

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
PASTORE COMPLEX
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

In the Matter of:

**Wingate Healthcare, Inc., SRC Providence, LLC,
SRC East Side, LLC, and SRC Management, LLC,¹
Applicants,**

DBR No.: 2019-IN-008

v.

**The Beacon Mutual Insurance Company
and Epoch Senior Living, LLC,
Respondents.**

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order Appointing Hearing Officer and Providing Notice of Hearing under R.I. Gen. Laws § 27-7.1-11.1 (“Notice of Hearing”) issued by the Department of Business Regulation (“Department”) on May 6, 2019 to the parties in the above-captioned matter in relation to an appeal filed by Wingate Healthcare, Inc., SRC Providence, LLC, SRC East Side, LLC, and SRC Management, LLC (“Wingate”).² A hearing was held on December 10, 2019.

¹ The caption was amended at the December 10, 2019 hearing by the undersigned at the request of Wingate to add SRC Management, LLC.

² R.I. Gen. Laws § 27-7.1-11.1 provides as follows:

Challenge and review of application of rating system. (a) An advisory organization and every insurer subject to this chapter which makes its own rate shall provide within this state reasonable means where any person aggrieved by the application of its rating system may upon that person's written request be heard in person or by the person's authorized representative to review the manner in which the rating system has been applied in connection with the insurance afforded the aggrieved person.

(b) Any party affected by the action of an advisory organization or the insurer may, within thirty (30) days after written notice of that action, make application, in writing, for an appeal to the director, setting forth the basis for the appeal and the grounds to be relied upon by the applicant. If the advisory

Wingate relied on its recitation of facts and presented testimony. Wingate filed a brief with The Beacon Mutual Insurance Company (“Beacon”) filing a reply brief by January 14, 2020.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-35-1 *et seq.*, R.I. Gen. Laws § 27-7.1-11.1, R.I. Gen. Laws § 42-14-1 *et seq.*, and Department regulation 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearings* (“Hearing Regulation”).

III. ISSUE

Whether Epoch Senior Living Center, LLC’s (“Epoch”) workers’ compensation experience modification rating should be removed from Wingate’s workers’ compensation experience modification or alternatively, whether the March 15, 2019 decision should be affirmed or overturned.

IV. MATERIAL FACTS AND TESTIMONY

Wingate submitted a recitation of undisputed facts. A partial recitation of these facts is summarized as follows:

1. Wingate Healthcare, Inc. and SRC Management, LLC, an affiliate of Wingate Healthcare, are the managers for privately held businesses that operate skilled nursing facilities and assisted living facilities in Rhode Island, Massachusetts, and New York.

organization or insurer fails to grant or reject the request within thirty (30) days after it is made, the applicant may proceed in the same manner as if the application has been rejected.

(c) The director shall review the application and, if the director finds that the application is made in good faith and that it sets forth on its face grounds which reasonably justify holding a hearing, the director shall conduct a hearing held not less than ten (10) days after written notice to the applicant and to an advisory organization or insurer. The director, after a hearing, shall affirm or reverse the action of an advisory organization or insurer.

(d) If, after a hearing held under this section, it is determined that the rates charged by an insurer are in excess of the appropriate rate, the overcharge shall be refunded to the insured.

2. SRC Management, LLC is the manager for two (2) assisted living facilities in Providence, Rhode Island. SRC Management also manages several other skilled nursing and assisted living facilities in Massachusetts.

3. On May 15, 2016, SRC Management entered into an Operations Transfer Agreement (“OTA”) with Epoch³ regarding the two (2) Providence facilities and several other skilled nursing and assisted living facilities in Massachusetts. Exhibit B.

4. Up through and including May 15, 2016, Epoch was the tenant of the two (2) Providence facilities pursuant to a lease with the landlord, Ventas (“Ventas”).

5. In the OTA, the parties were identified as follows: the “Wingate Affiliates” were designated as the “Successor Licensees” or “Successor Tenants” and the Epoch affiliated entities were designated as the “Current Licensees” or “Current Tenants” in reference to the various facilities subject to the OTA. Exhibit B, p. 1.

6. Wingate did not acquire Epoch's material assets, nor did Wingate acquire any ownership in Epoch. Both Epoch and Wingate entered separate lease agreements with Ventas.

7. Beginning May 16, 2016, Wingate became the tenant of the two (2) Providence facilities pursuant to its lease with Ventas.

8. Wingate and Epoch’s workers’ compensation carrier in Rhode Island is Beacon.⁴

9. The National Council on Compensation Insurance (“NCCI”)⁵ is authorized to act as the advisory organization regarding workers’ compensation insurance ratemaking-related activities in accordance with R.I. Gen. Laws § 27-7.1-8.1 and R.I. Gen. Laws § 27-7.1-9.1.

³ Epoch chose not to participate in this appeal. See record.

⁴ Beacon, named as a necessary party by the Department in its Notice of Hearing, has previously stated that it will implement the final decision regarding the experience modification rating.

⁵ NCCI is not a party to the within matter but participated in the status conference and subsequently produced documents in response to a subpoena issued by the Department at the request of Wingate.

10. NCCI is charged with reviewing and setting workers' compensation experience modification ratings which ultimately impact the cost of a company's workers' compensation insurance premium in Rhode Island. NCCI acts as a licensee of the Department⁶ pursuant to R.I. Gen. Laws § 27-9-22.

11. NCCI was charged with determining the impact of the transaction between Epoch and Wingate on Wingate's workers' compensation rates.

12. NCCI reviewed the Rule 3 of the NCCI Experience Rating Plan Manual ("NCCI Rules") to determine whether the workers' compensation experience modification rating of Epoch should transfer to Wingate. Rule 3 describes the types of "ownership" changes that warrant a transfer of modification ratings. Exhibits E and F.

13. On May 24, 2016, NCCI issued an ownership ruling. The letter stated that Wingate "acquired the following locations from Epoch Senior Living LLC...." Exhibit G. This ruling resulted in Epoch's workers' compensation experience rating being transferred to Wingate.

14. Wingate submitted additional information and documentation to NCCI. Exhibit H.

15. In a ruling issued on December 19, 2016, NCCI removed the Epoch experience from Wingate and stated that this ownership ruling superseded the May 24, 2016 letter due to the receipt of new information. Exhibit I.⁷

⁶ The Department is not a party to the within matter.

⁷ The December 19, 2016 letter stated:

We are in receipt of an Operations Transfer Agreement which names SRC Management LLC as the successor licensee to certain locations formerly managed by Epoch Senior Living LLC. Based on Rule 3C1.b.6 of the Experience Rating Plan Manual which states that entering and leaving a management agreement is not a change in ownership, the prior ruling regarding this transaction has been withdrawn.

We have revised the experience modifications effective 03/01/2016 and 03/01/2017 for Wingate Healthcare Inc. These ratings were revised to remove the experience of Epoch Senior Living LLC.

16. Unbeknownst to Wingate, Epoch appealed the December 19, 2016 ruling to NCCI.

17. On February 17, 2017, NCCI reviewed the information Epoch submitted to NCCI and stated, “we have determined that our letter dated 12/19/2016 is correct.” Exhibit J.⁸

18. Unbeknownst to Wingate, Epoch appealed that NCCI decision to the R.I. Workers’ Compensation Appeals Board (“Board”). Exhibit O.⁹

19. NCCI issued a notice of meeting on Epoch’s appeal to the Board to be held on July 24, 2018. Wingate was not notified of said meeting, nor was Wingate invited to participate in the meeting. Exhibit P.

20. On August 7, 2018 NCCI issued a letter to Epoch and reversed the December 16, 2016 NCCI decision in that it was decided to transfer the Rhode Island experience for the Epoch locations to Wingate. Exhibit S.

21. In a letter dated August 22, 2018, NCCI notified Epoch that that the Board ruled that there was a transfer of assets and operations from Epoch to Wingate and that as a result, effective May 15, 2016, Epoch’s workers’ compensation insurance experience modification rating would transfer to Wingate. Exhibit T. On September 5, 2018, Wingate appealed the August 22, 2018 decision. Exhibit U.

22. On March 15, 2019, NCCI issued a Case Summary Notice of Decision letter to Wingate that notified Wingate of the Board’s decision. This letter stated that Rule 3 was the

⁸ In support of that determination, on May 18, 2017, NCCI advised Epoch that NCCI reviewed the additional documentation submitted by Epoch and notified Epoch as follows:

There was no transaction between Epoch and Wingate. Wingate did not acquire the locations from Epoch . . . Wingate is a tenant operating the locations under a lease agreement. . . . There was no ownership change: Epoch moved out of the location and Wingate moved in. The locations are still owned by Ventas. Epoch is still operating a business, as is Wingate. Exhibit N.

⁹ The appeal was technically of the May 18, 2017 email (decision) explaining the February 13, 2017 decision as referenced in footnote eight (8).

applicable rule in this matter. The Board's decision, as stated in the March 15 letter, concluded that "the Rhode Island experience for the Epoch locations remain with Wingate." Exhibit DD.

23. On February 21, 2019, the Massachusetts Workers' Compensation Rating and Inspectional Bureau of Massachusetts ("WCRIBMA") issued a ruling that found there was a "sale/transfer of assets and operations" between Epoch and Wingate (for the Massachusetts' facilities). Exhibit EE. Wingate appealed the February 21, 2019 WCRIBMA ruling. Exhibit FF.

24. On April 9, 2019, the WCRIBMA withdrew its February 21, 2019 ruling and in a new decision concluded there was no change in ownership between Epoch and Wingate and that Epoch's experience modification rating should not transfer to Wingate. Exhibit GG.

25. On April 8, 2019, Wingate appealed the March 15, 2019 decision of the Board pursuant to R.I. Gen. Laws § 27-7.1-11.1(c) to the Department. Exhibit II attached.

Jonathan Scharf, Wingate's General Counsel, testified on behalf of Wingate. He testified that Ventas owns the Providence facilities that were operated by Epoch, and Ventas wanted a new operator, so Wingate stepped in. He testified that in both Massachusetts and Rhode Island, one needs a license to operate nursing and assisted living homes and one needs an operating transfer agreement to transfer those licenses which was what the OTA did. He testified that prior to May 16, 2016, the revenue and liabilities were with Epoch and after May 16, 2016, they were with Wingate. He testified that it was only in August, 2018, that Wingate received notice of the transfer of experience. He testified that the March 15, 2019 decision stated that Wingate took over Epoch's facilities, but it did not. He testified that there was no transfer of assets and the assets are still owned by Ventas. He testified that the OTA was just needed for the license. He testified that Wingate did not acquire locations from Epoch, but leased them from Ventas. He testified that the

Rhode Island experience is shared with other states so that rating affects Wingate's worker's compensation score in other states.

Denise Murphy, USI Insurance account manager, testified on behalf of Wingate. She testified that she has been Wingate's account manager since 2016 and the NCCI produces an experience module based on three (3) years of losses and payroll excluding the current year which will apply to Massachusetts, Rhode Island, and New York. She testified to acquire experience, one needs to acquire the assets, but leasing space does not require a transfer of experience. She testified there was a financial impact on Wingate by including Epoch's experience since it will cost more money in Rhode Island and other states.¹⁰

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases

¹⁰ While Ms. Murphy provided her own calculations (Exhibit KK), Beacon did not agree with those calculations and it was noted on the record that if the decision went in Wingate's favor, NCCI would recalculate the experience and cost. Thus, this decision is solely focused on where the experience lies and not on any request for a premium refund by Wingate. Wingate brought up these calculations in its brief, but as pointed out by Beacon in its reply, any such calculations were not part of this appeal.

where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

R.I. Gen. Laws § 27-7.1-11.1 speaks of holding a hearing after an appeal to the Department. There is no statutory provision that the appeal be on the record below like an administrative appeal to Superior Court pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-45-1 *et seq.* Thus, there is no basis to vary from the standard of review for administrative hearings.

C. NCCI Experience Rating Plan Manual

The relevant part of the experience rating plan in the NCCI Rules is Section 3 which is entitled “Ownership Changes” and states in part as follows:

1. Types of Ownership Changes

a. For purposes of this Plan, a change in ownership includes any of the following:

- (1) Sale, transfer, or conveyance of all or a portion of an entity's ownership interest
- (2) Sale, transfer, or conveyance of an entity's physical assets to another entity that takes over its operations
- (3) Merger or consolidation of two or more entities
- (4) Formation of a new entity that acts as, or in effect is, a successor to another entity that:
 - (a) Has dissolved
 - (b) Is non-operative
 - (c) May continue to operate in a limited capacity
- (5) An irrevocable trust or receiver, established either voluntarily or by court mandate

b. For purposes of this Plan, a change in ownership does not include the following:

- (1) Entities entering or leaving employee leasing arrangements
- (2) Creation or dissolution of joint ventures
- (3) Wrap-up projects
- (4) Establishment of or change in a revocable trust
- (5) Establishment of "debtor in possession" status
- (6) Entities entering or leaving affiliation, franchise and/or management agreements
- (7) Probate proceedings (until a disposition of the estate is complete)

2. Impact of Ownership Changes

Ownership changes may result in a change in:

- a. Experience rating modification.
- b. Combinability status with other entities.
- c. Premium eligibility status—an entity may or may not qualify to be experience rated. *Refer to Rule 2-A for more information regarding premium eligibility.*
- d. Rating effective date. (italics and underline included).

D. Arguments

Wingate argued that there were due process issues in the NCCI appeals since there were dual appeals with separate hearings without notice when under NCCI rules, the Epoch and Wingate appeals should have been consolidated so no weight should be given to the Board's decision. Wingate argued that under the NCCI Rules, the OTA was an entering and leaving of a management

agreement so that there was no transaction between Epoch and Wingate since Wingate took over management for Ventas. Wingate likened this to a mall where one store closes in a location and a new store opens in the same location but there is no transaction between the two (2) stores and the closed store would not transfer experience to the newly opened store. Wingate argued that the WCRIBMA with the same facts (but in Massachusetts) ruled in favor of Wingate.

E. Whether the Experience Should be with Wingate or Epoch

i. NCCI Process and Due Process

Wingate raised due process issues because the NCCI appeal process did not consolidate its and Epoch's appeals and Wingate had no notice of Epoch's appeal. While it certainly seems at the very least to be inefficient to have two (2) appeals on the same issue with the same facts without notice to one of the parties, the statutory issue before the undersigned is whether to affirm or deny NCCI's decision.¹¹ The undersigned will review the NCCI Rules and the evidence including the OTA to determine what kind of transaction occurred under the NCCI Rules.

ii. The Operating Transfer Agreement

The OTA indicated that Epoch was a tenant of the facilities for Wingate under a master lease dated December 31, 2007. No copy of that lease was provided. Wingate represents that on May 16, 2016, Wingate became a tenant of the two (2) Providence facilities. The OTA indicated that Wingate agreed to lease the facilities pursuant to a lease agreement with Ventas. Ventas' lease with Wingate is not an exhibit. The OTA stated as follows:

In order to facilitate an orderly transfer of operational responsibility for the Facilities from Current Licensees [Epoch] to Successor Licensees [Wingate], the parties hereto desire to document certain terms and conditions relevant to the transfer of operations responsibility for the Facilities. Exhibit B, p. 1.

¹¹ Wingate included in its recitation of facts many instances of what Wingate considered were notice issues by NCCI and of NCCI's failure to explain its decisions/rationales and of its failure to follow its dispute resolution rules.

The OTA stated that Wingate would take all steps required to obtain nursing and assisted living homes' licenses in Rhode Island. The OTA discussed the entry date for when Wingate was to take over operations and discussed that a condition of the entry date would be that Wingate would be appropriately licensed.

In terms of assets, the OTA provided as follows:

Delivery of Inventory, Furniture, Fixtures and Equipment. Successor Licensees acknowledge that Ventas owns all right, title and interest in and to substantially all of the furniture, machinery, equipment, appliances, fixtures and other tangible personal property located at and used in connection with the Facilities (excluding the personal property of the residents and their Medical Records) in accordance with the Master Lease. Notwithstanding the foregoing, pursuant to the terms of the Termination Agreement, Current Licensees shall, as instructed by Ventas, transfer and convey to Successor Licensee all right, title and interest in and to all furniture, machinery, equipment, appliances, fixtures and other personal property owned by the current licensee and located at and used exclusively in connection with the Facilities, including, without limitation, custody of medical records (excluding the personal property of the residents and all proprietary property of the Current Licensee and its management company and affiliates, including, without limitation, trade names, marks, logos, letterhead, manuals, policies, guidelines (subject to the 60 day transition period for manuals, policies and guidelines as provided in Section 11 below), and other intangible property not used exclusively at the Facilities and leased assets not transferred to Successor Licensee) (collectively, the "Personal Property"). For the avoidance of doubt, in no event shall the Successor Licensees continue to use the EPOCH or Bridges names or marks externally or hold itself out as continuing to do business with third parties as EPOCH or Bridges. It is understood and agreed that the presence of the Personal Property at the Facilities on the Entry Date shall constitute delivery thereof. Successor Licensee shall pay any sales of use tax which may be payable with respect to the transfer of the Personal Property and the Inventory. Successor Licensee acknowledges that any transfer of Personal Property and the Inventory. Successor Licensee acknowledges that any transfer of Personal Property are (sic) being delivered in their as-is where-is condition with all faults, and that Current Licensee makes no representation or warranty of any kind, express or implied with respect thereto. On the Entry Date, Current Licensee shall transfer and convey to Successor Licensee all consumable inventories of every kind and nature whatsoever (specifically including, but not limited to, all pharmacy supplies, medical supplies, office supplies, other supplies and foodstuffs) owned by current licensee as of the Entry Date and located and used exclusively at the Facilities (the "Inventory"). Current Licensee shall ensure that Inventory at each Facility on each Entry Date shall be consistent with Current Licensee's usual practice.

The OTA stated that Epoch would terminate all employees effective of the entry date. It stated that Wingate advised Epoch that it would offer employment to at least two-thirds of the employees. Wingate was to provide a list of employees that it would not offer employment to. The parties agreed that with their agreements about employment no notice needed to be given of a “mass layoff” as a consequence of the transfer of operations. The OTA provided for the transfer of accounts receivable and payable. The OTA provided for Wingate’s access to residents’ medical records and employee records. The OTA provided that Epoch was to sell its computer systems to Ventas but would allow access by Wingate as Wingate installed its information system. The OTA provided for the transfer of patient funds, billing and cost reports, and operating contracts for such items as copy machines.

iii. The Applicability of NCCI Rules

The decision from which Wingate appeals – the March 15, 2019 letter – found as follows:

A review of the OTA shows that Wingate is the Successor Licensee, and under section 2 it states that ‘Current Licensees [Epoch] (sic) shall, instructed by Ventas, transfer and convey to Successor Licensee [Wingate] (sic) all right, title, and interest in and to all furniture, machinery, etc.’ Wingate took over the operations of Epoch’s Rhode Island facilities, which included the residents and employees; therefore, that can be considered a transfer of operations under Rule 3-C-a(2). Exhibit DD.

In terms of how Section C(1)(a) of the NCCI Rules defines a change in ownership, the OTA does not fall under the sale, transfer, or conveyance of an entity’s ownership entity or a merger or consolidation of two or more entities or a formation of a new entity as a successor entity, or an irrevocable trust or receiver. Section C(1)(a)(2) states that a change of ownership includes the “[s]ale, transfer, or conveyance of an entity’s physical assets to another entity that takes over its operations.” It is that provision on which the March 15, 2019 letter relied to find Epoch’s experience would transfer to Wingate.

Ventas owns the Providence facilities. See testimony. Epoch operated the facilities for Ventas. Now Wingate operates the facilities for Ventas. Does the fact that Epoch used to operate the business mean that Wingate has now taken over Epoch's operations? To find pursuant to that provision that Wingate has taken over Epoch's operation, there must be a sale, transfer, conveyance of an entity's physical assets to another entity that has taken over its operation. Thus, Epoch needs to have transferred physical assets to Wingate and Wingate has to have taken over Epoch's operations.

The March 15, 2019 letter found that Wingate took over Epoch's facilities. It is unclear what facilities that Epoch could transfer. It does not own the facilities at issue. It is unclear that Epoch could have transferred its operational rights to Wingate without approval by Ventas. Epoch had a lease with Ventas to operate the facilities. Ventas then entered a lease with Wingate to operate the facilities. The OTA arose out of the fact that Ventas, the owner of the facilities, was changing its operator of the facilities. In the OTA, neither party can assign their rights under the OTA without the prior consent of the other party except that Wingate can assign its rights to entities owned by a specific person upon notice. Presumably, similarly Epoch would not have been able to assign its operational rights to Wingate without approval of Ventas. In this matter, it was represented that Ventas wanted a new manager.

Wingate is now operating the facilities that Epoch operated. However, the NCCI Rules are not just looking at an entity that takes over operations but rather whether that is performed in the context of the transfer of physical assets to another that entity that takes over its operations.

The March 19, 2019 letter quoted part of the OTA paragraph that addressed the transfer of property. Specifically, that letter cited to the sentence that provided Epoch would transfer property to Wingate as instructed by Ventas. However, prior to that specific sentence in the OTA, the OTA

paragraph stated that Ventas owns all furniture, machinery, equipment, appliances, and fixtures, and other tangible personal property. The OTA then provided that Epoch as instructed by Ventas shall convey to Wingate all rights to furniture, machinery, equipment, appliances, and fixtures, and other tangible personal property used in connection with the facilities including medical records (but not residents' personal property and Epoch's proprietary property). The property that could be transferred at the instruction of Ventas was any property located at said facilities and used exclusively at the facilities and leased property. Wingate was required to pay any sales or use tax payable on the transfer of personal property. The OTA also provided that Epoch would transfer all consumable inventories (e.g. food, pharmacy, and office supplies) to Wingate.

The March 15, 2019 letter only cited to the part of the paragraph that speaks of Epoch transferring rights to property as instructed by Ventas. However, in light of the initial representation in the paragraph that Ventas owns all the tangible property prior to the sentence that Epoch will transfer to Wingate as instructed by Ventas all rights to tangible property, the conclusion is that Ventas owns the tangible property. Ventas owns the facilities and is the landlord and according to the OTA, Ventas owns all furniture, machinery, equipment, appliances, and fixtures, and other tangible personal property. If Epoch had any rights to that property, it was to transfer those rights to Wingate as instructed by Ventas. For example, the OTA provided that Epoch was to transfer its copier contracts (which could have included leased copiers) to Wingate. Epoch is to retain its computer system and proprietary property and not transfer that property. Obviously, the transfer of food and medicine would not be the transfer of physical assets.

In contrast to the issue of the transfer of physical assets from one entity to another entity for that second entity to take over operations, a change in ownership does not include entities entering or leaving affiliation, franchises and/or management agreements. As set forth in the OTA,

Epoch was a licensed operator of those facilities and a tenant of Ventas and Ventas chose to lease the facilities to Wingate instead and Wingate would become licensed to operate those facilities. The OTA sets out the requirements of transferring the operations of said facilities by Epoch to Wingate as Wingate was taking over the operations after Ventas terminated its agreement with Epoch to operate the facilities.

Based on the evidence, Wingate took over the operation of the facilities. It kept the residents. It kept some of the employees. The residents and employees are not physical assets. The facilities were operated by Epoch but were not Epoch's facilities. Ventas owns the facilities and the tangible personal property. The March 15, 2019 letter speaks of Epoch's facilities, but the facilities were being operated by Epoch for Ventas. According to the OTA, the control of operations was transferred to Wingate by Ventas under a separate lease. The physical assets were not. To the extent that Epoch had rights in the property, it was to transfer those rights to Wingate, but that transfer was not for the purpose of Wingate taking over Epoch's facilities but because there was a change in the management of the facilities. Ventas is the owner and landlord of the Providence facilities and owns the physical assets as delineated in the OTA. Epoch used to manage the Providence facilities and now Wingate manages the Providence facilities.

VI. FINDING OF FACTS

1. On May 6, 2019, a Notice of Hearing was issued by the Department to the above-captioned parties.
2. A hearing was held on December 10, 2019. Briefs were timely filed by January 14, 2020.

3. The OTA served to transfer the responsibility to operate and manage the two (2) Providence facilities on behalf of Ventas from Epoch to Wingate. There was no transfer of physical assets by Epoch to Wingate. Wingate did not take over Epoch's facilities.

4. The facts contained in Section IV and VI are reincorporated by reference herein.

VIII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-35-1 *et seq.*, R.I. Gen. Laws § 27-7.1-11.1, R.I. Gen. Laws § 42-14-1 *et seq.*, and the Hearing Regulation.

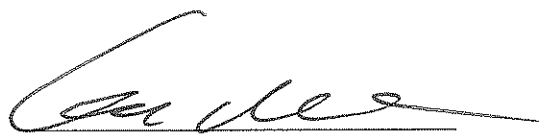
2. Epoch did not transfer its physical assets to Wingate for Wingate to take over its operations. There was no sale, transfer, or conveyance of an entity's physical assets to another entity that took over its operations.

3. The OTA provided a transfer of operations in that that Epoch was leaving its management agreement with Ventas and Wingate was entering into a management agreement with Ventas.

VIII. RECOMMENDATION

Based on the foregoing, the Hearing Officer recommends as follows: the March 15, 2019 decision shall be reversed.

Dated: February 29, 2020

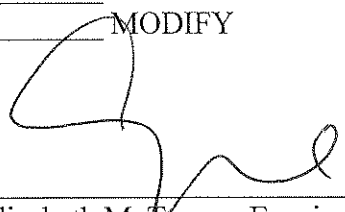

Catherine R. Warren, Esquire
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 3/5/2020



Elizabeth M. Vanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 6th day of February, 2020, that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail to Deborah A. George, Esquire, Robinson & Cole, One Financial Plaza, 14th Floor, Providence, R.I. 02903, Amy Vitale, Esquire, The Beacon Mutual Insurance, Company, One Beacon Centre, Warwick, R.I. 02886, and Vicki Dorsey, Esquire, NCCI, 901 Peninsula Corporate Circle, Boca Raton, FL 33487; and Susan Leach DeBlasio, Esquire, Adler Pollock & Sheehan, One Citizens Plaza, Providence, R.I. 02903 and by electronic delivery to Matthew Gendron, Esquire, and Samuel Kovach-Orr, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

