

**STATE OF HAWAII
DEPARTMENT OF HEALTH
OFFICE OF HEALTH CARE ASSURANCE
NOTICE OF VIOLATION AND ORDER**

<p>TO: HELEN FERRER, Individually and sole Member-Manager of TLC for the Elderly, LLC; MILLICENTS FERRER, Individually; and TLC for the Elderly, LLC 1863 Hookupa Street Pearl City, Hawaii 96782</p> <p>Respondents</p>	<p>RE: (1) UNLICENSED RESIDENTIAL CARE HOME LOCATED AT 1863 HOOKUPA STREET, PEARL CITY, HAWAII 96782, OPERATED BY HELEN FERRER, MILLICENTS FERRER, AND/OR TLC for the ELDERLY, LLC;</p> <p>(2) AIDING OR ABETTING AN UNLICENSED PERSON TO OPERATE AN ARCH OR E-ARCH</p>
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Pursuant to Hawaii Revised Statutes (HRS), Chapters 321 and 91, and Hawaii Administrative Rules (HAR), Chapter 11-100.1, the Department of Health, Office of Health Care Assurance (OHCA), issues this Notice of Violation and Order (NOVO). Based upon evidence that Helen Ferrer, Millicents Ferrer, and TLC for the Elderly, LLC, are collectively or individually illegally operating an Adult Residential Care Home (ARCH) or an Expanded ARCH (E-ARCH), by providing twenty four hour living accommodations at 1863 Hookupa Street, Pearl City, Hawaii 96782, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services. Furthermore, Millicents Ferrer, as the renter/tenant of 1863 Hookupa Street, Pearl City, Hawaii 96782, is aiding or abetting with her mother, Helen Ferrer, in operating an unlicensed ARCH or E-ARCH. OHCA has initiated this administrative enforcement action to address the violations alleged below. This administrative action concerns only the violations contained herein, and OHCA may bring other actions for other violations. This NOVO does not function to preclude or limit actions by any other public agency or private party.

NOTICE OF VIOLATION

Statutes/Rules	<p>Hawaii Revised Statutes (HRS) §321-15.1; HRS §321-15.6; HRS §321-15.62; HRS §321-20; HRS §321-486; HRS §321-486.1; HRS §321-486.3; Hawaii Administrative Rules (HAR) §11-100.1</p> <ol style="list-style-type: none"> 1. <u>HRS §321-15.1</u>: “Adult residential care home” means any facility providing twenty-four hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, but who do not need the professional health services provided in an intermediate, skilled nursing, or acute care facility. 2. <u>HRS §321-15.1</u>: “Expanded adult residential care home” means any facility providing twenty-four hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate or skilled nursing facility. 3. <u>HRS §321-15.6(a)</u>: All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.
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	<p>4. <u>HRS §321-15.62(a)</u>: All expanded adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein.</p> <p>5. <u>HAR §11-100.1-3(a)</u>: No person, group of persons, or entity shall operate an ARCH or expanded ARCH without a license previously obtained under and in compliance with this chapter and chapter 321, HRS.</p> <p>6. <u>HAR §11-100.1-91(b)(12)</u>: Misconduct includes, but is not limited to, the following: Aiding or abetting an unlicensed person to operate an ARCH or expanded ARCH as defined by chapter 321, HRS, and chapter 11-100.1, HAR.</p>
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Nature of the Violation	<p>(1) On September 16, 2020, the Office of Health Care Assurance (“OHCA”) received a complaint alleging the possible operation of an unlicensed Adult Residential Care Home/Expanded Adult Residential Care Home located at 1863 Hookupa Street, Pearl City, Hawaii 96782. The complainant alleged that the home had an “HPG Certificate” (Hawaii Platinum Group) placard placed inside the residence.</p> <p>(2) A review of OHCA records shows that this residence is currently not licensed by OHCA nor is there documentation that OHCA has ever received license applications separately or jointly from Helen Ferrer, Millicents Ferrer, TLC for the Elderly, LLC, or HPG or Hawaii Platinum Group, or any other person for an ARCH or E-ARCH license located at 1863 Hookupa Street, Pearl City, Hawaii 96782.</p> <p>(3) Property ownership was verified by reviewing the Honolulu City and County Property Tax Records. Tax records indicate that the property located at 1863 Hookupa Street, Pearl City, Hawaii 96782, is owned by Charles Bench and Yu Neu Bench. They do not reside at the property.</p> <p>(4) As a follow-up to the complaint, on September 18, 2020 at approximately 9:00 am, representatives of OHCA conducted an unannounced investigation at 1863 Hookupa Street, Pearl City, Hawaii 96782. OHCA representatives were met at the front door by two (2) females dressed in medical-style scrubs, wearing surgical masks, and disposable gloves. The females appeared to be caregivers. One (1) of the females identified herself as “Larnie” and refused to provide her last name while the second female refused to provide her name. OHCA representatives stated the purpose of the visit to the home and asked permission to enter the home. “Larnie” denied entry into the home. An OHCA representative handed a copy of HRS 321-486.2 (Act 148) to “Larnie” and explained its contents. “Larnie” then gave the phone number of Attorney Andrew Smith to the OHCA representatives. She then left, presuming that she went to call the operator of the home. One of the OHCA representatives contacted Mr. Smith who stated that he represented Ms. Ferrer.</p> <p>(5) While waiting for “Larnie” to return, OHCA representatives observed an elderly Asian male (Resident 1 (“R1”)) in a wheelchair sitting in the covered screened patio area eating on a hospital-style table with wheels. The Asian male did not appear to be related to “Larnie” or the second female caregiver.</p> <p>(6) OHCA representatives observed both caregivers checking on R1 periodically and assisting in feeding.</p>
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- (7) OHCA representatives also observed plywood nailed to the ground in the front entrance for wheelchair access. Two (2) wheelchairs were observed outdoors on the right side of the house and fourteen (14) filled or empty five (5) gallon water bottles were observed in the same covered patio area where R1 was eating.
- (8) OHCA representatives left the premises at approximately 9:45AM after being denied entry into the home.
- (9) After visiting the property, OHCA sought additional information regarding the property owners and their knowledge about the alleged unlicensed care home activity being conducted on their property. With assistance from the Department of the Attorney General, Investigations Division (“AG Investigations”), a subpoena was served on September 25, 2020 to Charles Bench and Yu Neu Bench to be examined under oath regarding the ownership of the residence located at 1863 Hookupa Street, Pearl City, Hawaii 96782. On September 28, 2020, Ms. Yu Neu Bench met with a representative from the AG Investigations and an OHCA representative to answer the subpoena. A copy of the rental agreement and insurance documents for the residence at 1863 Hookupa Street, Pearl City, Hawaii 96782 were provided to OHCA. Ms. Yu Neu Bench stated that she rents the home to Millicents Ferrer. Millicents Ferrer is the daughter of Helen Ferrer. Ms. Yu Neu Bench also mentioned that she knows Helen Ferrer and talks to Helen “quite a bit” and that Helen visits her office many times. Ms. Yu Neu Bench said Helen mostly does all the business and that when they pay the rent, they drop it off to her office or mail it. The rental agreement was executed on January 12, 2018 between Ms. Helen Y.N. (“Yu Neu”) Bench as landlord and Ms. Millicents Ferrer as tenant. Ms. Yu Neu Bench stated that she did not know if health care workers were going to the property as health care services were not a part of the rental agreement. Ms. Yu Neu Bench was also uncertain whether rooms were being subleased or rented to other individuals other than the tenants. The rental agreement stated that the residence is to be occupied only by tenants and no subleasing or additional tenants were permitted without the prior written consent of the landlord.
- (10) An online search of the DCCA business registration website by OHCA revealed that Helen Ferrer is also the Vice-President, Treasurer, and Director of Hawaii Platinum Group (“HPG”) aka Aging in Place aka Aging in Place Association aka AIP Model of Care.
- (11) On September 30, 2020, the AG Investigations served a subpoena to St. Francis Health Care Systems of Hawaii to be examined under oath regarding health care documents and the dispatch of registered nurse services to R2, located at 1863 Hookupa Street, Pearl City, Hawaii 96782. Documents were provided to OHCA on October 1, 2020 by St. Francis Health Care Systems of Hawaii Hospice Service unit. The documents state that two (2) different registered nurses provided end of life care to one (1) resident, which was confirmed to be R2, at 1863 Hookupa Street, Pearl City, Hawaii 96782, on May 16, 2019. Helen Ferrer was confirmed and identified as the point of contact and primary caregiver. R2 was admitted to 1863 Hookupa Street on or about December 22, 2018, and resided at 1863 Hookupa Street for approximately five (5) months before passing away in the residence on May 16, 2019.

- (12) On February 24, 2022, OHCA received a discharge register from a licensed ARCH, ACTG Gallegos Inc., because it was closing its operations, indicating that one of the residents (R4) was discharged to “Helen Ferrer Home 1863 Hookupa Street, Pearl City, 96782.”
- (13) On or about July 7, 2022, with the information and documents that OHCA collected, OHCA sought a search warrant for the 1863 Hookupa Street property in Honolulu District Court under HRS §321-486(2). On July 8, 2022, the Honolulu District Court found probable cause and issued a search warrant to OHCA. On July 15, 2022, OHCA and the AG Investigators executed the search warrant at 1863 Hookupa Street, Pearl City, Hawaii 96782. Millicents Ferrer arrived at the property after the search warrant was executed and while the search was underway. During the execution of the search warrant, nine (9) resident beds were observed on the premises. Of the nine (9) beds, four (4) residents were present, and records indicate that six (6) residents are currently residing in the home including the resident (R4) identified in the discharge register received by OHCA on February 24, 2022. There were two (2) certified nursing assistants (“CNAs”) present. The six residents are identified as R3, R4, R5, R6, R7, and R8. R10 passed away a day or two prior to the execution of the search warrant. In addition to these seven (7) residents, records were also obtained for an additional two (2) residents identified as R9 and R11, who were former residents in the home but were discharged or transferred elsewhere.
- (14) Documents and information obtained during the search warrant and follow-up to information ascertained from the search warrant revealed the following information about the 1863 Hookupa property, Helen Ferrer, and TLC for the Elderly LLC:
- a. R3 was transferred from a licensed ARCH and was admitted to TLC for the Elderly (1863 Hoopuka St) on or about December 31, 2018. A single monthly invoice (on TLC for the Elderly LLC letterhead) shows charges for “room, board, and health care services” for \$4,500 plus other expenses from approximately January 2019 to December 2021. From January 2022 to present, the monthly charge to “room, board, and healthcare services” increased to \$5,000 per month. All payments were made to Helen Ferrer.
 - b. R4 was transferred from a licensed ARCH that closed down (same ARCH that R8 resided at) and admitted to TLC for the Elderly on or about January 15, 2022. According to the ARCH transfer summary given to TLC for the Elderly, R4 is certified as an intermediate care facility (ICF) level of care. It is unknown how much R4 is paying for room, board and health care services.
 - c. R5 was admitted to TLC for the Elderly on or about June 1, 2022. R5’s records included completed OHCA standardized forms for ARCH residents. OHCA’s “Level of Care Evaluation for Adult Residential Care Home Residents” was completed and signed by R5’s physician, indicating R5 required adult residential care home level of care. OHCA’s “Self Preservation Statement” was also completed and signed by R5’s physician. Finally, OHCA’s “Resident Admission Medical and Personal History” form was completed and signed by R5’s physician, certifying R5 as requiring ARCH level of care. It is unknown how much R5 is paying for room, board and health care services.

	<p>d. R6 was admitted to TLC for the Elderly on or about January 5, 2022. Only one service agreement contract was discovered for R6, charging a monthly fee of \$6,300 for personal care services. Payment made to Hawaii Home Care Professionals LLC. Helen Ferrer is identified as the “personal care assistant”. Although it is silent regarding room and board for R6, it is likely implied that the single monthly fee includes room and board as 24 hour services is required and provided for R6. There is also a note on the “Services Agreement Contract” that “payment will be tended every end of the month.” So there is at least an implied agreement that room and board is included in the service agreement.</p> <p>e. R7 was admitted to TLC for the Elderly on or about March 27, 2022. R7’s records included completed OHCA standardized forms for ARCH residents. OHCA’s “Resident Admission Medical and Personal History” form was completed and signed by R7’s physician, certifying R7 as requiring ARCH level of care. OHCA’s “Self Preservation Statement” was also completed and signed by R7’s physician. R7 informed one of OHCA’s representatives at the search warrant that she writes a monthly check of \$2,300 to Helen Ferrer for everything.</p> <p>f. R8 was transferred from the same licensed ARCH that R4 was in and admitted to TLC for the Elderly on or about August 29, 2021. Helen Ferrer is identified as the caregiver. R8’s records included completed OHCA standardized forms for ARCH residents. According to the OHCA’s ARCH transfer summary and “Residential Physical Examination Record” given to TLC for the Elderly, R8 is certified as an ICF level of care. It is unknown how much R8 is paying for room, board and health care services.</p> <p>g. The two CNAs present during the search warrant said they were employed by Helen Ferrer (TLC for the Elderly LLC). One of the CNAs was wearing a “Hawaii Platinum Group” shirt. Timesheet documents showed that Helen Ferrer employed at least seven (7) staff members (appears to be all CNAs) to work at the 1863 Hookupa St residence.</p>
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Description of Violation

The search warrant investigation and earlier evidence collected from subpoenas and interviews with OHCA representatives uncovered evidence that Helen Ferrer individually and/or as the sole member manager of TLC for the Elderly LLC, and/or Millicents Ferrer, are providing twenty-four hour accommodations at 1863 Hookupa Street, Pearl City, Hawaii 96782, for a fee, to adults unrelated to her, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services. Evidence included but were not limited to observation of health care equipment and supplies, interviews of caregivers and residents (clients), and documentation including physician orders, care instructions, medication administration and other care records such as of vital signs, end-of-life care instructions, staffing and employee timesheets records, prior and current resident admission and transfer records, scope of services, service agreements, emergency contact information, and fee payment information.

Millicents Ferrer is currently the renter/tenant at 1863 Hookupa Street and retains control over the property. Therefore, anyone admitted to the property is there by permission of Millicents Ferrer despite being in violation of the rental agreement with Ms. Yu Neu Bench. As a result, Millicents Ferrer has aided or abetted with her mother, Helen Ferrer, to operate an unlicensed ARCH or E-ARCH at 1863 Hookupa Street, Pearl City, Hawaii 96782.

Based on the information provided by the complainant, evidence obtained by subpoenas, and the search warrant conducted by OHCA representatives at 1863 Hookupa Street, Pearl City, Hawaii 96782, the residence located at 1863 Hookupa Street, Pearl City, Hawaii 96782 is confirmed to meet the criteria of an ARCH/E-ARCH and is being operated by Helen Ferrer individually and/or as the sole member manager of TLC for the Elderly LLC, Millicents Ferrer individually, and/or TLC for the Elderly LLC, without a valid license issued by OHCA. Moreover, Millicents Ferrer, as the renter/tenant of 1863 Hookupa Street, has aided or abetted with her mother, Helen Ferrer, in operating an unlicensed care home.

ORDER

Respondents are hereby ordered to:

1. Cease and desist operation of the unlicensed ARCH or Expanded ARCH located at 1863 Hookupa Street, Pearl City, Hawaii 96782, effective immediately upon receipt of this NOVO;
2. Transfer all residents to a licensed ARCH or Expanded ARCH or other licensed or certified facility within seven (7) calendar days of receipt of this NOVO;
3. Notify in writing to OHCA within one (1) calendar day following transfer of all residents that the residents have been safely transferred to an OHCA licensed or certified facility and provide the name and address of the licensed or certified facility;
4. Pay an administrative penalty totaling **ONE HUNDRED THIRTY-FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$135,800)** based on Respondents' first violation of \$100 for each day of unlicensed operation times one thousand three hundred and fifty eight (1,358) days as calculated from the date of when the first alleged resident was admitted to the property (December 22, 2018) to the date of transfer of all residents (1,358 days x \$100 = \$135,800). The transfer date is seven (7) calendar days from the NOVO receipt date;
5. For Millicents Ferrer to pay an administrative penalty totaling **ONE HUNDRED THIRTY-FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$135,800)** for each day of violation of aiding or abetting an unlicensed person to operate an ARCH or expanded ARCH. Pursuant to HRS §321-20(1), the penalty is based on \$100 for each day of violation times one thousand three hundred and fifty eight (1,358) days as calculated from the date of when the first alleged resident was admitted to the property (December 22, 2018) to the date of transfer of all residents (1,358 days x \$100 = \$135,800). The transfer date is seven (7) calendar days from the NOVO receipt date; and
6. Disclose to the Department any other care home operated by Helen Ferrer, Millicents Ferrer, TLC for the Elderly LLC, Hawaii Platinum Group, or any other entity, agency, or organization owned, managed, or operated by Helen Ferrer, Millicents Ferrer, TLC for the Elderly LLC, or Hawaii Platinum Group.

This NOVO becomes final and enforceable twenty (20) days after your receipt of this NOVO unless, before the twenty (20) days expire, you submit a written request for a hearing to the Hearings Officer, Department of Health, 1250 Punchbowl Street, Third Floor, Honolulu, HI 96813. In the request, include a copy of this NOVO. At a hearing, you may seek to avoid any penalty, and OHCA may seek the maximum penalty per day, per violation. Parties may present evidence and witnesses on their behalf and may examine and cross-examine all witnesses and evidence presented by OHCA. Parties may be represented by lawyers at their own expense, or they may represent themselves. Any hearing will follow HRS, Chapters 91 and section 11-100.1-92, HAR. After a hearing, the Director of Health or his appointee will decide the actual administrative penalty, which may be more or less than that contained in this NOVO, or no penalty at all.

If you have questions or would like to discuss a possible settlement of this NOVO, please call Mr. Keith Ridley, Chief of the Office of Health Care Assurance, at (808) 692-7227.

If you have special needs due to a disability and are in need of assistance that will aid you in participating in the hearing or pre-hearing conference, please contact the Hearings Officer at (808) 586-4409 (voice) or through the Telecommunications Relay Service (711), at least ten (10) working days before the hearing or pre-hearing conference date.



KEITH R. RIDLEY

Sep 1, 2022

Date

Chief, Office of Health Care Assurance
Department of Health

APPROVED AS TO FORM:



Angela Tokuda
Deputy Attorney General