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Medical Health Officer Report to the Board of the Vancouver Island Health Authority

Re: Nanaimo Seniors Village

### **1.0 Authority of the Medical Health Officer**

I am appointed by Order-in-Council 541 dated November 2, 2011 as a medical health officer in the province of British Columbia for the area of the Vancouver Island Health Authority. As per Section 1 of the *Community Care and Assisted Living Act (CCALA)*, I have the responsibilities and authorities as a medical health officer under *CCALA*. I execute these functions and responsibilities in the geographic area that includes 6085 Uplands Drive, Nanaimo the location of the facility that operates under the name "Nanaimo Seniors Village". Section 13-15.4 of the *CCALA* detail some of the duties and powers of the medical health officer regarding facilities licensed under the *CCALA*. I have delegated some of these responsibilities to Licensing Officers employed by Island Health for activities such as inspections and investigations.

### **2.0 Recommendation Summary**

On November 6, 2019, I received a final investigative report regarding a set of complaint investigations undertaken as per Section 15 (1) (b) of the *CCALA* that were received between July 10, 2019 and August 29, 2019. I received a revised final investigation report on November 8, 2019 and the information contained in that final investigative report forms in a portion the rationale for this report to the board. I am aware that further complaints have been received since August 29, 2019 and have been noted in the final investigative report without a determination as to whether such complaints were substantiated.

The summary of apparent findings from the investigation of complaints up to August 29 was provided to the Licensee on October 18, 2019. The Licensee responded to the report on November 4, 2019 and their response forms an integral part of the final investigative report. The recommendations included in this report to the board include some activities at the facility up to November 15, 2019.

During this period of time, the Licensing program staff and Island Health Community Care programs have been working with the Licensee in facilitating progressive actions and in providing support for the safer operation of the facility. I have been aware of these activities through frequent briefings.

Based on the available information that I have received, I am of the opinion that the operator of Nanaimo Seniors Village has been either unable or unwilling to meet the minimum requirements of the *CCALA*. The standard of S 7(1)(b)(i) to ensure the health, safety and dignity of persons in care has not and continues to not be met.

As the Medical Health Officer, under Section 13, I have the power to vary the terms or conditions of the license, or to cancel or suspend the License. Cancellation or suspension of the License would have a significant negative impact on the health, safety and dignity of the current residents of Nanaimo Seniors Village and result in the displacement of the up to 150 individuals. Despite the combined efforts of the Licensee, the Licensing Program and the Island Health Community Care program over the last few months to institute improvements at the facility, I do not believe that by applying terms or conditions to the license that the Licensee would mitigate the ongoing risks to health, safety and dignity of residents. The

Licensing program in its final investigative report has recommended that an Administrator be appointed and I concur with this recommendation based on the evidence available to me.

As such, it is my opinion and advise that the Board of Vancouver Island Health Authority immediately appoint an Administrator as per Section 23 of the Community Care and Assisted Living Act for a period of time of not less than six months. The Administrator would be expected to work with the Licensee to ensure compliance with all requirements of the *CCALA* and to rebuild system stability and confidence in the operation of the facility.

This report informs the Vancouver Island Health Authority Board regarding the legislation, rationale and process related to the recommendation to appoint an Administrator for Nanaimo Seniors Village.

### **3.0 Authority of the board of the Vancouver Island Health Authority**

The *CCALA* Section (23) empowers the Minister to appoint an Administrator for a specified period of time, if the Minister has reasonable grounds to believe that there is a risk to the health or safety of persons in care. The duties of the Minister under the *CCALA* have been delegated to the Boards of BC Health Authorities.

The appointment of an administrator under section 23 is not considered an “action” for the purposes of reconsideration under Section 17 of the *CCALA*. Consequently, the Licensee does not have the right to request the Medical Health Officer reconsider his or her recommendation or decision.

Section 29 (2) of the *CCALA* does grant the Licensee an ability to appeal to the Community Care and Assisted Living Board the appointment of an Administrator within 30 days of receiving notification of that appointment. The Board’s decision to appoint an Administrator could be appealed pursuant to S 29 of the *CCALA*.

Section 23 (4-7) of the *CCALA* detail the financial administration of the community care facility during the period for which an Administrator is appointed. The net effect should be no additional costs to the Health Authority for the period of the appointment of the Administrator.

On September 23, 2019 The Board received a report from Dr. C. Enns in respect of another licensed facility (Comox Valley Seniors Village) where there was a recommendation and subsequent appointment of an Administrator.

The Licensee contact for both Comox Valley Seniors Village and Nanaimo Seniors Village is the same person (Jennie Deneka). Both facilities are known to be managed by the same management company (previously known as Pacific Reach Seniors Housing Management and now operating as West Coast Seniors Housing Management). While the License issued under *CCALA* is specific to the operating entity “Nanaimo Seniors Village 3LLP”, and investigations and actions by the Licensing program and the Medical Health Officer are specific to the facility at 6085 Uplands Drive in Nanaimo, the decision of the Board to appoint an Administrator may be informed by recognizing that the Comox Valley Seniors Village and Nanaimo Seniors Village are operated by the same management company.

### **3.0 Rational and Analysis**

The facility was purchased in 2017 by the current owners and a License to operate was issued to “Nanaimo Seniors Village 3LLP” in February 2017. The License was varied in May of 2019 naming a new facility manager.

Many community care facilities have occasional investigations in addition to routine inspections. At a routine inspection in June 2019, the hazard rating for the facility was considered low, indicative of a general standard of care that met minimum requirements under the *CCALA*. This particular facility appears to have started to experience difficulties in early summer and the first complaint regarding insufficient staffing which was received July 10. Through the month of August four additional complaints of insufficient staffing were received. The final investigation report covers the time period from early July to the end of August.

Since the beginning of September to November 15, sixteen additional complaints have been received which are under investigation. No determination has been made regarding whether the allegations in the complaints are substantiated or if there is a failure in compliance with the *CCALA*. It is recognized that recent publicity regarding the facility may have contributed to an increase in complaints received regarding the facility. However, the trend in increased numbers of complaints is disconcerting and problematic. Investigations may take months to complete.

The investigations and status are tabulated below.

<i>Licensing Investigations for the period of February 16, 2017 to November 15, 2019:</i>	<b>Category of the concern expressed.</b>	<b>Status</b>	<b>Contraventions identified?</b>
<b>Date of Allegation</b>			
March 8, 2017	Recordkeeping, Medications	Completed C-17-073	Yes
April 27, 2017	Staffing, Neglect	Completed C-17-085	Yes
June 26, 2017	Unexpected Death	Completed C-17-128	Yes
August 6, 2017	Staffing	Completed C-17-145	Yes
August 10, 2017	Emotional Abuse, Notification of a Reportable Incident	Completed C-17-152	Yes
October 20, 2017	Physical Abuse, Emotional Abuse	Completed C-17-180	Yes
November 17, 2017	Physical Plant, Staffing	Completed C-18-034	Yes
January 2, 2018	Neglect, Record Keeping	Completed C-18-027	No
January 19, 2018	Sexual Abuse	Completed C-18-028	Yes
February 22, 2018	Neglect	Completed C-18-056	Yes
July 21, 2018	Emotional Abuse	Completed C-18-121	Yes
September 27, 2018	Supervision	Completed C-18-150	No
January 11, 2019	Emotional Abuse	Completed C-18-094	Yes
January 21, 2019	Aggressive-Unusual	Completed C-18-101	No
July 10, 2019	Staffing, Neglect	In current report	Not determined
August 15, 2019	Staffing, Emotional Abuse	In current report	Not determined
August 22, 2019	Staffing	In current report	Not determined
August 23, 2019	Staffing	In current report	Not determined
August 29, 2019	Staffing, Neglect	In current report	Not determined

September 9, 2019	Neglect	In process	Not determined
September 16, 2019	Staffing, Neglect, Nutrition, Medications	In process	Not determined
September 19, 2019	Health safety, dignity and emotional abuse	In process	Not determined
September 24, 2019	Health safety and dignity	In process	Not determined
September 29, 2019	Staffing	In process	Not determined
September 30, 2019	Staffing, neglect and nutrition	In process	Not determined
September 30, 2019	Nutrition, health safety and dignity and physical plant	In process	Not determined
October 4, 2019	Staffing, neglect	In process	Not determined
October 7, 2019	Physical plant	In process	Not determined
October 8, 2019	Staffing, nutrition, health and safety	In process	Not determined
October 8, 2019	Neglect	In process	Not determined
October 11, 2019	Falls	In process	Not determined
October 11, 2019	Health and safety	In process	Not determined
October 26, 2019	Medication	In process	Not determined
October 29, 2019	Wound care, neglect	In process	Not determined
November 7, 2019	Health and Safety	In Process	Not determined

The final investigative report found the following substantiated contraventions of the *CCALA* in relation to Staffing, Neglect, Documentation and Health, Safety and Dignity *S(7)(1)(b)(i)* and *CCALA* regulations in relation to Staffing *S(42)* and Neglect (*S. 51((1)(a))*). These determinations are made based only on the investigation of complaints from July 10 to August 29.

In providing my opinion to the Board to take the immediate action of appointing an Administrator, I have relied on several trends in addition to the frequency and types of complaints that are now under investigation. I have also considered ongoing evidence of inadequate staffing and the dependence of the facility on support being provided by Island Health, the deterioration in health status of some residents, and the failure of the Licensee to demonstrate a commitment to resolving issues such that the health, safety and dignity of residents in their care would be protected. These factors are in addition to the demonstrated recent and ongoing failure to meet the requirements of the *CCALA*.

### **3.1 Insufficient Staffing**

In addition to monitoring the frequency of complaints, a central concern has been the ability to fill shifts with appropriately trained persons. It is noted in the documentation provided by the Licensee that they changed the approach to staffing in June of 2019 to a central staffing office that covers its facilities. This change occurred in the month prior to the first complaint related to staffing (July 10).

A repeated noted deficiency has been insufficient staff in the facility to provide adequate and safe care. This has been detailed in the final investigative report for the time frame to mid-September. The following

table provides weekly shifts since mid-September, showing the number filled by staff employed by Nanaimo Seniors Village, the number of Island Health employees providing support to fill positions, and the number of shifts remaining vacant. Island Health began providing staffing support during the week of September 25. In addition to registered care aides, Island Health has provided one registered nurse daily to supervise Island Health employees working at the facility. The Island Health employed nurse did not provide nursing services and is not included in the staffing compliment.

Full compliment	Registered Care Aide			Licensed Practical Nurse		Registered Nurse	
	NSV	Island Health	Vacant	NSV	Vacant	NSV	Vacant
	350			77		21	
<b>Sept 17-24</b>	305		45	71	6	12	9
<b>Sept 25 - Oct 1</b>	275	37	38	64	13	10	11
<b>Oct 2 -8</b>	276	36	38	77	0	17	4
<b>Oct 9 -15</b>	282	53	15	71	6	16	5
<b>Oct 16 -22</b>	277	42	31	73	4	15.5	5.5
<b>Oct 23 -29</b>	306	38	6	69	8	14	7
<b>Oct 30 - Nov 5</b>	296	54	0	70	7	10	11
<b>Nov 6 -12</b>	323	49	0	72.5	4.5	13.5	7.5

While NSV has increased registered care aide staffing, they were unable to fill the full complement of required shifts in the most recent weeks without assistance from Island Health employees. Registered nursing staff has actually decreased over recent weeks. LPN staffing has remained on average about one shift short each day.

In their response to the final investigative report, the Licensee responded by detailing their human resources policies, procedures, studies and changes that had been implemented prior to July 2019 and failed to discuss the challenges in filling shifts or actions being taken or to be taken to build a robust staff compliment. The facility did undertake hiring in mid-October, however did not complete the required suitability checks on newly hired staff prior to working in the facility. This is an expectation under the CCALA.

It is expected that the appointment of an Administrator will result in the development of staff recruitment strategies that ensure staff hiring in a manner such that the regulatory requirements for staff number, training and experience are met. They would also provide oversight, support and mentoring to identify and develop training and education for staff such that their competency aligns with their professional designation. The Administrator would build on existing practices to further develop and implement a sustainable and effective orientation for new staff.

### 3.2 Neglect of residents

Highlighted in the final investigative report are developing and ongoing concerns about the failure to mobilize residents, inadequate wound care and delays or omission of medication. Incidents since the final investigative report suggest but have not yet been substantiated that poor care may have contributed to

hospitalizations. The Island Health nursing staff providing support at the site have identified concerns regarding the documentation, the care and the apparent worsening of wounds. As these issues are current, appear to have some basis, and are considered a current concern for the health of residents, I must further conclude that the Licensee is currently unable or unwilling to meet their mandated and contracted abilities and may be putting the health and safety of residents at risk.

### ***3.3 Lack of ability of the Operator to provide care that ensures the health, safety and dignity of residents***

When Licensing initiates an investigation, the Licensee is usually immediately requested to provide a "health and safety plan" to ensure that the immediate health and safety of persons in care is protected for the duration of the investigation. The Licensee was informed of the need for a health and safety plan on August 28, 2019. The Licensee submitted a number of plans that were not considered acceptable as they lacked information and failed to address areas of concern to Licensing. Despite repeated requests, as of November 15, 2019 the Licensee has yet to submit an acceptable health and safety plan.

Licensees are routinely provided the opportunity to respond to allegations and investigative findings in the due process of applying principles of administrative law. The response also provides the Licensee with the opportunity to detail what actions they propose to undertake to mitigate or resolve areas of substantiated concern.

The voluminous response received from Nanaimo Seniors Village on November 4, 2019 reiterated their existing policies, procedures, and responses to past investigations. The response failed to outline plans to resolve the areas of substantiated concern, did not detail how staffing issues would be resolved, did not describe how the facility would operate with Island Health until they were functioning well, and did not outline corrective actions.

The Licensee contact is employed by a company which, according to its website, manages and operates 25 facilities that provide residential services in Canada. Such a company should have the capabilities to address problems and to respond in a professional fashion to inspections and investigations. Seven of these facilities are located within the geography of Island Health operations and contract with Island Health for residential care services.

Because of the failure to manage this situation in an appropriate fashion I must conclude that the Licensee is either unable or unwilling to meet their mandated and contracted responsibility of ensuring health, safety and dignity of persons in care.

### ***3.4 Failure of the Licensee to meet the requirements of the CCALA.***

The Licensee has the primary responsibility to ensure the health, safety, and dignity, of persons in care and to operate a facility in compliance with the CCALA and Regulations. This standard is explicitly stated in Section 7 of the CCALA. In order to assist the Licensee to meet their mandate, the Licensing program has invested significant time and resource in supporting in this facility, including attending the facility on at least a weekly basis since Aug 7, 2019 through to the time of this report.

I am concerned that even where the Licensee has taken recent action to comply with the CCALA and Regulations to date, this is in part due to the frequency and intensity of Licensing's onsite inspections and support provided by the Island Health community care program. A properly functioning Licensed residential care facility may receive two routine inspections a year. I do not have confidence that the Licensee would be able to comply with the CCALA without Licensing's ongoing intervention.

While important to acknowledge that the Licensee has made some progress over the past few months, the Licensee is required to fully satisfy the requirements of the *CCALA*, not just partially satisfy them.

The majority of licensed long term care facilities are able to meet or exceed the minimal requirements of the *CCALA* without active oversight provided by the Licensing program or the need for support from Island Health's community care program. The Licensee has moved too slowly toward re-establishing compliance. A routine inspection of the facility conducted on October 29, 2019 found 14 new areas of contravention to the *CCALA* and its regulations, and three outstanding areas of contravention. As of November 5, 2019 the risk assessment for the facility has increased to a 'high' risk rating. I must again conclude that the Licensee is either unable or unwilling to meet their mandated and contracted responsibility of ensuring health, safety and dignity of persons in care.

An appointed Administrator would act as a bridge between the Licensee and Licensing to empower the Licensee with the tools and systems for sustained and independent provision of competent and compliant care.

#### **4.0 Consideration of options**

In their final investigative report the Licensing program has recommended to myself as the Medical Health Officer that an Administrator be appointed. They dismissed recommending the application of terms and conditions on the license as "due to the Licensee's inability to fully comply with legislation and inability to provide sufficient details with corrective actions measures. Licensing is not confident that the action of imposed conditions will ensure to promote and maintain the health, safety and dignity of persons in care and sustain the corrections put forth by the Licensee based on the current compliance condition of the facility."

Under the *CCALA* Section 13(1), the Medical Health Officer may suspend, cancel, vary existing terms and conditions or attach terms and conditions to a license. I have essentially four viable options to consider in any similar situation;

- maintain the License unvaried and continue operations,
- attach or vary terms and conditions to the License,
- suspend (or cancel) the License
- recommend to the Minister or the Minister's delegate to appoint an Administrator

Based on the findings I have concluded that action is required. As noted in the background section, suspending or cancelling a license would increase the risk to the current residents of the facility. I have carefully considered the option of attaching terms and conditions. I must consider the lack of response to the concerns, the failure to respond with a feasible plan to remedy the situation, the continuing level of investment provided by Island Health to support the facility and the evidence of ongoing and current risk to the health and safety of residents as detailed in this report. Given these concerns, I am unable to conclude that attachment of terms and conditions would result in mitigation of this risk and must therefore recommend to the Board of the Vancouver Island Health Authority as the delegated authority of the Minister under *CCALA* section 23 to appoint an Administrator for a period of time of not less than 6 months.

## 5.0 Regarding the proposed Administrator

It is recommended that the Administrator be Susan Abermann. The proposed Administrator's qualifications are attached as Appendix A. The proposed Administrator is currently also the Administrator appointed by the Board to the Comox Valley Seniors Village, a facility operated by the same company. The Administrator has the authority to hire staff that may assist them in their duties to the board.

The Board, acting as the delegate of the Minister, may direct that the funds for the Administrator be deducted from monies directed to the Licensee, effectively that there are no additional costs to Island Health for appointing an Administrator or in the Administrator hiring staff to support them in their work.

## 6.0 Terms of Reference for the proposed Administrator

A draft term of reference for the prospective Administrator is attached as Appendix B and is similar to those for Comox Valley Seniors Village with the addition of the responsibility listed as item 6. It is recommended that the letter appointing the Administrator include the following terms:

- That the Administrator is a representative of Island Health s.13  
s.13
- The Administrator's contact person at Island Health will be Jenna Boehm, Residential Licensing Officer, #29 - 1925 Bowen Road Nanaimo.
- The Administrator is to take his or her instructions from the Board; and
- A clause in which the Board may terminate the appointment of the Administrator earlier than the termination date of the appointment at its discretion.

## 7.0 Notice to Licensee and Persons in Care

Once the Board has made a decision to appoint an Administrator, it must serve notice of that appointment to the Licensee.

Enclosed as Appendix C is a draft letter giving the Licensee notice of the appointment of an Administrator.

It is recommended that a written notice of the appointment be sent to the Minister of Health although this is not a statutory requirement.

The Board should also plan, at a minimum to notify the individuals in care and their families of the appointment of an Administrator.



Paul Hasselback MD MSc FRCPC  
Medical Health Officer



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