearing, when Mr. Leary asked her at the annual inspection on October 27, 2009, if she had problems with the assessment and care plans, she responded “**I did not have any issues with that.**” Tr.281 Overall, Ms. Silvester is “to be pretty fair with providers,” per Mr. Leary at the ALJ Hearing.

B. EVIDENCE

5. Specific Findings of Fact were not supported by the testimony of the witnesses or the evidence produced at the hearing

Given the nature of the violations and the background in which they were looked at with magnified glasses, as the provider was labeled by the evil pact doer, Ms. V.L, the Department has not convinced and proved that the license revocation was the greatest and final punishment. Furthermore, about six years later, after the fact, the imposition of fines follows along with prohibiting specialties on ES license. **Arbitrary and capricious**, again, as their habits are. Provider has not failed or refused to comply with the laws governing the subject industry, and WAC 388-76-10940 clearly states reasons for license revocation. Per **Mr. Leary**, there is no reason why the department resorts to this most punishable

resource but from the reason of **arbitrary and capricious**. There were no reasons why this posed serious risk to three residents, and there was no risk to prevent. The department cannot rule on pre imagined or pre-fabricated mindset. There is a **ten years history** *behind the provider* who has provided in a loving care and met the needs of the residents. Furthermore, I continued to provide for the residents for about two to three more years, after the license revocation, at my other Evergreen adult family home.

Per Mr. Leary in “Appeal to the Board of Appeals-8”

The Following findings of Fact are not supported by the testimony of the witnesses or the evidence produced at the hearing: Findings of Fact (“Ms. Gligor’s intent was to reprimand R for his inappropriate behavior”; 13 (“Ms. Gligor did not mention to Ms. Davis her concerns about R’s hyper sexuality”); and Finding of fact 15 (“... but the doggy’s scratch was not cleaned well and became infected.”). Ms. Gligor’s intent was not to reprimand but redirect R. Ms. Gligor did mention R’s hyper sexuality to Ms. Davis and Mrs. Davis, department’s case manager, failed to respond. Finally, there was no testimony regarding whether the doctor properly or improperly cleaned resident Y’s wound. Further, Findings of Fact 18 fails to adequately summarize Dr. Anderson’s testimony. He stated that the fax from Ms. Gligor was sufficient to *put him on notice* that she had concerns with his sexual acting out and that was as common behavior exhibited by males who suffer from dementia.

6. Ability to Provide Care and Services

Per Ms. Sykes, RN Case Manager, Ms. Hudson, RN Delegator, Dr. Anderson, Ms. Mitchell POA for resident Doug, and Ms. O'Connor, POA for resident Y, had expressed in writing or verbally, or both only positive qualifications on me and my work.

Per Mr. Leary in Closing Argument of the Appellant- 9:

Next, the Department alleges that Ms. Gligor lacked the understanding, ability emotional stability necessary to meet the needs of her residents. The claim is without merit. The testimony of the Department's own licenser refuted the allegation. Unquestionably there was ample evidence that R.J. was a difficult resident who presented a complicate set of issues. The lack of support and the lack of responsiveness by R.J's doctor and his family compounded the issue.

The testimony of Licenser Estelle Sylvester was **enlightening** as to Ms. Gligor's character, dedication and demeanor. Ms. Sylvester described Ms. Gligor as personable, gracious, well-educated and someone whose intent was to provide the best care for her residents. She said that if anything, Ms. Gligor tried too hard and had the belief that she could help anyone at any time. Her dedication should not be misconstrued as emotional unfitness. WAC 388-76-10020(1).

Per Honorable Judge James Rogers in Notice of Appeal to Court Appeals, Division I, and Page3:

Both the Administrative Law Judge and the Review Order Judge upheld the Department's decision that Ms. Gligor was personally unfit to be a caretaker and upheld the Department's remedy of revocation on that basis. See Conclusion 20, 21; Review Order at para, 42. But even though the **Department decided on the most drastic sanction**, license revocation, for Ms. Gligor's adult home at issue, the Department allowed her to transfer her clients from the adult family home at issue to her second adult family home, Evergreen AFH.

The words such as: reprimanded, making him shake, R.J., Tr. 61-65, 138; AR 304-305. Y.B., with a caustic behavior has written her feelings as a means to vent them; she did not sign a waiver. Tr. 69, 122-123; AR 458. If dementia patients read any notes, form facility journal or elsewhere, as they cannot recall things minutes later what they read, why would that be a problem to being with? V.L. affirmed in ALJ hearing "her dad is like a child, and doesn't know for rhyme or reason, why he is like that. "

Per Mr. Leary in Closing Argument of the Appellant -13:

Can the Department's actions, attempting to revoke the license of Evergreen Seasons AFH only to latter allow the residents to move to Evergreen AFH, be described as anything but arbitrary and capricious? No. The simple answer is that the decision is an admission that Ms. Gligor provides good care for her residents and that her license should not be revoked. The testimony of Licensor Sylvester clearly demonstrates that she is educated, caring provider. The testimony of Ms. Sykes illustrates how effective Ms. Gligor can be with challenging clients. Geri Mitchell and Brent Mitchell discussed how pleased they were with the care Ms. Gligor provides for their husband/father.

5. There was insufficient evidence to conclude that residents were not safe from facility's dog.

Ms. Silvester saw the dog interacting with the residents, sitting on their lap and bringing toys to residents. Saw joy in the residents or just having the puppy around them Tr. 240 The condition of the house and the condition of the residents with respect to cleanliness and hygiene per Ms. Cantu, who exposed a reversed jealousy view on provider, "they were clean." Tr. 241

Per Mr. Leary in Appeal to the Board of Appeals – 7:

Ms. Giger's willingness to get a dog demonstrates the lengths that she is willing to go to provide for her residents and accommodate their requests. Ms. Sykes testified about how Y.B. Had strong opinions and was a feisty 89-year –old woman. She describes her as being, at times, caustic and had difficulty accepting what she perceived poor choices by other residents. Despite the traits that might make the transition into an adult family home difficult, Y.B. thrived at Evergreen Seasons. Much to her delight, Ms. Gligor purchased the dog, Sparky, for her. The presence of Sparky was one of the reasons why Y.B. thrived in the home.

There was ample testimony that Sparky was an active dog with lots of energy. However, there was no evidence that it was aggressive before the incident with Y.B. or afterwards. Further, there is no allegation that Y.B. did not receive appropriate care after the incident with the dog. Ms. Gligor

specifically selected the breed because it was known for being good with people. Her entry in the facility journal that “(Y.B.) plays at own risk” was an unartful, unenforceable comment. It was not as if Ms. Gligor had Y.B. or her representative signs a waiver. Ms. Gligor and Ms. Sykes testified that Y.B. Was not engage with the dog after the incident. Only after the passage of time where it was determined that Sparky was not a risk to Y.B. was she allowed increasing her interactions with her. Conclusion of Law 7 finds that Ms. Gligor acted appropriately when the dog bit the resident Y.B. However, the conclusion that” she plays at own risk” does not and cannot establish that Ms. Gligor did not support Y.B. safety.

7. There were no allegations from the Department that provider failed to protect one resident from another resident, specifically protect Yetta from sexual advance from Mr. Richard Jacome

The findings of fact and conclusion of law cannot be based on a factual theory that was not raised or alleged by the agency bringing action. A license revocation is a quasi-criminal proceeding and entitles to all protection of due process. Nguyen, 144 Wn.2d at 474; Washington State med. Disciplinary Bd. V. Johnson, 99 Wn. 2d 466, 663 P. 2d 457 (1983).

In Conclusion of Law 5, Judge Conklin found that provider “did not actively support the safety of Y, by failing to protect her from sexual advances of R in violation of WAC 388-76-10400(3).” Nowhere in Department’s Exhibit 2, the notice of stop placement or Exhibit 3, the statement of deficiencies, did the Department allege that provider failed to protect Y from sexual advances of R. Judge Conklin’s final legal conclusion rests on a factual assertion that was not alleged Conclusion law 21.

Judge Conklin ultimate legal conclusion legal conclusion rests on a factual assertion that was not alleged by the department.

Ms. Roth quotes this passage in an attempt to credit Judge Conklin's conclusion of law:

In Relations Comm'n, 38 Wn. App.572, 579, 686 P.2d 1122 (1984): Generally, an administrative law judge's decision on an issue will not be upheld on review if the issue was not raised in the amended complaint, in the briefs, or in oral argument, and **no evidence** was presented concerning that issue. There was no evidence that WAC 388-76-10400(2), (3), (a) and (3) (b) was violated. No damage was ever evidenced in the subject resident, before and after that time. AR 131. WAC 388-76-10400 (2); (3) (a) and (3) (b), as we provided necessary care and services, in a professional manner, consistent with safety first, and quality of life. Per Ms. Sylvester, the licensor, "Ms. Gligor is very personable gracious individual. She has the intent to provide the best care for her residents." Tr 263. Ms. Davis, Case manager, though it sated in the assessment "provider has not five hours sleep out of eight hours," failed to even consider paying for a night "**awake staff.**" Per Ms. Silvester, at ALJ hearing, "the WAC don't require 24-hour **awake staff** Tr. 310. Even so, we hired a Ms. Dinisiuc, in an attempt to help with R.J. overloaded caregiving. Tr. 125-127, 409, 419.

Y.B. was watched at night, and R, J. was strictly monitored by the door alarms. This is the reason why I found him under cover at 7:00PM in Y's bedroom.

Actually, provider has improved Y.B.'s quality of life, per Ms. Sykes, Dr. Rappaport, and POA.

No violations of WAC388-76-10400(2) and WAC 388-76-10400(3). WAC 388-76-10400(2) & (3). R.J.'s health declines naturally, and providers are cannot "revive "aging declining health, nor are they accounted to do have this unrealistic capacity to slow or reverse the aging process.

Y.B.' s caustic behaviors were addressed in a supportive, over patient, extremely delicate manners, as at any time she would cuss, swear, and explosively express herself in a vocal manner. Writing did her good, and she loved to write, and to receive attention and feel important at all times. WAC 388-76-10400(2) was not violated. Y.B. had moments of lucidity, as agreed by RN, and doctors, and she had to be aware and reminded all the times not to play with the dog. She was not asked to sign a waiver! Tr.109

In conclusion, there is no clear evidence, and hearsays, and fake statements form V.L. cannot stand. WAC 388-76-10400(2), (3) (a) and (3) (b) were not violated. The Review judge cannot rule on a potential future harm as there was no actual harm for both R.J. and Y.B.

In fact, a system in place was provided: a new caregiver was hired, and alarm system on R's bedroom was loud enough to awake every person in the home, day or night, however the residents were either hard of hearing or deaf in an ear.

Ms. Sylvester, my licensor's for about nine years, testified in ALJ Hearing. She was right when she stated provider is "compassionate, well educated, and thinks she can help everybody all the time." The extra effort to help R should not be misconstrued as being emotionally unfit to provide for residents. Naturally, everybody would get frustrated when resident's family becomes hostile, and refuses to help. **The dynamics in an adult family home can be realistically seen and dissected only by the provider and personnel involved** in the dynamics.

Even after the Court affirms the standard of proof in this proceeding as preponderance of the evidence, Honorable Judge Rogers affirms the following in Review Decision and Final Order ("Review Order"), 4/18/13:

8. Ms. Gligor was not afforded due process on the allegation that she endangered a resident, Y, by not protecting her from the sexual advances of R. The Court reverses Conclusion of Law 5 & 9 as Ms. Gligor was not given notice of her allegation. There are two ways in which she might have been given notice. First, the Administrative judge believed that the Department gave notice by incorporating all allegations from the investigator's report in the Notice, Exhibit 2, from the attached report. It does not. The plain language of Exhibit 2 limits allegations to the ones listed in it, while referencing the attached report for further details of the allegations. The second way notice might have been provided would be by amending the Notice before or even during the trial, much like amending a complaint to conform to the evidence. Given the evidence introduced, this would have allowed Ms. Gligor to address the allegation. This was not done. The defense was clearly surprised, as noted in their written closing argument and appeal briefing by Mr. Leary.

1. The Court reverses Findings 20 and Conclusion 17 that provider failed to give a 30 day notice letter as not supported by evidence. R's daughter Ms. Larson clearly testified that it was her idea to move her Father on the same day that Ms. Gligor stated that she had intended to have R move, and thus Ms. Gligor never had a chance to issue a 30 day letter. Report of Proceedings at 198; 204. The findings completely ignore this evidence, which is contrary to the finding, and makes no attempt to reconcile it.

2. The Review Order attempted to address this other evidence on a 30 day notice, but in part by citing (at 16) the February incident, as if this could be considered for why Ms. Gligor failed to give notice in March. But the Department did not charge Ms. Gligor with failure to give R's family notice to move him in February 2010 (even though it was in the report attached to the Notice, Ex.2), and as a result the

Administrative Judge declined to even consider it as a basis for revocation. Conclusion of Law 16. The Review Order nowhere addresses this issue of notice.

3. The department choice of a remedy was arbitrary and capricious.

4. The Conclusion of law goes to great pains to discuss that the Department's decision of a remedy is accorded great deference. The Review Order, from pages 26-41, discusses this very same issue in the same manner. The Department is given great deference under an arbitrary and capricious standard....

5. Both the Administrative Law Judge and the Review Order Judge upheld the Department's decision that Ms. Gligor was personally unfit to be a caregiver and upheld the Department's remedy of revocation on that basis. See Conclusion 20, 21; Review Order at para, 42. But even though the Department decided on the most dramatic sanction, license revocation, for Ms. Gligor adult family home at issue, the Department allowed her to transfer her clients from the adult family home at issue to her second adult family home, Evergreen AFH. **Testimony of Estelle Sylvester: "My only concern was that the residents be informed about it, that they receive a 30-day notice, advance of the move, and they had the opportunity to go over to see the house to see if they thought they'd be comfortable there."** Tr. 295 Ms. Sylvester continued **"The monitoring visits" amplified, to ensure the safety and well-being of the residents who may still be residing in the home.**" Tr. 261 She apparently continues her work to the present time.

Regarding the assessments and care plans that addressed residents' needs, Ms. Sylvester checked them, and had "no concerns about them," TR 281

In this context, Ms. Silvester and Mr. Leary define the role of the provider: “the provider is not a doctor, a nurse, or a nurse practitioner” and the role is not to diagnose, but to provide care, Tr. 287.

V. ARGUMENT on FINES

Six years later, we are still here, first, dissecting right from wrong because of only two women’s act during my fourteen years as provider, and secondly asking respectfully the Court of Appeals, Division One, to deny the \$2,000 fines, and keep all specialties on ES license.

The Court of Appeals, represented by Honorable Judges: Trickey, Verellen, and Spearman conclude on October 20, 2014:

The DSHS licensor, Estelle Silvester, testified that DSHS permitted the residents to move to Evergreen, the other home operated by Gligor. (TR at 296) At that time, Gligor had no residents at Evergreen, and had not had any for two years, but maintained her license there. (TR at 314)

Silvester conducted two full inspections, two follow-up inspections, a complaint investigation, and six monitoring visits of the two homes. (TR 260) Silvester testified that the residents from ES were relocated to Evergreen. Silvester had no concern with the moving of the residents to Evergreen. Her only concern was that the residents be informed and that they receive a 30-day notice and an opportunity go visit the home to see if it would be comfortable. (TR 295)

In August 2010, Silvester conducted a full inspection of the Evergreen home. **The resident whom the dog had bitten, really liked the dog. (TR 315-16** the other remaining resident told Silvester that the dog did not bother him.

DSHS argues that it did not have authority to prevent the relocation of residents to Evergreen because the license is for the home, not the provider, and there were no enforcement actions pending against Evergreen. However, WAC 388-76-10985 (2) provides:

If violations in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same provider, the department may impose remedies on those other homes.

If DSHS truly found the violations presented a serious risk of harm the remaining two residents, those residents should never have been permitted to move with the same provider. The DSHS did not think so is evidenced by its permitting the residents to be moved there.

The residents resided to my Evergreen from about 2009 till 2013. Also, admitted new residents at Evergreen. In 2014 I relinquished the License, as the stress to defend myself for ES license has taken a toll on my time, health, and the level of stress that had to be managed.

During this period of time, we continued to have inspections, and everything I did was under the microscope, and radar. However, we never had any complaints or allegations on the WACs cited for in 2009. Nor did we have from 2000 to 2009, and from 2009 till 2013.

Ms. Sylvester was right when affirming that **“provider is compassionate, truly care for her residents, and is well educated, and her intention was to help the residents.”** ALH Hearing

FINALLY, there is no evidence that the caregiving, assessments, and care plans lacked control.

Actually, **if anything, I worked too hard and analytical to ensure best care.** The discharge was clearly not a violation, per documents. The caregiving assessments were done by the B.S, RN, and we have hundreds of pages to prove, on file. The fine of \$10, 700 for “107 days of regulatory violations,” is again, another way that shows how arbitrary and capricious the department is. It is outrageous after all I have been through, and all that was brought into light during a 6 years trials, to even ask for fines, for a double punishment, as means so to speak, “ to show the drastic mistakes provider made.” This is how the habits of the department are: **arbitrary and capricious.** At the Superior Court on 10/30/2015, Judge Riestchel:

There is no setting forth in this decision about a history of prior failures of the Appellant, warnings or suspensions. On the first do-round, the Department went straight to revocation. The only reason given for the fines is the seriousness of the violations. There’s no other reason given for that. So the amount of the fine strikes this Court as punitive. The Court believes that the tenor of the decision, the reason given for it, it is arbitrary and capricious to give the fine.... (P 26)

Both the Court of Appeals Division One, and the Superior Court judges ruled that License Revocation in 2009 be REVERSED and Remanded. The Department was arbitrary and Capricious, consistent with this opinion. The License originally comes with three Specialties, Dementia, Mental Health, and

Disabilities. Respectfully, I ask this court to deny the State any prohibition on license. Consistent with license being reversed

The Constitutional rights prevail again, in my favor, ex post facto;

Ex post facto

ex post facto *adj.* Formulated, enacted, or operating retroactively. [Med Lat., from what is done afterwards] *Source: AHD*

In U.S. Constitutional Law, the definition of what is ex post facto is more limited. The first definition of what exactly constitutes an ex post facto law is found in *Calder v Bull* (3 US 386 [1798]), in the opinion of Justice Chase:

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. every law that aggravates a crime, or makes it greater than it was, when committed. 3d. every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Double Jeopardy

Double jeopardy is a term used in law. Double jeopardy is forbidden by the Constitution.

VI.CONCLUSION OF LAW

The imposition of Civil Penalties was adopted on January 7, 2012, WAC 388-76-10975.

The Board of Appeals decision on 1/20/2015 to aggravate and inflict a second punishment, even greater, by asking for fines per diem, for violations not committed, five years later, cannot stand. This is unprecedented! US Constitution, Article 1, Section 9, Clause 3x forbids Ex Post Facto:

No bill of attainder or ex post facto Law shall be passed.

To do a license revocation in 2009, and in 2015 to do a financial penalty, a double penalty, is not a procedural due process. I have all the rights the law affords to clear me from all **capricious and arbitrary** punishments of the department.

For the aforementioned reasons, Judge Rietschel's affirming in part, reversing in part decision, cannot stand. The respondent respectfully request that this Court of Appeals, Division One, to dissolve and deny the \$2,000 fines. Also, the license specialties: Dementia, Mental health and Disability continue be on the license, as the license revocation was reversed by your Honors with all Original Specialties, consistent with this opinion. Constitutional rights prevail in provider's case.

RESPECTFULLY SUBMITTED this February 25, 2016

MARIANE GLIGOR, MA Ed



Respondent for EVERGREEN SEASON

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