STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H., as Commissioner of Health of the State of New York, to determine the action to be taken with respect to:

Westgate Nursing Home, Inc.

Respondent

as operator of

Westgate Nursing Home
525 Beahan Road
Rochester, New York 14624

STIPULATION

AND

ORDER

NH-02-71

arising out of alleged violations of Article 28 of the Public Health Law of the State of New York and Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

WHEREAS, the New York State Department of Health (the "Department"), has made findings based upon inspections of the Westgate Nursing Home (the "Facility"); and

WHEREAS, the Department completed its inspections of the Facility on January 11, 2002; and

WHEREAS, the Department's inspection findings included alleged violations of Article 28 of the Public Health Law and 10 NYCRR Part 415; and

WHEREAS, prior to commencement of administrative enforcement action based upon the alleged violations by service of a Notice of Hearing and Statement of Charges, the Department and the Respondent engaged in settlement discussions; and

WHEREAS, the parties wish to resolve this matter by means of a settlement instead of an adversarial administrative hearing.

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. This matter is settled and discontinued with prejudice. The Department shall not pursue administrative enforcement action against the Respondent pursuant to Article 28 of the Public Health Law and 10 NYCRR Part 415 in connection with the Department's findings based upon the inspections completed on January 11, 2002.

2. The Respondent admits that substantial evidence of violations of 10 NYCRR Part 415 existed under the citations set forth in the attached addendum. The foregoing admission made by the Respondent is solely for the purpose of resolving the instant administrative matter and is not intended for use in any other forum, tribunal or court, including any Medicare or Medicaid enforcement proceeding and including any civil or criminal proceeding in which the issues or burden of proof may differ. Any such admission is without prejudice to the Respondent's rights, defenses and claims in any other matter, proceeding, action, hearing or litigation not involving the Department. It is agreed that the foregoing admission is not intended to be dispositive of any allegations of medical malpractice that may be made in a civil action for monetary

damages.

3. Pursuant to Sections 12 and 206 of the Public Health Law, the Respondent shall pay a civil penalty of Four Thousand Dollars ($4,000) in ten (10) monthly installments of Four Hundred Dollars ($400) each. The first installment shall be made on the first day of the first month following the effective date of the Stipulation and Order. The remaining nine payments shall be made on or before the first day of each succeeding month thereafter until paid in full. If the Respondent fails to pay a part or all of any installment of this civil penalty, then, at the Department's option, the entire unpaid balance of the civil penalty shall be due and payable immediately. This civil penalty shall be sent by certified mail, return receipt requested, and shall be made payable by certified check to the New York State Department of Health and forwarded to the New State Department of Health, Bureau of Accounts Management, Room 1258, Corning Tower, Empire State Plaza, Albany, New York 12237-0016. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses [Tax Law Section 171(27); State Finance Law Section 18; CPLR Section 5001; Executive Law Section 32].

4. Nothing herein contained shall be construed to preclude the Department from pursuing any and all sanctions or remedies authorized by the Public Health Law against any individual employed by or practicing in association with the Facility for any violations identified during the inspections referred to herein. Such sanctions and remedies may include, but are not limited to, administrative proceedings brought pursuant to Public Health Law Section 2803-d (relating to patient abuse, mistreatment or neglect), Public

Health Law Section 230 (relating to professional medical conduct) and Public Health Law Article 28-D (relating to the practice of nursing home administration). A copy of this Stipulation and Order shall be sent to the Bureau of Nursing Home Administrator Licensure for whatever action, if any, it may deem appropriate.

5. It is further stipulated and agreed by the Respondent and the Department that there exist valid and sufficient grounds, as a matter of fact and law, for the issuance of this Stipulation and Order under the Public Health law, and the Respondent consents to its issuance, accepts its terms and conditions and waives any right to challenge this Stipulation and Order in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or in any other action or proceeding.

6. This Stipulation and Order shall be effective upon service on the Respondent or the Respondent's attorney or representative of a copy by personal service or by certified or registered mail.

DATED: 9/4/02, New York, 2002

Westgate Nursing Home, Inc.

By: David Giunta

AGREED AND SO ORDERED:

DATED: Albany, New York 9.13, 2002

ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H.
Commissioner of Health

By: D P Whalen

DENNIS P. WHALEN
Executive Deputy Commissioner

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New York State Department of Health
Bureau of Accounts Management
Corning Tower, Room 1258
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Albany, New York 12237-0016

ADDENDUM

Westgate Nursing Home

Date	**Code Cite 10 NYCRR**	**Violation**
January 11, 2002	415.4 (b)(1)(i)	Resident Behavior and Facility Practices: Staff Treatment of Residents
	415.12 (a)(1)(ii)	Quality of Care: Activities of Daily Living