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## **ADMINISTRATIVE PENALTY ORDER SUMMARY TO BE MADE AVAILABLE IN HOME**

Pursuant to the *Retirement Homes Act, 2010* S.O. 2010, Chapter 11, section 93.

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783720 Ontario Inc  
o/a Birchmere Retirement Residence  
234 Bay Street  
Orillia, ON L3V 3W8

### **ADMINISTRATIVE PENALTY ORDER 2023-N0026-93-01 – BIRCHMERE RETIREMENT RESIDENCE**

The Deputy Registrar of the Retirement Homes Regulatory Authority (the “Deputy Registrar” and the “RHRA”, respectively) has reasonable grounds to believe that 783720 Ontario Inc (the “Licensee”) operating as Birchmere Retirement Residence (the “Home”) has contravened sections of the *Retirement Homes Act, 2010* (the “Act”).

The Deputy Registrar issues this Order to Pay an Administrative Penalty under section 93 of the Act to encourage the Licensee to comply with the requirements under the Act and Regulation.

### **CONTRAVENTION**

The Deputy Registrar has reasonable grounds to believe that the Licensee contravened the following sections of the Act:

- S. 35 para. 2 (i)
- S. 44(1)(a), (b) and (d)

### **BRIEF SUMMARY OF FACTS**

A resident of the independent section of the Home exhibited exit-seeking behaviours. The Licensee met with the resident’s substitute decision makers to establish a plan to reduce the risk that the resident would wander from the Home until the resident could be placed in a long-term care facility that would be able to accommodate the resident’s care needs. The day after the resident’s substitute decision makers, before the plan could be implemented, the resident wandered from the Home and was not found for several hours. On the resident’s return to the Home, the Licensee sent the resident to hospital. The Licensee subsequently took the position that the resident could not return to the Home unless the resident’s family provided 24-hour external care, which was substantially more significant than the Licensee had articulated in its plan with the resident’s substitute decision-makers.

The Deputy Registrar has reasonable grounds to believe that, by refusing to allow the resident to return to the Home unless 24-hour care was provided, the Licensee in effect cut off any care services it was providing to the resident without the notice period required by the Act, and improperly evicted the resident in breach of the Licensee's obligation to operate the Home in compliance with all other applicable Acts, including the *Residential Tenancies Act, 2006*.

## ADMINISTRATIVE PENALTY FACTORS

The Deputy Registrar considered the factors contained in subsection 60.1(1) of the Regulation in determining the amount of the Administrative Penalty:

- a) **Severity of Adverse Effect / Potential Adverse Effect:** The severity of the adverse effect on the resident in this case is not known. The resident was sent to hospital and likely received care there and found new accommodation in a more appropriate environment one week later. That said, it is self-evident that being abruptly cut off from care at one's home and being sent to another facility without any process would have a potentially significant emotional and psychological impact on a person. The potential adverse effect is at least in the mid-moderate range. Additionally, a breach of s. 44 of the Act is a more serious breach of the Act, as it is deemed an "offence" pursuant to s. 98(2).
- b) **Mitigation of Contravention:** The Licensee advised the resident's family that the resident would be able to resume living in the Home if the family provided 24-hour care for the resident, 7 days a week. Based on its response to the education from the inspector, the Licensee did not appear to understand that its actions in sending the resident to hospital and, in essence, evicting them from the Home would have had a detrimental effect on the resident. The Licensee's lack of appreciation that its actions were potentially detrimental to the wellbeing of the resident is a factor in increasing the amount of the monetary penalty.
- c) **Previous Contraventions:** The Licensee has not had any instances of non-compliance in this respect in the past three years and so this is a neutral factor.
- d) **Economic Benefit:** The Licensee did not receive any direct economic benefit from this non-compliance, and so this is a neutral factor.
- e) **Purpose of Administrative Penalty:** The Deputy Registrar is of the view that the quantum of the payment is appropriate given the factors above and in light of the purpose of the administrative penalty to incentivize and encourage compliance now and into the future and that it is not intended to be punitive.

**Issued on November 23, 2023.**