



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein M.D., Secretary

November 20, 2012

Zachary Gray
Administrator
St. Thomas More Medical Complex
4922 Lasalle Avenue
Hyattsville, MD 20782-3302

**RE: NOTICE OF RESTRICTION ON
ADMISSIONS UNDER SECTION 19-328
OF THE HEALTH-GENERAL ARTICLE
OF THE ANNOTATED CODE OF
MARYLAND**

Dear Mr. Gray:

Based on recent findings by the Office of Health Care Quality arising from a survey it conducted from October 17 to November 15, 2012, I have determined that life-threatening deficiencies exist at St. Thomas More Medical Complex. To enable the facility to address these deficiencies immediately and comprehensively, and pursuant to § 19-328 of the Health-General Article and COMAR 10.07.02.49, it is hereby ordered that St. Thomas More shall decline new admissions or readmissions for a 30-day period, beginning immediately.

Rationale for Decision

Since 2004, St. Thomas More, a 250-bed comprehensive care facility, has been cited for more than 250 deficiencies, including 35 life safety code deficiencies, 3 actual harm cases, and 4 immediate jeopardy cases. In March 2011, the Centers for Medicare and Medicaid Services placed St. Thomas More on its list of "special focus facilities," which CMS describes as an improvement program for facilities with "a history of serious quality issues" and "repeated cycles of serious deficiencies." CMS expects that, in most cases, within 18-24 months of inclusion in the program, a facility will demonstrate sufficient improvement to graduate from the program or, if it fails to do so, its participation in Medicare and Medicaid will be terminated.

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The Office of Health Care Quality conducted its most recent licensure Quality Indicator Survey at St. Thomas More from October 17 to November 15, 2012. During that survey, OHCQ documented a number of cases in which deficient practices at the facility jeopardized the lives of residents, as well as a case revealing a failure on the part of the facility to adhere to a plan of correction to which the facility had previously committed in response to prior adverse survey findings. Some of the recent survey findings include:

- St. Thomas More failed for approximately two weeks in October 2012 to monitor adequately its administration of Coumadin, an anti-coagulation medicine, to one of its residents. The facility ordered appropriate lab testing only after an OHCQ surveyor raised questions about the resident's care. The testing revealed anti-coagulant markers at dangerously high levels. Based on the test results, the resident was at risk of a life-threatening bleeding event.
- In failing to monitor its administration of anti-coagulation to this resident in October 2012, St. Thomas More failed, as well, to adhere to a Plan of Correction to which it had previously committed after a prior deficiency finding. In an August 14, 2012 Plan of Correction, the facility stated that "[t]he nursing staff . . . has been reinserviced on anticoagulant therapy and physician collaboration requirements while a resident is receiving anticoagulation therapy," and the facility committed that, going forward, "[a]ll anticoagulant orders will be reviewed at clinical stand-up for accuracy." OHCQ found that appropriate collaboration and review had not occurred in the case described above.
- In September 2012, after admitting an elderly resident for whom a hospital had previously prescribed Haldol, an anti-psychotic drug, St. Thomas More failed for over two weeks to evaluate the appropriateness of the continued administration of the drug. While failing to conduct such an evaluation, the facility prescribed Cogentin to address drooling, a known side effect of Haldol. The resident lost approximately 15 pounds within 8 days of his admission to the facility. The facility failed to evaluate the cause of this weight loss. In an interview with an OHCQ surveyor, the resident's attending physician at the facility stated that he was unaware of the weight loss. During this period, the resident also experienced multiple falls and a decline in his mental status, yet the facility continued to administer Haldol and Cogentin.
- On September 21, 2012, the facility received a phone call from a laboratory indicating that the same elderly resident described above had a "critically elevated" blood potassium level, consistent with substantial risk of death.

The facility failed to document properly its response to this event. In addition, it appears to have failed to act promptly. Specifically, it appears that the resident's attending physician was not informed about the critical lab result for approximately two hours. In addition, it appears that the facility failed to inform the physician of other significant lab values related to the resident's elevated potassium. Over three hours after receiving the lab result, the facility called 911 for emergency transfer to the hospital. The resident died in the hospital a week later.

St. Thomas More has already received documentation of the cases described above, each of which OHCQ deemed to be an "immediate jeopardy" situation for purposes of federal regulatory standards. Survey documents dated October 25, 2012; November 1, 2012; and November 9, 2012 are incorporated by reference. Under 42 C.F.R. § 488.301, "[i]mmediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation [in the Medicare and Medicaid programs] has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." Other important findings from OHCQ's October-November survey will be described in a comprehensive Statement of Deficiency report, which OHCQ is currently finalizing and expects to issue shortly.

According to OHCQ's survey findings, St. Thomas More does not adequately evaluate and monitor the administration and dosing of high-risk medications to its residents; it does not ensure proper communication among the members of residents' treatment teams, even after a resident has experienced an adverse medical event or a significant deterioration in his or her condition; and it does not respond in a timely fashion when residents appear to require urgent medical attention. These deficiencies threaten the lives of the facility's residents. OHCQ's findings also reflect that the facility has failed to correct a previously-identified deficiency and to adhere to a prior plan of correction. A restriction on new admissions would permit the facility to focus immediately and comprehensively on, and to devote additional resources to, ensuring the safety of its existing residents and correcting the deficiencies that OHCQ has identified. For these reasons, pursuant to § 19-328 of the Health-General Article and COMAR 10.07.02.49, I am ordering St. Thomas More to decline any new admissions or readmissions for a period of 30 days, beginning immediately. During this 30-day period, the facility may re-admit previously-admitted residents on a case by case basis if it obtains OHCQ's approval in advance of doing so.

In response to each of the "immediate jeopardy" cases arising from OHCQ's recent survey, St. Thomas More has proposed, and OHCQ has approved, a plan of correction. In addition, after OHCQ issues its comprehensive Statement of Deficiency report for the recent survey, St. Thomas More will be required to propose an additional plan of correction. St. Thomas More must successfully implement these plans of correction. Section 19-328(a)(3) of the Health-General Article provides that, within 21

days of the restriction on admissions hereby imposed, St. Thomas More “shall take steps to correct the deficiency.”

Under § 19-328(b) of the Health-General Article, “[u]nless the Secretary lifts the admission restriction, within 30 days after admissions are restricted, a hearing shall be held to determine whether the [facility] has taken enough steps to correct the deficiency,” and, “[i]f the Secretary finds that the deficiency still exists,” the Secretary may “[c]ontinue to restrict admissions” to the facility for additional 30-day periods or “revoke the license of the [facility].”

In determining whether to lift the admission restriction that I have imposed or instead to take further action under this provision of law, in addition to considering any new violations of standards set forth in State or federal law, I will principally consider the extent to which St. Thomas More has both implemented all pending plans of correction and demonstrated sustained adherence to recently-implemented plans of correction. I have directed OHCQ, for the duration of this 30-day period, to undertake appropriate monitoring of St. Thomas More. I have also directed OHCQ to report to me in 21 days concerning any progress that St. Thomas More has made in addressing the deficiencies it has identified.

Counsel for St. Thomas More should contact Joshua Auerbach (410-767-1860) or Paul Ballard (410-767-6918), both of the Office of the Attorney General, concerning the tentative scheduling of a hearing at the Office of Administrative Hearings under § 19-328(b) of the Health-General Article. If such a hearing occurs, the Office of Administrative Hearings would issue a proposed decision; the parties would have the opportunity to take exceptions to that proposed decision; and I would issue a final decision.

Notice of Opportunity for a Hearing

In addition to the hearing anticipated in § 19-328(b) of the Health-General Article, St. Thomas More has a right to request a hearing under § 19-328(a). Any hearing would be governed by procedures set forth in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-201 *et seq.* and COMAR 10.01.03 and 28.02.01. **Failure to request a hearing will result in the restriction on admissions hereby imposed remaining in effect for 30 days, unless that restriction is lifted by further order.**

Any request for a hearing must be submitted, in writing, not later than 30 days after receipt of this notice, to:

Jana Corn Burch
Executive Administrative Law Judge
Office of Administrative Hearings

11101 Gilroy Road
Hunt Valley, Maryland 21031-1301

With a copy to:

Joshua Auerbach, Assistant Attorney General
Principal Counsel, Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

And:

ATTN: Margie Heald
Office of Health Care Quality
Department of Health and Mental Hygiene
Bland Bryant Building
55 Wade Avenue
Catonsville, Maryland 21228

A copy of this notice must be attached to the hearing request. The hearing request must include the name, address, and telephone number of the attorney representing you.

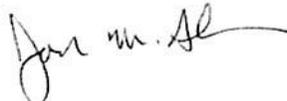
The Administrative Procedure Act gives you the right to be represented by counsel, call witnesses, present evidence, cross-examine any witnesses, present argument and summation, and subpoena witnesses with appropriate costs assessed. The Office of Administrative Hearings will issue a proposed decision. I will issue a final decision.

Representation By Counsel

If St. Thomas More is a corporation, it must be represented at all stages of this proceeding by counsel. If you wish to be represented by an attorney not licensed to practice in Maryland, the attorney must apply to be specially admitted for this proceeding. *See* Rule 14 of the Rules Governing Admission to the Bar of Maryland.

Any questions regarding this notice may be directed to Paul Ballard, Assistant Attorney General, at 410-767-6918.

Sincerely,



Joshua M. Sharfstein, M.D.
Secretary

Attachment: Attachment I - Summary of Immediate Jeopardy findings of October 25, 2012; November 1, 2012; and November 9, 2012.

cc: Pamela B. Creekmur, Prince Georges County Health Officer
Margie Heald, Deputy Director, OHCQ
Patricia Melodini, Survey Coordinator
Jane Sacco, Medicaid
Alice Hedt, MD Ombudsman Program
Department of Aging
Joshua Auerbach, Assistant Attorney General
Paul Ballard, Assistant Attorney General
Timothy Hock, CMS, Region III
Alan Horowitz, Esquire, Counsel to St. Thomas More
Mark Yost, Esquire, Counsel to St. Thomas More
File I