

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil  
(Consumer Protection)

Court File No. \_\_\_\_\_

In the Matter of Continental Gardens Senior  
Living, LLC d/b/a Yorkshire of Edina Senior  
Living**PETITION FOR ORDER  
APPROVING ASSURANCE OF  
DISCONTINUANCE**

The State of Minnesota, by its Attorney General, Keith Ellison, hereby petitions the Court, pursuant to Minn. Stat. § 8.31, subd. 2b, for an Order approving the attached, fully-executed Assurance of Discontinuance between the State of Minnesota, through its Attorney General, Keith Ellison, and Continental Gardens Senior Living, LLC d/b/a Yorkshire of Edina Senior Living.

Dated: April 1, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota*/s/ Noah Lewellen*NOAH LEWELLEN  
Assistant Attorney General  
Atty. Reg. No. 0397556445 Minnesota Street, Suite 1200  
St. Paul, MN 55101-2130  
(651) 724-9945 (Voice)  
(651) 296-7238 (TTY)  
noah.lewellen@ag.state.mn.us (Email)ATTORNEYS FOR PLAINTIFF  
STATE OF MINNESOTA

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In the Matter of Continental Gardens Senior  
Living, LLC d/b/a Yorkshire of Edina Senior  
Living**ASSURANCE OF  
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, through its Attorney General, Keith Ellison and Continental Gardens Senior Living, LLC d/b/a Yorkshire of Edina Senior Living (“Yorkshire”);

WHEREAS, Yorkshire is a senior living facility that enters into contracts for housing and medical services with consumers in Minnesota;

WHEREAS, the State issued correspondence to investigate whether Yorkshire violated the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69 *et seq.* (“CFA”); the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, *et seq.* (“DTPA”); and the Minnesota Act Against False Statements in Advertising, Minn. Stat. § 325F.67 (“MFAA”) related to its advertisements, representations, and conduct with its residents who paid for Yorkshire’s monthly “Wellness Package.” Such representations and conduct included, for example, advertising that Wellness Package participants would receive a monthly Wellness Visit on top of other monthly nursing and other services available to Wellness Package participants, but, due to the onset of the COVID-19 Pandemic, instead replaced the monthly Wellness Visit with twice-daily COVID-19 screens for a

period of time, which in the view of the Attorney General did not amount to actually providing the monthly Wellness Visit to Wellness Package participants as advertised;

WHEREAS Minnesota Statutes section 8.31 vests the Attorney General with authority to enforce the CFA, DTPA, and MFAA, including by bringing a civil action in Minnesota state court and pursuing injunctive relief, restitution and/or disgorgement, a civil penalty of up to \$25,000 per violation, and recovery of the State's attorneys' fees and costs;

WHEREAS Minnesota Statutes section 8.31 further vests the Attorney General with the authority to accept an assurance of discontinuance to resolve its investigations, and such an assurance may include a stipulation for performance or remedies provided by section 8.31, and violation of such an assurance is punishable as contempt; and

WHEREAS, the Attorney General and Yorkshire (collectively, the "Parties") desire to resolve fully this matter by entering into this Assurance;

NOW THEREFORE, the Attorney General and Yorkshire hereby agree to entry of an order with the following terms and conditions:

#### **FACTUAL ALLEGATIONS**

1. Yorkshire's principal place of business and registered office is located at 7151 York Avenue South, Edina, Minnesota, 55435 in Hennepin County. Howard Groff is the registered manager.
2. The Attorney General alleges that Yorkshire engaged in deceptive and misleading practices in connection with the advertisement and provision of its "wellness package."
3. Specifically, the Attorney General alleges that:
  - Yorkshire advertised that it offers four "Health Service Levels," the least comprehensive of which is called the "Wellness Package;"

- Yorkshire advertised that all of its residents received its Wellness Package;
- Yorkshire charged each resident receiving its Wellness Package \$325 per month;
- The Wellness Package was advertised to include multiple services, including “a monthly nurse visit and Wellness Review, an emergency pendant and . . . [maintenance of] an individual health record that includes a current medication listing.”
- Yorkshire stated that the monthly nurse visit could only be completed by a Licensed Practical Nurse (“LPN”) or Registered Nurse (“RN”);
- Due to the onset of the COVID-19 Pandemic, for a few months Yorkshire replaced its monthly Wellness Visit with twice daily COVID-19 Screens completed by trained Yorkshire staff. Sometimes these COVID-19 Screens were completed by a LPN or RN;
- Of Yorkshire’s 21 residents enrolled in the Wellness Package from May 2020 through August 2020, 20 of those residents did not receive a visit from a nurse or physician in at least one of those months, outside of any COVID-19 Screens that they may have received from an LPN or RN;
- Yorkshire advertised that its Wellness Visits provided a greater depth of monitoring and services to residents than Yorkshire’s COVID-19 Screens; and
- From May 2020 through August 2020, Yorkshire did not provide Wellness Visits as advertised to each of its 21 residents enrolled in the Wellness Package.

4. The Attorney General alleges that the above-described alleged conduct constitutes multiple, separate violations of Minnesota Statutes sections 325D.44, subd. 1(5) (representing that

services have characteristics that they do not) and (13) (engaging in conduct that creates a likelihood of confusion or misunderstanding); 325F.69, subd. 1 (making misrepresentations, misleading statements, and deceptive practices in connection with the sale of merchandise); and 325F.67 (publishing misleading advertisements).

### **INJUNCTIVE RELIEF**

5. Yorkshire, including its principals, employees, agents, independent contractors, affiliates, as well as other persons in active concert or participation with Yorkshire who receive actual notice of this Assurance, shall comply with the following permanent injunctive terms and provisions:

- a. For as long as Yorkshire offers and/or provides its Wellness Package to its Minnesota residents, Yorkshire shall provide a minimum of one monthly nursing visit to each resident enrolled in its Wellness Package; and
- b. Yorkshire shall not make any misleading, deceptive, false or fraudulent statements to residents or prospective residents, including but not limited to misleading statements about the qualities or characteristics of the services Yorkshire provides to its Minnesota residents.

6. Yorkshire shall fulfill the terms of this Assurance, and all of its principals, employees, agents, independent contractors, affiliates, as well as other persons in active concert or participation with Yorkshire who receive actual notice of this order shall be bound by this Assurance as if they had signed this Assurance, so as to accomplish the full relief contemplated by this Assurance. Yorkshire shall not affect any change in its form of doing business as a method or means of attempting to avoid the requirements of this Assurance.

### **MONETARY PAYMENT**

7. Within 30 days of the filing of this Assurance with Ramsey County District Court, Yorkshire shall pay to the Attorney General the sum of \$10,000 (the "Settlement Sum") pursuant to Minnesota Statutes section 8.31. All or any portion of the Settlement Sum may be distributed

to consumers by the Attorney General in his discretion pursuant to Minnesota Statutes section 8.31. Monies from the Settlement Sum may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minnesota Statutes sections 8.31 and 16A.151.

8. The above-referenced Settlement Sum shall be made payable to the State of Minnesota and sent by check to Assistant Attorney General Noah Lewellen, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101.

#### **STAYED CIVIL PENALTY**

9. Yorkshire shall pay a stayed civil penalty of \$75,000 to the Attorney General upon application to the Court and a showing by the Attorney General that Yorkshire has violated any of the terms of this Assurance and Order. The Court shall decide whether the stayed civil penalty shall be imposed and may hold an evidentiary hearing if it deems such hearing necessary. The release in Paragraph 12 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this Paragraph.

#### **GENERAL TERMS**

11. Nothing in this Assurance shall relieve Yorkshire of its obligation to comply with all applicable Minnesota and federal laws and regulations.

12. In consideration of the stipulated relief and contingent upon the Court's entry of this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Yorkshire of any and all claims of the Attorney General under Minnesota Statutes sections 325D.44, subdivision 1; 325F.69, subdivision 1; and 325F.67 connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against

Yorkshire or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

13. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

14. The person signing this Assurance for Yorkshire warrants that Yorkshire has authorized the person to execute this Assurance and that he or she executes this Assurance in an official capacity that binds Yorkshire and its successors.

15. This Assurance constitutes the full and complete terms of the agreement entered into by Yorkshire and the Attorney General.

16. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

17. The Ramsey County District Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Assurance or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Assurance. The parties agree that, in any action brought by the Attorney General to enforce the terms of this Assurance, the Court shall have the authority to award equitable relief, including specific performance.

18. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

19. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

20. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

21. Yorkshire shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condone, or agree with any conduct or actions by Yorkshire.

22. Yorkshire neither admits nor denies the allegations in this Assurance.

23. Yorkshire agrees that the Attorney General, without further notice to Yorkshire, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

24. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Noah Lewellen, Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101

Robert Rodè, Esq.  
Aaron Sagedahl, Esq.  
Voigt, Rodè, Boxeth & Coffin, LLC  
1000 University Avenue West, Suite 250  
St. Paul, MN 55104



KEITH ELLISON  
Attorney General  
State of Minnesota

Date: April 1, 2021 \_\_\_\_\_

By: /s/ Noah Lewellen \_\_\_\_\_  
Noah Lewellen  
Assistant Attorney General

Date: 3-25-21 \_\_\_\_\_

By: *Chris Krebsbach* \_\_\_\_\_  
Chris Krebsbach  
*Chris Krebsbach*

**ORDER**

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.