

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY)
RULING BY COVINGTON HOUSE OF) DECLARATORY RULING
RALEIGH, LLC, d/b/a PINE TREE VILLA)**

I, Robert J. Fitzgerald, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A.0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Covington House of Raleigh, LLC, d/b/a/ Pine Tree Villa (“Pine Tree Villa”) has requested a declaratory ruling (the “Request”) seeking an interpretation of N.C.G.S. § 131D-2(b)(1b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls, Gina Bertolini, and Patrick J. Togni of Kennedy Covington Lobdell & Hickman, L.L.P, have requested this ruling on behalf of Pine Tree Villa and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Pine Tree Villa is a licensed, 120-bed adult care home located in Raleigh, North Carolina. On May 3, 2007, the Department’s Adult Care Licensure Section (“Licensure Section”) notified Pine Tree Villa that it was assessing a penalty for violations of N.C.G.S. § 131D-21 and 10A NCAC 13F.0901(c), and that these violations constituted a Type A penalty. Pine Tree Villa has

challenged this action in contested case proceeding, which is currently pending in the Office of Administrative Hearings. The issues in the contested case are unrelated to the subject of this Declaratory Ruling.

N.C.G.S. § 131D-2(b)(1b) provides in pertinent part:

(1b) No new license shall be issued for any adult care home to an applicant for licensure who:

.....

b. Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department; . . .

Pine Tree Villa asserts that the Licensure Section interprets this provision to mean that an owner, principal, or affiliate of an adult care home (“ACH”) assessed such a penalty may not apply for a new license until either (1) one year from the date the penalty was assessed, or (2) one year from the date on which the home has substantially complied with the correction plan. This belief is based on what it describes as “[i]nformation received informally from the Attorney General’s Office.”

Pine Tree Villa contends that this interpretation is incorrect and would prevent its owner from applying for a new license for an ACH for an unduly long period. It argues that the legislative intent was for Section 131D-2(b)(1b)b to bar an applicant until the earlier of two dates: (1) one year from the date the penalty was assessed, or (2) the date upon which the Licensure Section determines and certifies that the ACH is in substantial compliance with the correction plan.

I am advised that Pine Tree Villa’s understanding of the interpretation of this section by the Licensure Section and the Attorney General’s Office is not accurate.

ANALYSIS AND CONCLUSION

To the extent there is uncertainty about this Department's interpretation of N.C.G.S § 131D-2(b)(1b)b, it is in the public interest to clarify it.

I find that N.C.G.S § 131D-2(b)(1b)b refers to two possible periods of time after the assessment of a Type A or Type B penalty. The first period is the passage of one year in time after the date of the assessment of the penalty by the Licensure Section. The second period is the period of time between the assessment of the penalty and the date that the Licensure Section determines and certifies that the home has substantially complied with the correction plan established pursuant to N.C.G.S. § 131D-34. The bar against applying for a new license lasts for the shorter of these two periods of time, i.e., the first to occur of the date of compliance or the date of one year after the penalty assessment. This interpretation, which is the same as that urged by Pine Tree Villa in its Request, is compelled by the plain language of the statute and is supported by the legislative materials provided with the Request.

This the _____ day of January, 2008.

Robert J. Fitzgerald, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Gary S. Qualls
Gina Bertolini
Patrick J. Togni
Kennedy Covington Lobdell & Hickman, L.L.P.
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of January, 2008.

Jeff Horton
Chief Operating Officer