OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU

IN THE MATTER OF THE INVESTIGATION OF
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

AOD No. 14-057

OF

BETSY ROSS NURSING AND REHABILITATION
CENTER

ASSURANCE OF DISCONTINUANCE

In October 2013, the Office of the Attorney General of the State of New York ("OAG") began to investigate, pursuant to New York State Executive Law § 63(12), whether Betsy Ross Nursing and Rehabilitation Center had engaged in unlawful discrimination based on race in violation of the New York State Human Rights Law, New York State Executive Law ("Human Rights Law") § 290 *et seq.*; the New York State Civil Rights Law § 40-c; and Title VII, 42 U.S.C. §§ 2000e *et seq.* Specifically, the OAG sought to determine whether the Betsy Ross Nursing and Rehabilitation Center ("BRNH") accommodated and acceded to the racially discriminatory preferences of patients by making reassignments of nurses on the basis of race and took other employment-related action that created a hostile work environment for African-American employees.

This Assurance of Discontinuance ("Assurance") contains the OAG's findings in connection with its investigation of BRNH and the relief agreed to by the OAG and BRNH.

PART ONE: DEFINITIONS

1. Throughout this Assurance, the following terms shall have the following meanings:

   a. "Assurance" means this Assurance of Discontinuance.

   b. "Effective Date" means the date this Assurance is fully executed by the parties.

   c. "Employee" means any full-time or part-time employee of Betsy Ross Nursing and Rehabilitation Center.

   d. "Parties" means the OAG and BRNH.

   e. "Personnel" includes Certified Nursing Aides, Registered Nurses, and Licensed Practical Nurses.

   f. "Resident" means any person, including elderly and younger adults with physical or mental disabilities, living within the BRNH and/or using services provided by the BRNH facilities.

   g. "Supervisor" means any Betsy Ross Nursing and Rehabilitation Center employee responsible for supervision, management, and/or oversight of any other employee(s).

h. Terms of construction:

i. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

ii. "All" means "any and all" and "any" means "any and all."

iii. "Including" means without limitation.

iv. The use of the singular form of any word includes the plural and vice versa.

v. "Day" refers to a calendar day, not a business day.

PART TWO: FINDINGS

2. BRNH is a nursing home located in Rome, New York, which provides nursing care to seniors, and includes long-term patients.

3. In October 2013, the OAG received and reviewed information indicating that BRNH, through its employees and supervisory staff, engaged in discrimination against its employees on the basis of race. In response, the OAG commenced an investigation, which included interviews of multiple complainants about the conditions at BRNH; analysis of documents, including nursing home policies and procedures; and review of personnel assignment sheets.

4. The investigation revealed that some BRNH supervisors acceded to the racially discriminatory preferences of patients. Specifically, on more than one occasion, BRNH supervisors reassigned African-American nurses to accommodate the racially discriminatory preference of a white patient. BRNH posted a Care Plan making explicit that African-American nurses were not permitted in the area or floor occupied by the white patient. Specifically, the Care Plan indicated that "No

Colored Nurses" were allowed on the floor. The investigation also revealed that BRNH did not have in place a sufficient anti-discrimination policy or procedures to prevent discrimination in the workplace. The investigation also revealed that BRNH does not train or guide supervisors on prohibited conduct; and BRNH does not educate its employees as to their rights under the New York State Human Rights Law, New York State Executive Law §§ 290 *et seq.*; the New York State Civil Rights Law § 40-c; and Title VII, 42 U.S.C. §§ 2000e *et seq.*

5. Based on the evidence obtained during the investigation, the OAG believes the actions of BRNH and BRNH's employees constitute a violation of the New York State Human Rights Law, New York State Executive Law §§ 290 *et seq.*; the New York State Civil Rights Law § 40-c; and Title VII, 42 U.S.C. §§ 2000e *et seq.*

6. Following the commencement of the investigation and after the OAG brought this matter to BRNH's attention, both Parties sought to resolve the matter and agreed to enter into this Assurance for settlement purposes.

PART THREE: PROSPECTIVE RELIEF

WHEREAS, BRNH is subject to New York State Executive Law § 63(12); the New York State Human Rights Law, New York State Executive Law §§ 290 *et seq.*; the New York State Civil Rights Law § 40-c; and Title VII, 42 U.S.C. §§ 2000e *et seq.*, all of which require, among other things, equal treatment in employment, regardless of race;

WHEREAS, the OAG's investigation included the review and analysis of documents regarding existing BRNH policies, procedures and practices of BRNH; and the review of information provided by multiple complainants;

WHEREAS, BRNH neither admits nor denies the OAG's Findings in Paragraphs (2) - (6);

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and discontinue its investigation of BRNH; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between BRNH and OAG, as follows:

PART FOUR: GENERAL COMPLIANCE WITH THE LAW

7. BRNH agrees that it shall not engage in any act or practice that discriminates against any employee on the basis of race and agrees to abide fully by the obligations, terms, and conditions of all applicable federal, state and local laws, including but not limited to Title VII of the Civil Rights Act of 1964, and the New York State Human Rights Law.

PART FIVE: EQUAL EMPLOYMENT OPPORTUNITY POLICY AND PROCEDURES

8. BRNH shall adopt a written equal employment opportunity policy regarding prohibited discriminatory conduct; employee rights and responsibilities; and employee complaint procedures (the "EEO Policy"). Within fifteen (15) days of the Effective Date, BRNH shall submit the EEO Policy to the OAG for approval, which shall not be unreasonably withheld. Upon the OAG's approval, the EEO Policy shall immediately be adopted and implemented by BRNH. For the duration

of this Assurance, BRNH shall not make any changes to the EEO Policy without the express written permission of the OAG.

9. BRNH shall appoint or designate an Equal Employment Opportunity Officer (the "EEO Officer") to investigate all complaints arising under the EEO Policy and ensure BRNH's compliance with its EEO Policy, as well as with all federal, state, and local anti-discrimination laws. Within fifteen (15) days of the Effective Date, BRNH shall submit the name and contact information for the designated EEO Officer to the OAG for approval.

10. Following the approval and implementation of the EEO Policy, BRNH shall distribute and disseminate the policy to all BRNH employees. Methods for distribution and dissemination of the EEO Policy shall include a mailing of the policy along with each BRNH employee's pay check or wage statement for two subsequent pay periods; posting the policy in a visibly conspicuous location in the workplace; and/or electronic mailing of the policy to employees BRNH-issued email addresses or publication on any intranet website used to post information for BRNH employees. The policy shall also include contact information for the Civil Rights Bureau of the New York State Attorney General's Office.

11. BRNH shall distribute the EEO Policy to all new employees within seven (7) days of the date of hire.

PART SIX: DIVERSITY CONSULTANT & TRAINING

12. Within thirty (30) days of the Effective Date, BRNH shall identify an external Diversity Consultant to assist with the development of anti-discrimination training materials and to conduct anti-discrimination training for all BRNH staff. The

training shall, at a minimum, include an explanation of the anti-discrimination and anti-harassment policies developed pursuant to the terms of this Assurance. The training shall also illustrate examples of discriminatory conduct, and provide a response for addressing discrimination in the workplace including discriminatory requests made by patients. In addition, the training shall also address the process for reporting complaints of discrimination or harassment.

13. Anti-discrimination training shall be conducted for all BRNH employees at least once each year for the duration of this Assurance.

14. All BRNH employees shall acknowledge in writing that they have received the training and agree to comply with the requirements covered in both the training and the EEO Policy, using the acknowledgement form annexed as Exhibits A and B, respectively. The EEO Officer shall maintain attendance records for all training sessions for the duration of this Assurance.

PART SEVEN: COMPLAINTS

15. The EEO Officer at BRNH shall timely review complaints regarding alleged discrimination or harassment in accordance with the terms of the EEO Policy and the law. BRNH shall provide the OAG with any and all copies of complaints made by employees or patients concerning discrimination or harassment on the basis of race within seven (7) days of receipt.

16. The EEO Officer shall conduct a complete and thorough investigation into the complaint and take appropriate action to resolve the complaint in accordance with the EEO Policy, with the terms of this Assurance, and with applicable law. BRNH shall maintain all records regarding each such complaint, including

materials concerning the investigation and the resolution of the complaint, for the duration of this Assurance. Copies of all materials concerning the resolution of the complaint, including any information describing actions taken in response to the complaint, shall be provided to the OAG within seven (7) days of the completion of the investigation.

PART EIGHT: REPORTING

17. BRNH shall provide six (6) semi-annual monitoring reports to the OAG, with the first due five (5) months after the Effective Date and the remaining reports due every six (6) months thereafter. Each report shall include:

    a. Copies of all complaints made by employees or patients concerning discrimination and harassment, to the extent not already provided;

    b. Copies of acknowledgement forms signed by employees and supervisors; and

    c. Copies of any other materials or documents that the OAG deems necessary to confirm BRNH's compliance with the terms of this Assurance.

18. This Assurance does not in any way impair or affect the right of the OAG to obtain documents from BRNH pursuant to subpoena.

PART NINE: PROHIBITION AGAINST RETALIATION

19. BRNH agrees that it shall not in any manner discriminate or retaliate against any current employee who cooperated or may be perceived to have cooperated with the OAG's investigation.

PART TEN: NOTICE TO THE PUBLIC

20. Within thirty (30) days of the Effective Date, BRNH shall post at each public entrance to its facility and in a location clearly visible to all patients, a sign indicating that BRNH is committed to non-discrimination and that it will treat all individuals, including patients and employees, without regard to race or color. This Non-Discrimination Statement is annexed as Exhibit C.

21. Documentation of BRNH's compliance with this Part, including copies of all advertisements, shall be produced to the OAG pursuant to Part Eight.

PART ELEVEN: SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS

22. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by BRNH and the results of the OAG's investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

23. This Assurance will expire three (3) years after the Effective Date.

24. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by BRNH in connection with their agreeing to abide by this Assurance.

25. This Assurance binds BRNH, their principals, beneficial owners, officers, successors, assigns, "d/b/a" companies, subsidiaries, and affiliates, if any, to the extent that they engage in Covered Activities.

26. BRNH represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. BRNH agrees not to take any action or make any statement denying, directly or indirectly, (i) the propriety of this Assurance or (ii) expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects BRNH's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of wrongdoing or of liability by BRNH.

27. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.

28. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, which shall not be unreasonably withheld.

29. In the event that any one or more of the provisions contained in this Assurance shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance, and the remaining clauses shall continue to be in effect.

30. To the extent not already provided under this Assurance, BRNH agrees, upon request by the OAG, to provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

31. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

OAG:

Kristen Clarke
Bureau Chief
Civil Rights Bureau
New York State Office of the Attorney
General 120 Broadway, 23rd Floor
New York, New York, 10271-0332
Civil.Rights@ag.ny.gov
(212) 416-8250
(212) 416-8074 (Fax)

BRNH:

Richard Sents
Nursing Home Administrator
Betsy Ross Nursing and Rehabilitation Center
1 Elsie Street
Rome, New York 13440

Any changes in the person to whom communications should be directed shall be made in writing in advance of the change.

32. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and BRNH agrees not to make any representation to the contrary.

33. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of a violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

34. If a court of competent jurisdiction determines that BRNH has breached this Assurance, BRNH agrees to pay to the OAG the costs, if any, tied to such determination and costs tied to enforcement of this Assurance, including without limitation reasonable legal fees, expenses and reasonable court costs.

35. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

36. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: Rome, New York
February 26th, 2014

JENNIFER L. PACICCA
NOTARY PUBLIC,
STATE OF NEW YORK
COUNTY OF ONEIDA
COMMISSION EXPIRES 5/16/14
01PA5058009
Jennifer L Pacicca

Betsy Ross Nursing & Rehabilitation Center

By: _____
owner Representative

CONSENTED TO:

Dated: New York, New York
~~February~~ March 3, 2014

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____

Kristen Clarke
Bureau Chief

Travis Nembhard
Volunteer Assistant Attorney General

Civil Rights Bureau
120 Broadway
New York, New York 10271
Tel. (212) 416-8250
Fax (212) 416-8074

EXHIBIT A

TRAINING ACKNOWLEDGMENT FOR EMPLOYEES

BETSY ROSS NURSING AND REHABILITATION CENTER

On _____, 20__, I attended a training seminar regarding my responsibilities under Title VII, 42 U.S.C. §§ 2000e *et seq.*; and the New York State Human Rights Law, Executive Law §§ 290 *et seq.* I was also instructed as to the equal employment opportunity policy of Betsy Ross Nursing and Rehabilitation Center, which prohibits discrimination and harassment, including on the basis of race, color, national origin and sex. I had earlier received a copy of and have fully read and completely understand Betsy Ross Nursing and Rehabilitation Center's equal employment opportunity policy. I understand my legal rights and responsibilities and will comply with those responsibilities.

I understand that violating these written policies and procedures, or otherwise engaging in discriminatory employment practices prohibited by federal, state, or local law, shall subject me to appropriate disciplinary action, including termination of employment.

I have been informed by my employer that I will not be retaliated against by my employer for providing information to any law enforcement official or agency, including the New York State Office of the Attorney General, Civil Rights Bureau, 120 Broadway, 23rd Floor, New York, NY 10271, telephone (212) 416-8250, regarding my employer's compliance with the above laws.

_____ _____

Print Name Signature

_____ _____

Title Date

EXHIBIT B

EQUAL EMPLOYMENT OPPORTUNITY POLICY ACKNOWLEDGMENT

BETSY ROSS NURSING AND REHABILITATION CENTER

On _____, 20__, I received and read the Betsy Ross Nursing and Rehabilitation Center Equal Employment Opportunity Policy, and I have read and completely understand that policy. I understand my legal rights and responsibilities and will fully comply with those responsibilities.

I understand that violating these written policies and procedures, or otherwise engaging in discriminatory employment practices prohibited by federal, state, or local law, shall subject me to appropriate disciplinary action, including termination of employment.

I have been informed by my employer that I will not be retaliated against by my employer for providing information to any law enforcement official or agency, including the New York State Office of the Attorney General, Civil Rights Bureau, 120 Broadway, 23rd Floor, New York, NY 10271, telephone (212) 416-8250, regarding my employer's compliance with the above laws.

_____ _____

Print Name / Title Signature

_____

Date

EXHIBIT C

EMPLOYEE NOTICE

Posted Pursuant to an Agreement with the NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

This Employee Notice is being posted as part of the remedy agreed to pursuant to a Settlement Agreement between Betsy Ross Nursing and Rehabilitation Center and the NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL (OAG).

Federal and state laws prohibit discrimination against any employee or applicant for employment because of the individual's race with respect to hiring, promotion, firing, compensation, or other terms, conditions or privileges of employment.

Betsy Ross Nursing and Rehabilitation Center supports and will comply with such federal and state laws in all respects and will not take any action against employees because they have exercised their rights under the law.

Specifically, Betsy Ross Nursing and Rehabilitation Center will not retaliate against employees because they have exercised their rights under the law, reported an alleged violation under the law or provided assistance in any investigation conducted by the New York State Attorney General's Office.

Betsy Ross Nursing and Rehabilitation Center has adopted an equal employment opportunity policy and will ensure that all supervisory employees and other employees abide by the requirements of that policy and that employees will not be discriminated against on the basis of their race or subjected to any conduct in violation of Title VII and New York State Human Rights Law.

Signed this _____ day of _____, 20__

Questions concerning this notice may be addressed to:
New York State Office of the Attorney General
Civil Rights Bureau
120 Broadway
New York, New York 10271
(212) 416-8250
Civil.Rights@ag.ny.gov

This notice will be posted through March 2017