

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

WALL CARE HOME I,  
Tiffany Wall, Administrator,

Appellant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Regional Center.

OAH Nos. 2011100923, 2011110432 and  
2011110433

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In the Matter of:

WALL CARE HOME II,  
Tiffany Wall, Administrator,

Appellant,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Regional Center.

OAH Nos. 2011100928 and 2011110430

**PROPOSED DECISION**

Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH) conducted a review of the above-referenced matters pursuant to California Code of Regulations, title 17, sections 56061, subdivisions (a)(1), (a)(2) and (a)(3); 56064; and 56065.<sup>1</sup>

Tiffany Wall, Administrator, filed two appeals dated October 19, 2011, on behalf of Wall Care Home I (OAH No. 2011100923) and Wall Care Home II (OAH No. 2011100928)

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<sup>1</sup> All references are to California Code of Regulations, title 17, unless otherwise noted.

Adult Residential Facilities (Appellant) with the Department of Developmental Services (DDS). A copy of the DDS Appeals, with appellant's supporting documentary evidence, was received by OAH from DDS on October 26, 2011. On October 27, 2011, OAH served appellant and Alta California Regional Center (ACRC) with an Acknowledgement of Appeal and Request for Documentation and Appeal File. The parties were given fifteen days to submit additional information pertinent to the DDS appeals.

Ms. Wall filed three additional appeals dated November 3, 2011, with DDS on behalf of Wall Care Home I (OAH Nos. 2011110432 and 2011110433) and Wall Care Home II (OAH No. 2011110430). A copy of these DDS appeals, with appellant's supporting documentary evidence, was received by OAH from DDS on November 10, 2011. On November 15, 2011, OAH served appellant and ACRC with an Acknowledgement of Appeal and Request for Documentation and Appeal File. The parties were given fifteen days to submit additional information pertaining to these appeals.

The matter was assigned to Administrative Law Judge Hollingshead for review. On December 1, 2011, the Administrative Law Judge issued an Order Granting Consolidation after finding that the appeals involve common questions of law or fact and, in the interest of judicial economy and to avoid unnecessary costs or delay, good cause existed to consolidate. Final documents were received by OAH on December 8, 2011. The record was closed and the matter was submitted for decision on December 8, 2011.

## PROCEDURAL BACKGROUND

ACRC issued two Facility Action Reports (FARs), dated May 16, 2011, pertaining to findings of Substantial Inadequacy under section 56054, subdivision (a), involving Wall Care Home I and Wall Care Home II. A meeting was held with the facility administrator on May 17, 2011, for development of Corrective Action Plans (CAPs). By letters dated May 18, 2011, ACRC cited four findings of Substantial Inadequacy against Wall Care Home I and six findings of Substantial Inadequacy against Wall Care Home II, and informed appellant that sanctions would be applied to the facilities pursuant to section 56057, subdivision (a)(2). In response, the appellant filed two letters of appeal received by ACRC on June 17, 2011, appealing these citations/sanctions. ACRC responded by letter dated June 28, 2011, informing appellant of requirements outlined in section 56062 which must be followed in order to schedule a hearing. Thereafter, on August 5, 2011, ACRC held an appeal hearing (ACRC Hearing) before Darline Dupree, Supervising Counselor and Designated Hearing Officer (ACRC Hearing Officer). ACRC issued its decision in writing on October 3, 2011 (ACRC Decision). This appeal followed.

ACRC issued three FARs, dated June 20, 2011, pertaining to findings of Immediate Danger under section 56053, subdivision (a), involving Wall Care Home I and Wall Care Home II. Two of these FARs were a follow up to the May 16, 2011, FARs and May 17, 2011, CAPs. Items on the CAPs were due on May 20, 2011, and extended to May 31, 2011, upon Ms. Wall's request. These FARs issued after ACRC determined that the CAP items were not all completed

by May 31, 2011. The third FAR was based on a Special Incident Report (SIR) filed by Ms. Wall after a consumer was struck by a facility vehicle, driven by an unlicensed facility employee, at Wall Care Home 1.

A decision was made to immediately relocate consumers from the facilities. In response, the appellant filed three letters of appeal received by ACRC on August 4, 2011, appealing the consumer relocation. On August 26, 2011, ACRC held an appeal hearing (ACRC Hearing) before Maureen Paine, Supervising Counselor and Designated Hearing Officer (ACRC Hearing Officer). ACRC issued its decision in writing on October 19, 2011 (ACRC Decision). This appeal followed.

### ISSUES RAISED ON APPEAL

Whether the findings of Substantial Inadequacy contained in ACRC's FARs, dated May 16, 2011, based on California Code of Regulations, title 17, section 56054, subdivisions (a)(1) (Health and Safety), (a)(2) (Direct Care Hours), (a)(4) (Consumer Services), (a)(5) (Consumer Admissions Agreement), (a)(6) (P&I), and (a)(7) (Administrator/Staff Qualifications and/or Training), and resulting citations/sanctions applied on May 18, 2011, should be upheld?

Whether the findings of Immediate Danger contained in ACRC's FARs dated June 20, 2011, based on California Code of Regulations, title 17, section 56053, and the resulting decision to relocate the facilities' consumers, should be upheld?

### EVIDENCE CONSIDERED

The parties provided the following information to the Administrative Law Judge, which constituted the record on appeal:

Exhibit 1: ACRC's Appeal File for Wall Care Home II (OAH No. 2011100928) received by OAH on November 18, 2011, with the following attachments:

1. Appellant's Appeal of Residential Services Facility Decision, dated October 19, 2011, (DDS Appeal), received by OAH on October 26, 2011.
2. Residential Services Facility Appeal Decision dated October 3, 2011.
3. August 4, 2011, Notice of Representation (James N. Eimers), for Wall Care Homes I & II.
4. June 17, 2011, Notice of Request for Appeal letter to ACRC from The Ullrich Law Firm, representing Tiffany Wall and Wall Care Homes I & II, appealing Citations/Sanctions dated May 18, 2010.

5. May 18, 2011, Notice of Citation/Sanctions for six Substantial Inadequacies from ACRC.
6. Facility Action Report dated May 16, 2011, with Corrective Action Plan signed on May 17, 2011.
7. Unannounced Facility Monitoring Visit Report dated May 14, 2011.
8. Unannounced Facility Monitoring Visit Report with ACRC Recommendations Log dated May 13, 2011.
9. Unannounced Facility Monitoring Visit Report dated May 5, 2011.
10. Unannounced Facility Monitoring Visit Report dated April 21, 2011.
11. Unannounced Facility Monitoring Visit Report dated April 15, 2011.
12. Facility Action Report dated April 14, 2011.
13. Two Unannounced Facility Monitoring Visit Reports dated April 13, 2011.
14. Facility Action Report dated April 12, 2011.
15. ACRC Technical Support Log dated March 24, 2011.
16. Facility Liaison Quality Assurance Monitoring Tool, Title 17-Section 56048 (d) (1)-Annual Review dated March 11, 2011.
17. Staffing Schedule Requirements pursuant to section 56002(a)(48).

Exhibit 2: Acknowledgement of Appeal and Request for Documentation and Appeal File dated October 27, 2011.

Exhibit 3: Appellant's exhibits for Wall Care Home II (OAH No. 2011100928), 1 through 47, a listing of which is appended as Attachment One to this Decision.

Exhibit 4: ACRC's Appeal File for Wall Care Home I (OAH No. 2011100923) received by OAH on November 18, 2011, with the following attachments:

1. Appellant's Appeal of Residential Services Facility Decision, dated October 19, 2011, (DDS Appeal), received by OAH on October 26, 2011.
2. Residential Services Facility Appeal Decision dated October 3, 2011.

3. August 4, 2011, Notice of Representation (James N. Eimers), for Wall Care Homes I & II.
4. ACRC Notice of Hearing on Appeal, Residential Facility Appeal of Wall Care Homes #1 and #2, dated July 19, 2011.
5. ACRC's June 28, 2011, notice of receipt of appeal of ACRC's Facility Action Reports dated May 16, 2011, and Citations/Sanctions dated May 18, 2011, for Wall Care Home#1 and #2, and request for additional information, with California Code of Regulations, Title 17, Section 56062-Contents of Appeal and Hearing.
6. May 18, 2011, Notice of Citation/Sanctions for four Substantial Inadequacies from ACRC.
7. Facility Action Report dated May 16, 2011, with Corrective Action Plan signed on May 17, 2011.
8. Unannounced Facility Monitoring Visit Report with ACRC Technical Support Log dated May 14, 2011.
9. Unannounced Facility Monitoring Visit Report with ACRC Technical Support Log dated May 5, 2011.
10. Unannounced Facility Monitoring Visit Report with ACRC Technical Support Log dated April 21, 2011.
11. Unannounced Facility Monitoring Visit Report dated April 15, 2011.
12. Facility Action Report dated April 14, 2011.
13. Two Unannounced Facility Monitoring Visit Report dated April 13, 2011.
14. Facility Action Report dated April 12, 2011.
15. ACRC Technical Support Log dated March 24, 2011.

Exhibit 5: Acknowledgement of Appeal and Request for Documentation and Appeal File dated October 27, 2011.

Exhibit 6: Appellant's exhibits for Wall Care Home I (2011100923), 1 through 50, a listing of which is appended as Attachment Two to this Decision.

Exhibit 7: ACRC's Appeal File for Wall Care Home II (OAH No. 2011110430) received by OAH on December 8, 2011, with the following attachments:

1. Appellant's Appeal of Residential Services Facility Decision, dated November 3, 2011, (DDS Appeal), received by OAH on November 10, 2011.
2. Residential Services Facility Appeal Decision dated October 19, 2011.
3. September 2, 2011, letter acknowledging receipt by ACRC of faxed documents including police report #11-171121 and Cheryl Randolph Consulting Invoice dated June 23, 2011.
4. E-mails regarding scheduling a hearing date with section 56062, Contents of Appeal and Hearing, attached.
5. ACRC Amended Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 23, 2011.
6. ACRC Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 19, 2011.
7. August 4, 2011, Notice of Representation (James N. Eimers), for Wall Care Homes I & II.
8. Appellant's August 3, 2011, appeal of ACRC's Facility Action Report dated June 20, 2011, and decision to immediately relocate consumers, for Wall Care Home II.
9. July 20, 2011, letter granting Ms. Wall's request for an extension of time to appeal the June 20, 2011, FARs for both Wall Care Home I and Wall Care Home II, until August 4, 2011.
10. Facility Action Report dated June 20, 2011, with decision to immediately relocate consumers, with unsigned Corrective Action Plan.

Exhibit 8: Acknowledgement of Appeal and Request for Documentation and Appeal File dated November 15, 2011.

Exhibit 9: Appellant's exhibits for Wall Care Home II (2011110430), 1 through 45, a listing of which is appended as Attachment Three to this Decision.

Exhibit 10: ACRC's Appeal File for Wall Care Home I (OAH No. 2011110433) received by OAH on December 8, 2011, with the following attachments:

1. Appellant's Appeal of Residential Services Facility Decision, dated November 3, 2011, (DDS Appeal), received by OAH on November 10, 2011.
2. Residential Services Facility Appeal Decision dated October 19, 2011.

3. September 2, 2011, letter acknowledging receipt by ACRC of faxed documents including police report #11-171121 and Cheryl Randolph Consulting Invoice dated June 23, 2011.

4. E-mails regarding scheduling a Hearing date with section 56062, Contents of Appeal and Hearing, attached.

5. ACRC Amended Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 23, 2011.

6. ACRC Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 19, 2011.

7. August 4, 2011, Notice of Representation (James N. Eimers), for Wall Care Homes I & II.

8. Appellant's August 3, 2011, appeal of ACRC's Facility Action Report dated June 20, 2011, and decision to immediately relocate consumers, for Wall Care Home I.

9. July 20, 2011, letter granting Ms. Wall's request for an extension of time to appeal the June 20, 2011, FARs for both Wall Care Home I and Wall Care Home II, until August 4, 2011.

10. Facility Action Report dated June 20, 2011, with decision to immediately relocate consumers, with unsigned Corrective Action Plan.

Exhibit 11: Acknowledgement of Appeal and Request for Documentation and Appeal File dated November 15, 2011.

Exhibit 12: Appellant's exhibits for Wall Care Home I (2011110433), 1 through 46, a listing of which is appended as Attachment Four to this Decision.

Exhibit 13: ACRC's Appeal File for Wall Care Home I (OAH No. 2011110432) received by OAH on December 8, 2011, with the following attachments:

1. Appellant's Appeal of Residential Services Facility Decision, dated November 3, 2011, (DDS Appeal), received by OAH on November 10, 2011.

2. Residential Services Facility Appeal Decision dated October 19, 2011.

3. September 2, 2011, letter acknowledging receipt by ACRC of faxed documents including police report #11-171121 and Cheryl Randolph Consulting Invoice dated June 23, 2011.

4. E-mails regarding scheduling a Hearing date with section 56062, Contents of Appeal and Hearing, attached.
  5. ACRC Amended Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 23, 2011.
  6. ACRC Notice of Hearing on Appeals, Residential Facility Appeal of Wall Care Homes #1 and #2, dated August 19, 2011.
  7. August 4, 2011, Notice of Representation (James N. Eimers), for Wall Care Homes I & II.
  8. Appellant's August 3, 2011, appeal of ACRC's Facility Action Report (SIR) dated June 20, 2011, and decision to immediately relocate consumers, for Wall Care Home I.
  9. July 20, 2011, letter granting Ms. Wall's request for an extension of time to appeal the June 20, 2011 FARs for both Wall Care Home I and Wall Care Home II, until August 4, 2011.
  10. Facility Action Report (SIR) dated June 20, 2011, with decision to immediately relocate consumers, with unsigned Corrective Action Plan.
  11. Investigative Facility Action Report (SIR) dated June 16, 2011.
  12. ACRC Technical Support Log dated June 13, 2011.
  13. Triennial Quality Assurance Evaluation.
  14. Two Unannounced Facility Monitoring Visit Reports with ACRC Technical Support Log dated May 27, 2011.
  15. Unannounced Facility Monitoring Visit Report with ACRC Technical Support Log dated May 25, 2011.
  16. May 20, 2011, letter from Donald W. Ullrich, Jr., Ullrich Law Firm, to ACRC Community Service Specialist Odelia Johns.
  17. Weekly Staff Schedule for the week of May 23-May 29, 2011.
- Exhibit 14: Acknowledgement of Appeal and Request for Documentation and Appeal File dated November 15, 2011.

Exhibit 15: Appellant's exhibits for Wall Care Home I (2011110432), 1 through 46, a listing of which is appended as Attachment Five to this Decision.

The Administrative Law Judge reviewed all documentary evidence, relevant statutes and regulations, and written argument.

## FACTUAL FINDINGS

1. Wall Care Home I and Wall Care Home II are licensed by the Department of Social Services (DSS) and vendorized by ACRC as residential facilities providing 24-hour care and supervision for developmentally disabled adults. Tiffany Wall is appellants' administrator.

*Facility Action Reports Dated May 16, 2011*

*Wall Care Home II*

2. On March 11, 2011, ACRC representatives Odelia Johns and Stephen Richardson conducted a "Title 17-Section 56048 (d)(1) Annual Review of Wall Care Home II." The review stated that the facility had a licensed and vendored capacity of four consumers and four consumers were being served. The facility service level, 4I, requires 144 staffing hours. The annual review included a review of staffing schedules, training and qualifications as well as facility inspection, file and program reviews.

The ACRC reviewers had "concerns regarding staff trainings, consumer P & I funds and staffing hours" which were submitted to the facility in a Technical Support Log on March 24, 2011, and in Investigative FARs submitted to Wall Care Home II on April 12, 2011, and April 14, 2011. Ms. Johns and Mr. Richardson made a follow-up visit to the facility on March 21, 2011, and conducted several Unannounced Visits on April 12, 13, 15, 21, and May 5, 13, and 14, 2011. The FAR which is the subject of this appeal issued on May 16, 2011.

3. ACRC representatives Mr. Richardson and Ms. Johns met with the administrator, Ms. Wall, to discuss the May 16, 2011, FAR and develop a Corrective Action Plan, as required by section 56056. As a result of that meeting, ACRC made findings of the following substantial inadequacies at Wall Care Home II pursuant to section 56054, subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6) and (a)(7):

(a) Substantial inadequacies are the following:

(1) Conditions posing a threat to the health and safety of any consumer, that are not considered an immediate danger as specified in Section 56053;

(2) Provision of fewer direct care staff hours than are required by the facility's approved service level;

¶ . . . ¶

(4) Failure to provide consumer services as specified in the consumer's IPP;

(5) Failure to comply with the terms of the consumer's Admission Agreement;

(6) Deficiencies or irregularities in the handling of the consumer's cash resources, personal property, and valuables;

(7) Failure to comply with the requirements for administrator and staff qualifications and/or administrator and staff training;

¶ . . . ¶

4. The substantial inadequacies cited under section 56054 (a)(1) and (a)(2) were both related to staffing hours. The May 16, 2011, FAR states that the facility provided fewer staffing hours than agreed upon within the Residential Service Contract Agreement for vendorization. "There were no staff schedules, no staff time cards, incomplete payroll records and a non-functioning punch card machine. The facility provided fewer direct care staff hours than are required by the facility's approved service level. Staff documented time worked on loose paper and were requested to call the House Manager with time worked."

5. The substantial inadequacy cited under section 56054(a)(4) was related to significant changes affecting consumers. The May 16, 2011, FAR included "(A) Failure to notify the Regional Center of the absence of the Administrator, and (B) Administrator failed to notify the planning teams regarding significant changes with consumers including the conservator."

6. The substantial inadequacy cited under section 56054(a)(5) was related to the submission of requested documents. The May 16, 2011, FAR stated that the "Administrator failed to submit requested documents to the regional center."

7. The substantial inadequacy cited under section 56054(a)(6) was related to consumers' personal and incidental funds (P& I). The May 16, 2011, FAR states that "(A) Cash is not available to consumers, (B) Commingled consumer funds, (C) Administrator failed to notify planning teams of significant changes with the consumers including the conservator, (D) P&I ledgers not accurate and up to date."

8. The substantial inadequacy cited under section 56054(a)(7) was related to staff and administrator requirements. The May 16, 2011, FAR states "(A) Administrator failed to ensure all staff receive required trainings within the time frames of the regulations including herself; and (B) Administrator failed to ensure staff trainings in the facility were documented."

9. The corresponding Corrective Action Plan (CAP) for the substantial inadequacies noted in the May 16, 2011, FAR for Wall Care Home II required the following:

1. The administrator shall post a weekly schedule in the facility.
2. The administrator shall submit the weekly schedule to the ACRC at the start of the facility's work week, Mondays. This schedule shall not include hours to be covered in the other home.
3. The administrator shall implement a system that clearly shows the amount of staffing hours in the facility including direct care hours performed by the administrator.
4. The facility shall submit a valid First Aid and CPR certification for staff member MB.
5. Each consumer's P & I shall not be commingled with any other consumer funds or corporate funds.
6. All consumer P & I funds/ledger shall be accurate and up to date.
7. The administrator shall discuss/meet with each planning team to determine how consumer P & I funds will be managed/tracked.
8. The administrator shall attend the P & I Training at ACRC.
9. The staff working in the facility shall obtain all required trainings within the time frames outlined in Title 17 and Title 22.
10. The administrator shall maintain a record of all the on the job training.
11. The administrator shall maintain copies of staff hours (time cards) for providing direct care and supervision.
12. The administrator shall submit documents to the Regional Center upon request.
13. The administrator shall submit to the Regional Center the Articles of Incorporation for Sunshine Management, LLC. This information shall name the board members.

14. The administrator shall submit to the Regional Center formal documents explaining the relationship with Silver Capital Investments, Inc. These documents shall include the contractual agreement with Wall Care Home #2.

15. The administrator shall submit the payroll documents (for the period of 11/1/10-5/6/11) for the agency responsible for the handling such [sic] documents. These documents shall include deductions such as Federal, State or Medicare deductions as well as the total number of hours worked per pay period for all the staff providing direct care and supervision in the facility.

16. The administrator shall submit the W2's for the year 2010 to the Regional Center.

17. The administrator shall submit the DE(6) form for the 2010 year from the Employment Development Department to the Regional Center.

18. The administrator shall submit an updated CCL form #308.

19. The administrator shall submit copies of the paperwork completed (signature/checking accounts, the ones that were closed) with Anna from Wells Fargo.

20. ACRC shall complete Unannounced Visit(s) to the facility.

10. By letter dated May 18, 2011, ACRC informed appellant that Wall Care Home II was being cited for the six substantial inadequacies addressed at the CAP meeting pursuant to section 56054, subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6) and (a)(7). In addition, this letter notified appellant that ACRC was applying sanctions to the facility based on two findings of substantial inadequacy within a twelve month period per section 56057, subdivision (a)(2). The sanction applied was to "not refer consumers to the facility through 11/18/11."

#### *Wall Care Home I*

11. On March 21, 2011, ACRC representatives Odelia Johns and Stephen Richardson met with Tiffany Wall "to discuss the P&I system/tracking for the facility [Wall Care Home I]." Their concerns "derived from what was revealed at Wall Care Home II with regards to staffing and the consumer's P&I accounts."

The ACRC reviewers' concerns were submitted to the facility in a Technical Support Log on March 24, 2011, and in Investigative FARs submitted to Wall Care Home I on April 12, 2011 and April 14, 2011. Ms. Johns and Mr. Richardson conducted several Unannounced Visits on April 12, 13, 15, 21, and May 5 and 14, 2011. The FAR which is the subject of this appeal issued on May 16, 2011.

12. ACRC representatives Mr. Richardson and Ms. Johns met with the administrator, Ms. Wall, to discuss the May 16, 2011, FAR and develop a Corrective Action Plan, as required by section 56056. As a result of that meeting, ACRC made findings of the following substantial inadequacies at Wall Care Home II pursuant to section 56054, subdivisions (a)(1), (a)(4), (a)(5), and (a)(6):

(a) Substantial inadequacies are the following:

(1) Conditions posing a threat to the health and safety of any consumer, that are not considered an immediate danger as specified in Section 56053;

¶ . . . ¶

(4) Failure to provide consumer services as specified in the consumer's IPP;

(5) Failure to comply with the terms of the consumer's Admission Agreement;

(6) Deficiencies or irregularities in the handling of the consumer's cash resources, personal property, and valuables;

¶ . . . ¶

13. The substantial inadequacies cited under section 56054 (a)(1) were related to staffing hours and medication errors. The May 16, 2011, FAR states that "(A) The facility provided fewer staffing hours than agreed upon in the Residential Service Contract Agreement for vendorization; (B) Administering the wrong medication to a consumer; and (C) Administrator failed to contact the service coordinator timely regarding medication error."

14. The substantial inadequacy cited under section 56054(a)(4) was related to notification of significant changes affecting consumers. The stated reason for the inadequacy in the May 16, 2011, FAR included "(A) Failure to notify the Regional Center of the absence of the Administrator, and (B) Administrator failed to notify the planning teams regarding significant changes with consumers including the conservator."

15. The substantial inadequacy cited under section 56054(a)(5) was related to the submission of requested documents. The May 16, 2011, FAR stated that the “Administrator failed to submit requested documents to the regional center.”

16. The substantial inadequacy cited under section 56054(a)(6) was related to consumers’ personal and incidental funds (P& I). The May 16, 2011, FAR states that “(A) Cash is not available to consumers, (B) Commingled consumer funds, (C) Administrator failed to notify planning teams of significant changes with the consumers including the conservator, (D) P&I ledgers not accurate and up to date.

17. The corresponding Corrective Action Plan (CAP) for the substantial inadequacies noted in the May 16, 2011, FAR for Wall Care Home I required the following:

1. The administrator shall post a weekly schedule in the facility.
2. The administrator shall submit the weekly schedule to the ACRC at the start of the facility’s work week, Mondays. This schedule shall not include hours to be covered in the other home.
3. The administrator shall implement a system that clearly shows the amount of staffing hours in the facility including direct care hours performed by the administrator.
4. The facility shall submit a valid First Aid and CPR certification for staff member MB.
5. Each consumer’s P & I shall not be commingled with any other consumer funds or corporate funds.
6. All consumer P & I funds/ledger shall be accurate and up to date.
7. The administrator shall discuss/meet with each planning team to determine how consumer P & I funds will be managed/tracked.
8. The administrator shall attend the P & I Training at ACRC.
9. The administrator shall maintain copies of staff hours (time cards) for providing direct care and supervision.
10. The administrator shall submit documents to the Regional Center upon request.

11. The administrator shall submit to the Regional Center the Articles of Incorporation for Sunshine Management, LLC. This information shall name the board members.
12. The administrator shall submit an updated CCL form #308.
13. The administrator shall submit copies of the paperwork completed (signature/checking accounts, the ones that were closed) with Anna from Wells Fargo.
14. The administrator shall submit to the Regional Center formal documents explaining the relationship with Silver Capital Investments, Inc. These documents shall include the contractual agreement with Wall Care Home #1.
15. The administrator shall submit the payroll documents (for the period of 11/1/10-5/6/11) from the agency responsible for the handling such [sic] documents. These documents shall include deductions such as Federal, State or Medicare deductions as well as the total number of hours worked per pay period for all the staff providing direct care and supervision in the facility.
16. The administrator shall submit the W2's for the year 2010 to the Regional Center.
17. The administrator shall submit the DE(6) form for the year 2010 from the Employment Development Department to the Regional Center.
18. The administrator shall submit SIR timely to the appropriate parties.
19. The administrator shall attend the SIR Training at the Regional Center.
20. The administrator shall complete a staff training regarding SIRs.
21. The administrator shall attend the Medication Training at the Regional Center.
22. The administrator shall complete a staff training on medications.
23. ACRC shall complete Unannounced Visit(s) to the facility.

18. By letter dated May 18, 2011, ACRC informed appellant that Wall Care Home I was being cited for the four substantial inadequacies addressed at the CAP meeting pursuant to section 56054, subdivisions (a)(1), (a)(4), (a)(5), and (a)(6). In addition, this letter notified appellant that ACRC was applying sanctions to the facility based on two findings of substantial inadequacy within a twelve month period per section 56057, subdivision (a)(2). The sanction applied was to “not refer consumers to the facility through 11/18/11.”

*Appeal of Wall Care Home I and Wall Care Home II sanction letters dated May 18, 2011*

19. By letter dated June 17, 2011, appellants, through counsel Donald W. Ullrich, filed with ACRC a “Notice of Request for Appeal.” The letter requested appeal of “the two sanction letters dated May 18, 2011, asserting substantial inadequacies that she received with respect to each of her care homes, to wit: Wall Care Home #1 and Wall Care Home #2. As to Wall Care Home #1 she is appealing substantial inadequacies under Title 17, Sections 56054(a)(1), (a)(4), (a)(5), and (a)(6). As to Wall Care Home #2, she is appealing substantial inadequacies under Title 17, Sections 56054(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), and (a)(7).”

ACRC acknowledged receipt of the appeal by letter dated June 28, 2011, requesting additional information to support the basis of the appeal.

20. The ACRC Hearing on the appeals of Wall Care Home I and Wall Care Home II was held on August 5, 2011. Tiffany Wall, Administrator, Ginger Fodge, witness, and Jim Eimers Attorney at Law, attended on behalf of appellant. The following attended on behalf of ACRC: Kevin Simpson, Supervising Counselor and Agency Representative; Odelia Johns, Community Services Specialist; Adia Cunningham, Community Services Specialist; Jessica Romero, Service Coordinator/Facility Liaison; and Darline Dupree, ACRC Hearing Officer. The ACRC Hearing Officer, Ms. Dupree, issued her decision on October 3, 2011.

21. The ACRC Hearing Officer considered appellant’s suggested resolution and facts in support of her appeals, as well as ACRC representative’s comments and facts in support of their position. After consideration, the ACRC Hearing Officer determined as follows:

*Wall Care Home II*

22. The ACRC Hearing Officer upheld the substantial inadequacy citations based on section 56054, subdivision (a)(1) (Health and Safety), (a)(2) (Direct Care Hours), (a)(5) (Admission Agreement), and (a)(7) (Administrator/Staff Qualifications and/or Training).

Regarding the finding of substantial inadequacy pursuant to section 56054(a)(4) (Consumer Services), the ACRC Hearing Officer upheld the finding “related to letter (B)” but found that “ACRC failed to provide evidence to support a substantial inadequacy . . . related to Issue (A). Therefore, I rule that that finding be removed from the facility action report dated 5/16/11.”

Regarding the finding of substantial inadequacy pursuant to section 56054(a)(6) (P&I), the ACRC Hearing Officer upheld the finding of substantial inadequacy. However, she found that “the appellant met her obligation to fulfill the requirements of the corrective action plan related to this substantial inadequacy as signed off by ACRC as being corrected on May 5, 2011.”

23. Due to multiple substantial inadequacies listed in Wall Care Home II within a twelve month period, ACRC imposed sanctions on the home that restricted consumer referrals for placement through November 18, 2011. The ACRC Hearing Officer determined that the appellant failed to establish that ACRC had insufficient evidence to support the sanctions placed on the facility so she upheld the decision “to place the home on sanction as stipulated in the sanction letter dated May 18, 2011.”

*Wall Care Home I*

24. The ACRC Hearing Officer upheld the substantial inadequacy citations based on section 56054, subdivision (a)(1) (Health and Safety), and (a)(5) (Admission Agreement).

Regarding the finding of substantial inadequacy pursuant to section 56054(a)(4) (Consumer Services), the ACRC Hearing Officer upheld the finding “related to letter (B)” but found that “ACRC failed to provide evidence to support a substantial inadequacy. . . related to Issue (A). Therefore, I rule that that finding be removed from the facility action report dated 5/16/11.”

Regarding the finding of substantial inadequacy pursuant to section 56054(a)(6) (P&I), the ACRC Hearing Officer upheld the finding of substantial inadequacy. However, she found that “the appellant met her obligation to fulfill the requirements of the corrective action plan related to this substantial inadequacy as signed off by ACRC as being corrected on May 5, 2011.”

25. Due to multiple substantial inadequacies listed in Wall Care Home I within a twelve month period, ACRC imposed sanctions on the home that restricted consumer referrals for placement through November 18, 2011. The ACRC Hearing Officer determined that the appellant failed to establish that ACRC had insufficient evidence to support the sanctions placed on the facility so she upheld the decision “to place that home on sanction as stipulated in the sanction letter dated May 18, 2011.”

26. A summary of the facts supporting the ACRC Hearing Officer’s conclusions and appellant’s contentions are as follows:

*Section 56054, subdivision (a)(1) (Health and Safety) and (a)(2) (Direct Care Hours)*

27. A home vendored at level 4I requires a basic staffing level (BSL) of one staff available at all times and present in the home when at least one consumer is home. With four consumers residing in the home, 144 additional staff hours beyond the BSL is required. An

additional 54 direct care staff hours is required for each additional consumer beyond four. ACRC determined that the facilities were operating with fewer staff hours than required for a facility with a 4I service level as agreed upon in the residential service contracts for vendorization. On several facility visits ACRC found that staff schedules were not maintained in the facility, some schedules were e-mailed to staff, staff/administrator scheduled for shifts were not present during scheduled times, and staff records were not maintained after being submitted for payroll purposes.

Ms. Wall contends that she had “circumstances arise that may have affected the amount of staffing hours in the facility.” She terminated an employee due to a medication error he made, lost another employee who was injured at work and placed on Worker’s Compensation, and lost her house manager “as she became overly stressed with Wall Care Home audits and quit.”

Ms. Wall demonstrated that she was actively seeking additional employees for both Wall Care Home I and Wall Care Home II. However, “finding quality employees is challenging.”

28. A medication error occurred at Wall Care Home I on May 3, 2011, when a consumer was administered another consumer’s medication. Subsequent investigation showed inconsistent or missing medical documentation and storage of consumer medications.

Ms. Wall stated that she e-mailed the consumer’s Service Coordinator on May 4, 2011. On May 5, 2011, she was made aware of another medication error and e-mailed the Service Coordinator on the same day. She stated that she terminated the employee and that she followed proper procedures.

29. ACRC was persuasive that it could not be determined that sufficient staffing was in place to assure that the required direct care hours were in fact provided and that the facility was properly staffed such that the health and safety of the consumers was maintained.

It was also shown that medications were not appropriately recorded, stored, and administered.

*Section 56054, subdivision (a)(4) (Consumer Services)*

30. ACRC contends that the regulations emphasize the responsibility of the administrator to notify a consumer’s Service Coordinator of changes related to service needs. In this case, the administrator opened an individual bank account for a conserved consumer without notifying the conservator or the Service Coordinator and without informing the bank that the consumer was conserved and unable to open the account individually. Other accounts were opened without notification of consumers’ Service Coordinators.

Appellant explained that she was rushed to open bank accounts for consumers and was not informed of the appropriate process.

31. The submitted evidence confirmed that the administrator failed to notify consumers' Service Coordinator or conservators of changes related to service needs.

*Section 56054, subdivision (a)(5) (Consumer Admissions Agreement)*

32. As part of the consumers' Admission Agreements, appellant agreed to "provide services and abide by all laws and regulations, including Title 22 and Title 17 of the California Code of Regulations, the consumer's IPP (Individualized Program Plan), and vendor agreements with the regional center."

33. Throughout the investigation of Wall Care Homes I and II, ACRC requested access to files and records as well as copies of numerous documents. Disagreements arose as to the administrator's obligation to provide the documents and the extent of required access. Ms. Wall stated that she kept client and staff files in a locked area to stay in compliance with privacy laws and only select staff had access to that area. She explained that there was always someone available to unlock that area within fifteen minutes.

ACRC gave examples of times they were not able to attain access and were unable to contact the administrator.

The evidence showed that Ms. Wall provided many of the required records. However, some were not provided within the timelines specified in the CAPs, and some still have not been provided.

*Section 56054, subdivision (a)(6) (P&I)*

34. These concerns have been resolved and are no longer at issue.

*Section 56054, subdivision (a)(7) (Administrator/Staff Qualifications/Training)*

35. ACRC documented numerous examples of staff not having the minimum of six months prior experience, training, qualifications and continuing education required pursuant to section 56038 for all Service Level 4 direct care staff. Evidence was also submitted documenting inadequacies in the administrators training and continuing education requirements.

ACRC noted that personnel records are required to document hours worked and shall be retained for at least three years following termination of employment, pursuant to Title 22, California Code of Regulations, section 80066, subdivision (d).

Ms. Wall reported that the documents "were destroyed and that ACRC can not site [sic] for Title 22 Regulations." She submitted evidence showing that some, but not all, requirements were met.

36. Appellant appealed ACRC's decisions to DDS by letter dated October 19, 2011, stating that she "does not agree with all of ACRC's findings and believes many of the facts reported by ACRC are not true..."

*Facility Action Reports Dated June 20, 2011*

*Wall Care Home II*

37. ACRC granted Wall Care Home II an extension of time to May 31, 2011, to complete the corrective action items required in the May 17, 2011, CAP. On June 20, 2011, ACRC determined that the CAP items were not all completed by May, 31, 2011, and issued an additional FAR, which contained the following findings of immediate danger pursuant to section 56053:

1. Situations which come to the attention of the regional center and which appear to constitute an immediate danger.

Inadequacy imposed:

A. The administrator failed to staff the facility at a ratio to ensure the health and safety of the consumers.

B. The staff training is lacking in the facility.

C. Technical Support Logs, multiple FARs and Corrective Action Plans from 3/24/11-6/16/11.

D. Sanctions on the facility, 5/18/11.

E. Plan of Correction not completed by the Administrator and the facility continues to be in Non Compliance.

F. On numerous occasions records were not produced and when records were produced they were not sufficient.

*Wall Care Home I*

38. ACRC granted Wall Care Home II an extension of time to May 31, 2011, to complete the corrective action items required in the May 17, 2011 CAP. On June 20, 2011, ACRC determined that the CAP items were not all completed by May 31, 2011, and issued an additional FAR, which contained the following findings of immediate danger pursuant to section 56053:

1. Situations which come to the attention of the regional center and which appear to constitute an immediate danger.

Inadequacy imposed:

- A. The administrator failed to staff the facility at a ratio to ensure the health and safety of the consumers.
- B. The staff training is lacking in the facility.
- C. Technical Support Logs, multiple FARs and Corrective Action Plans from 3/24/11-6/16/11.
- D. Sanctions on the facility, 5/18/11.
- E. Plan of Correction not completed by the Administrator and the facility continues to be in Non Compliance.
- F. On numerous occasions [sic] records were not produced and when records were produced they were not sufficient.
- G. Medication errors.
- H. Consumer struck by agency vehicle by unlicensed driver of the facility.

39. ACRC issued a second FAR to Wall Care Home I on June 20, 2011. This FAR was submitted based on a Special Incident Report (SIR) submitted by Ms. Wall after a consumer (RH) was struck by a facility vehicle on June 11, 2011, and followed an investigative FAR issued on June 16, 2011.

ACRC contends that Ms. Wall reported the incident via phone message to the consumer's Service Coordinator, Jessica Romero, who completed an SIR to the regional center and Community Care Licensing on June 13, 2011.

40. On June 11, 2011, MJ, an employee of Wall Care Home I, struck consumer, RH, while driving a facility van out of the facility's driveway. The police report (CHP # 11-171121) states that MJ was traveling at an unsafe speed and did not see the consumer lying in the driveway. He apparently ran over the consumer's right hand and caused scratches to the left side of his back. Consumer was transported to the hospital by ambulance and released the next day. During the course of the investigation it was discovered that the employee did not possess a valid driver's license.

41. Based on these three FARs, the decision was made to immediately relocate consumers from the facilities.

*Appeal of Wall Care Home I and Wall Care Home II FARs dated June 20, 2011*

42. Three letters were received by ACRC on August 4, 2011, appealing the consumer relocations at Wall Care Home I and Wall Care Home II.

43. The ACRC Hearing on these appeals was conducted on August 26, 2011. Tiffany Wall, Administrator, attended on behalf of appellant. The following attended on behalf of ACRC: Kevin Simpson, Supervising Counselor; Jessica Romero, ACRC Service Coordinator/Facility Liaison; Jean Onesi, Community Services and Supports Manager; Adia Cunningham, Community Services and Supports Specialist, and Maureen Paine, ACRC Supervising Counselor and designated Hearing Officer. The ACRC Hearing Officer, Ms. Paine, issued her decision on October 19, 2011.

44. The ACRC Hearing Officer considered appellant's suggested resolution and facts in support of her appeals, as well as ACRC representative's comments and facts in support of their position. After consideration, the ACRC Hearing Officer determined as follows:

The actions and decisions of the Administrator reflect her inability to properly protect the health and safety of the residents of both care homes, and created an immediate danger pursuant to California Code of Regulations, Title 17, 56053. The decision by ACRC to relocate the consumers in the Wall Care Homes No.1 and 2 is therefore UPHOLD.

45. Appellant appealed ACRC's decision to DDS by letters dated November 3, 2011.

### LEGAL CONCLUSIONS

1. Section 56054, subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6) and (a)(7) state:

(a) Substantial inadequacies are the following:

(1) Conditions posing a threat to the health and safety of any consumer, that are not considered an immediate danger as specified in Section 56053;

(2) Provision of fewer direct care staff hours than are required by the facility's approved service level;

[( ) . . . ( )]

(4) Failure to provide consumer services as specified in the consumer's IPP;

- (5) Failure to comply with the terms of the consumer's Admission Agreement;
- (6) Deficiencies or irregularities in the handling of the consumer's cash resources, personal property, and valuables;
- (7) Failure to comply with the requirements for administrator and staff qualifications and/or administrator and staff training;

2. Section 56057 provides, in part:

(a) The regional center *shall* apply sanction(s) to the facility when:

- (1) A substantial inadequacy is not corrected within the time frame specified in the CAP developed pursuant to Section 56056; or
- (2) There are two findings of substantial inadequacy in the same facility within any twelve-month period.

(b) If the regional center determines that the substantial inadequacy(ies) is related to the basic staffing level or the additional weekly direct care staff hours provided by a facility, the regional center may reduce the approved service level to the level associated with the total number of staff hours actually being provided by the facility.

(c) In determining the number of staff hours being provided by the facility, the regional center shall determine the basic staffing level and the average number of direct care staff hours provided by the facility during a minimum of four one-week periods during the previous 12 months.

(d) In all findings of substantial inadequacy, the regional center may:

[¶] . . . [¶]

(2) Not place consumers into the facility until the facility complies with the CAP.

[¶] . . . [¶]

(Emphasis added)

3. Section 56056, subdivision (c)(1) provides:
  - (c) Correction of the substantial inadequacy shall occur within a period not to exceed 30 days of the development of the CAP unless the regional center determines that correction cannot be accomplished within the specified time frame.
    - (1) When correction will take longer than 30 days from the development of the CAP, the CAP shall specify interim dates by which specific steps toward correction of the substantial inadequacy will take place, with the total time not to exceed six months.
4. Section 56053 defines Immediate Danger as follows:
  - (a) Situations which come to the attention of, or are reported to, the regional center and which appear to constitute an immediate danger shall be investigated immediately following the notification. Situations which shall be investigated included but are not limited to:
    - (1) Life threatening structural conditions;
    - (2) Suspicion or allegations of abuse of a consumer;
    - (3) A consumer(s) in the facility with no direct supervision unless there is an IPP objective and waiver or exception, approved pursuant to Title 22, California Code of Regulations, Section 80024;
    - (4) Failure to provide a consumer(s) with a medically prescribed diet(s); or
    - (5) The presence of an individual exhibiting aggressive or assaultive behavior which is life threatening to self or others.
5. Section 56061, subdivisions (a)(1), (a)(2), and (a)(3) state:
  - (a) The administrator may appeal to the director of the regional center the following specific actions taken by the regional center:
    - (1) Findings of substantial inadequacy pursuant to Section 56054;

- (2) Findings of immediate danger pursuant to Section 56053;
- (3) Sanctions pursuant to Section 56057.

6. In the event that the administrator is dissatisfied with the decision rendered by the regional center director, Sections 56064 and 56065 provide for the current appeal and resulting decision.

7. ACRC worked with Wall Care Home I and Wall Care Home II for several months to address numerous concerns that became evident during the annual review and series of subsequent announced and unannounced visits. After concerns remained unresolved, the facilities were cited for substantial inadequacies. Section 56057 provides that the regional center *shall* apply sanctions when a substantial inadequacy is not corrected within the timeframe specified in the CAP or there are two findings of substantial inadequacy in the same facility within any twelve- month period. There was sufficient evidence to support both of these occurrences. Section 56057 also provides that, in all findings of substantial inadequacy, the regional center may not place consumers into the facility until the facility complies with the CAP. There is insufficient evidence to support that the facilities have complied with the CAPs. Thus, a sanction to not place consumers into the facility is appropriate.

8. A major concern has been, and continues to be, whether the facilities are appropriately staffed. There was insufficient evidence to demonstrate compliance with required staffing hours for the approved service level as well as administrator and staff qualifications and training. There was demonstrated difficulty in hiring staff and verifying qualifications of those hired. The administrator continued to fail to ensure that the facilities were adequately staffed with appropriately qualified and trained staff such that the health and safety of the consumers was protected. Such failure did, in fact, result in injury to the consumer struck by the facility vehicle driven by the unlicensed employee as noted in Police Report No. 11-171121. The administrator failed to verify the employee's qualifications, and an injury occurred. In addition, there was no direct supervision of the injured consumer, as no one at the facility appeared to know that he was in the facility driveway in front of the facility vehicle.

9. After ACRC was continually unable to verify appropriate staffing, qualifications and training, CAPs were not completed, and an unlicensed driver struck a consumer in the facility driveway, it appropriately determined that the situation constituted an immediate danger to the health and safety of the consumers. Action was then taken to relocate the consumers.

10. Appellant provided voluminous documentation that demonstrated resolution of some issues but also acknowledged failure to comply in other areas; while stating reasons why she did not comply. She submitted sufficient evidence

to conclude that the facilities did correct some items noted in the CAPs while other deficiencies remained as previously stated in the factual findings. The remaining deficiencies were sufficient to support the actions in this matter. Other arguments received were considered and found to be without merit as they did not affect the outcome of this decision.

Appellant failed to establish that ACRC's findings of Substantial Inadequacies and corresponding Sanctions were improper. Appellant failed to establish that ACRC's findings of Immediate Danger and subsequent relocation pursuant to section 56053 was improper.

### ORDER

The October 19, 2011, DDS appeals of Wall Care Home I and Wall Care Home II, Tiffany Wall, Administrator, are DENIED. The November 3, 2011, DDS appeals of Wall Care Home I and Wall Care Home II, Tiffany Wall, Administrator, are DENIED.

DATED: February 1, 2012

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SUSAN H. HOLLINGSHEAD  
Administrative Law Judge  
Office of Administrative Hearings