

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 89-1271
 :
 TUCKER HOUSE II, INC., ET AL. :
 :
 Defendant. :

CONSENT ORDER

The United States of America and Tucker House II, Inc. have consented to the issuance of the following order subject to the approval of the Court:

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The United States and Defendant, Tucker House II, Inc. agree that this Court has jurisdiction over this matter pursuant to 28 U.S.C.A. §§ 1331, 1345; 31 U.S.C.A. § 3729. The parties further agree that venue lies in this judicial district pursuant to 28 U.S.C.A. § 1391 (b) and (c).

2. On or about November 1989, the Defendant, Tucker House II, Inc., hired GMS Management-Tucker House II, Inc. for the purpose of providing quality patient care services to residents of Tucker House Nursing Home, 1001 Wallace Street, Philadelphia, Pennsylvania, through the supervision and direction of the day-to-day operations at its nursing home facility. In addition, Tucker House II, Inc. contracted with Total Care Management Services, Inc., a wholly-owned subsidiary of GMS Management-

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Tucker House II, Inc. Under the terms of that agreement, Total Care Management Services, Inc. agreed to provide dietary services at the nursing home facility which included, "but were not limited to, supervision of those services in accordance with the applicable federal, state and local laws, rules and regulations, and in compliance with certain dietary standards of operation as required for participation in the federal Medicare Program and Pennsylvania Medicaid Program."

3. Defendant, Tucker House II, Inc. asserts that it relied upon the expertise of GMS Management-Tucker, Inc. for the operation of Tucker House Nursing Home. Defendant, Tucker House II, Inc. now recognizes the failures of GMS Management-Tucker, Inc. to provide the services required under their agreements.

4. Defendant, Tucker House II, Inc. recognizes that GMS Management-Tucker, Inc. submitted invoices to the Government for services rendered to residents to Tucker House Nursing Home. Defendant, Tucker House II, Inc. also recognizes that it was the deliberate ignorance of the truth and/or reckless disregard of the truth in the creation and/or submission of those very same invoices regarding the failure to provide adequate nutrition in accordance with state and federal law and regulations that served as a basis for the Government to commence this action.

5. This Consent Order shall not be construed as an admission of any liability or wrongdoing on the part of Defendant, Tucker House II, Inc.

6. Defendant, Tucker House II, Inc. agrees to pay the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to the United States

of America as a penalty under the False Claims Act. Payment of this amount shall be made to the United States Attorney's Office, 615 Chestnut Street, Philadelphia, Pa. 19106, Attention: David R. Hoffman and is to be made as follows:

(a) upon the execution of this Consent Order by Defendant, Tucker House II, Inc. shall remit the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00);

(b) Defendant, Tucker House II, Inc. shall remit the amount of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) by June 15, 1996.

7. Defendant, Tucker House II, Inc. and its agents, employees, contractors, and/or subcontractors agree to comply with the "Quality Assessment and Assurance Program-Nutritional Monitoring Program", attached hereto and incorporated herein as Exhibit A.

8. Defendant, Tucker House II, Inc. and its agents, employees, contractors and/or subcontractors agree to provide wound care (decubitus ulcers) treatment in strict accordance with the Agency for Health Care Policy and Research Guidelines, attached hereto and incorporated herein as Exhibit B.

9. Defendant, Tucker House II, Inc. agrees to provide training to all of its staff on all of the requirements set forth in the documents referred to in paragraphs 7 and 8 within forty-five (45) days from the entry of this Order. This training shall be on-going and all new staff must be immediately apprised of the requirements set forth in the documents identified in paragraphs 7 and 8.

10. Defendant, Tucker House II, Inc. agrees to report on all nutritionally compromised and nutritionally at risk residents, as defined in the Defendant's Nutrition Monitoring Program (Exhibit A), to the Tucker House Nursing Home Internal Quality Assurance Team, to the United States Attorney's Office and to the Health Care Financing Administration (HCFA), Health Standards and Quality Division, on a monthly basis for a period of not less than one (1) year from the date of entry of this Order. Review of these residents by government agencies does not constitute approval or disapproval of the care provided by Defendant, Tucker House II, Inc. and the United States reserves its right to take any action, in any forum, against Defendant for failing to provide adequate care to its residents.

11. Defendant agrees that it will ensure that residents are not improperly, medically unjustifiably or involuntarily given feeding tubes for nutritional purposes.

12. Defendant, Tucker House II, Inc. agrees to allow, at Defendant Tucker House II, Inc.'s expense, a mutually-agreed upon (by the United States and Tucker House II, Inc.) independent third party to monitor Tucker House Nursing Home, at any time, for nutritional and wound care compliance with this Consent Order. The independent third party shall visit the facility at least quarterly for a period of one (1) year from the date of entry of this Order and shall have immediate access to Tucker House Nursing Home residents and their records. The independent third party shall create a report documenting any findings relating to nutrition and wound care and shall present the report

within ten (10) calendar days of the visit to the Defendant, Tucker House II, Inc., the U.S. Attorney's Office and the local Long-Term Care Ombudsman Program.

13. Defendant, Tucker House II, Inc. agrees to send to selected family members of the three victims referred to in the Complaint, as identified by the U.S. Attorney's Office, a letter expressing remorse over the care and treatment provided. This letter shall be mutually agreed upon by Defendant and the United States.

14. Defendant, Tucker House II, Inc. agrees to comply fully with the applicable rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act.

15. In the event that Defendant, Tucker House II, Inc. and/or its agents, employees, contractors and subcontractors fail to comply in good faith with the terms of this Consent Order or should any of the Defendant's representations or warrants be materially false, the United States may at its sole discretion, exercise one or more of the following rights:

(a) declare this Consent Order breached and proceed against Defendant, Tucker House II, Inc. on the underlying claims. In this event, Defendant, Tucker House II, Inc. waives any statute of limitations defenses that would not have been available to it at the time of the entry of this Consent Order.

(b) seek contempt of court provisions based on the failure of Defendant, Tucker House II, Inc. and/or its agents, employees, contractors and subcontractors to comply with this Consent Order.

(c) exercise any other right granted by law or recognizable at common law or equity.

16. Each party to this Consent Order shall bear its own costs except as otherwise provided herein.

17. Defendant, Tucker House II, Inc. and/or its agents, employees, contractors and/or subcontractors agree not to take any retaliatory action against any individual or individuals who cooperated with this investigation.

18. Defendant, Tucker House II, Inc. agrees to continue to cooperate with the investigation into the care of the victims named in the Complaint and will make readily available to the U.S. Attorney's Office, any agent or employee of Tucker House Nursing Home for interviewing purposes or providing testimony in any judicial proceeding.

19. This Consent Order shall be binding on the heirs, administrators, executors, successors, and transferees of Defendant, Tucker House II, Inc.

Judge

United States District Court

Entered
3/6/96
(called cvA)

We the undersigned, consent to the entry of the above Consent Order. We represent to the Court that this Consent Order contains a complete description of the agreement between the parties. All material representations, understandings and promises of the parties are contained in this Order. Any modifications must be set forth in writing and signed by all parties. Defendant, Tucker House II, Inc. represents that this Consent Order is entered into with knowledge of the events described herein, and that it is entered into knowingly and voluntarily, without any degree of duress or compulsion whatsoever.

UNITED STATES OF AMERICA:

MICHAEL R. STILES
UNITED STATES ATTORNEY


JAMES G. SHEEHAN
ASSISTANT U.S. ATTORNEY
CHIEF CIVIL DIVISION


DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

TUCKER HOUSE II, INC.:

By: 
Floyd W. Alston, President