



2. R.C. 5119.10, the Director of Mental Health and Addiction Services (“Director”) is charged with fulfilling the requirements, intents, and purposes of R.C. Chapter 5119.
3. Pursuant to R.C. 5119.34, the Department is charged with licensing, inspecting, and regulating residential facilities that provide accommodations, supervision, and certain personal care services to persons with mental illness.
4. Pursuant to R.C. 5119.34(N), the Director is authorized to petition the Court of Common Pleas in which a residential facility is located for an order enjoining any person from operating a licensed facility when, in the Director’s judgment, there is a present danger to the health or safety of any occupant of the facility.
5. This action is brought pursuant to R.C. 5119.34(N) and Civ.R. 65 for the purpose of enjoining Defendant Clara Mae’s Group Home, LLC (“Defendant”) from operating the licensed residential facility Clara Mae’s Adult Family Home I (“Clara Mae I”) and enjoining Defendant from operating the licensed residential facility Clara Mae’s Adult Family Home II (“Clara Mae II”). In the Director’s judgment, there is a present danger to the health and safety of occupants of Clara Mae I and Clara Mae II.

#### Parties

6. Plaintiff, Lori Criss, appears in her official capacity as Director.
7. Defendant Clara Mae’s Group Home, LLC is a domestic limited liability company registered with the Ohio Secretary of State. Defendant’s registered address is 3532 Turret Green Drive, Toledo, Ohio, 63607. Clara M. Brank is Defendant’s statutory agent. Ms. Brank’s registered address is 3532 Turret Green Drive, Toledo, Ohio 43607. Ms. Brank is also the owner of Clara Mae I and Clara Mae II.

### **Jurisdiction and Venue**

8. Jurisdiction of this Court is proper under R.C. 5119.34(N) and Civ.R. 65.
9. Venue in this Court is proper under Civ.R. 3(C)(1)-(3). Defendant resides in Lucas County and has its principal place of business in Lucas County. Additionally, the activity giving rise to this claim for relief occurred in Lucas County.

### **Allegations**

10. Defendant holds two separate licenses issued by the Department for the operation of a residential facility for adults with mental illness. Defendant holds one license for the operation of Clara Mae I and a second license for the operation of Clara Mae II.
11. Clara Mae I and Clara Mae II are located on adjacent properties in Lucas County, Ohio. Clara Mae I is located at 72 San Rafael Avenue, Toledo, Ohio 43607. Clara Mae II is located at 68 San Rafael Avenue, Toledo, Ohio 43607.
12. On January 17, 2020, employees of the Department conducted unannounced inspection surveys of Clara Mae I and Clara Mae II in response to a complaint. The Department is authorized to conduct such unannounced inspection surveys pursuant to R.C. 5119.34(H).
13. Employees of the Department conducted additional unannounced inspection surveys of both Clara Mae I and Clara Mae II on June 22, 2020 and July 16, 2020. The Department is authorized to conduct such unannounced inspection surveys pursuant to R.C. 5119.34(H).
14. During the inspection surveys conducted on January 17, 2020, June 22, 2020, and July 16, 2020 (collectively "inspection surveys"), Department employees observed multiple violations of numerous Ohio Administrative Code regulations governing residential facilities. These violations included, but were not limited to, failure to adequately supervise residents.

15. Based on the violations observed during the inspection surveys, the Department issued Defendant a notice that it intended to revoke the residential facility license for Clara Mae I. The notice was issued on August 11, 2020. (See Exhibit A, attached.) Defendant timely requested an administrative hearing pursuant to R.C. 119.
16. Based on the violations observed during the inspection surveys, the Department issued Defendant a notice that it intended to revoke the residential facility license for Clara Mae II. The notice was issued on August 11, 2020. (See Exhibit B, Attached.) Defendant timely requested an administrative hearing pursuant to R.C. 119.
17. The Department and Defendant agreed to consolidate the proposed revocation of Clara Mae I and the proposed revocation of Clara Mae II for a single administrative hearing. The administrative hearing is currently scheduled for December 10 and 11, 2020. (See Exhibit C, attached.)
18. When the Department proposes to revoke or refuse to renew the license of a residential facility, Ohio Adm.Code 5122-30-05(D)(5) prohibits the residential facility from admitting any new residents during the pendency of administrative proceedings under R.C. Chapter 119.
19. Pursuant to Ohio Adm.Code 5122-30-05(D)(5), Defendant was prohibited from admitting residents to either Clara Mae I or Clara Mae II after August 11, 2020.
20. In either late October or early November 2020, Defendant admitted a resident, R.C., to Clara Mae II. Defendant admitted R.C. after the Department issued notices of intent to revoke the residential facility licenses of Clara Mae I and Clara Mae II. R.C. previously lived at the facility, but left in January 2020.
21. Defendant's admission of R.C., as described in Paragraph 19 of this complaint, violated Ohio law.

22. On November 12, 2020, R.C. collapsed and died on the premises of Clara Mae II.
23. R.C. was 50 years old at the time of death. At this time, the Department does not definitively know the cause of R.C.'s death.
24. Defendant did not notify either the Department or the Lucas County Mental Health & Recovery Services Board ("Lucas County Board") of R.C.'s death until November 20, 2020. That morning, Ms. Brank reported R.C.'s death to a Lucas County Board employee via telephone. The Lucas County Board then notified the Department. A Department employee spoke to Ms. Brank later in the morning on November 20, 2020.
25. Ms. Brank told the Department that R.C. was admitted to Clara Mae II on November 7, 2020. R.C.'s case manager, Linda Rixey, reported to the Department that R.C. was admitted to Clara Mae II on October 23, 2020.
26. Ms. Brank told the Department that R.C. collapsed indoors while sitting in a chair and that Ms. Brank called 911 immediately. Ms. Rixey, told the Department that R.C. was outside smoking when R.C. collapsed. R.C.s' father, who was present on the day of the incident, also reported to the Lucas County Board that R.C. was outside.
27. Ohio Adm.Code 5122-30-05(D)(4) prohibits the owner, operator, or manager of a residential facility from presenting false or misleading information as part of an investigation.
28. Pursuant to Ohio Adm.Code 5122-30-16(H) and Ohio Adm.Code 5122-30-16 Appendix A, Defendant was required to file an incident report with the Department within 24 hours of R.C.'s death.
29. Pursuant to Ohio Adm.Code 5122-30-16(H) and Ohio Adm.Code 5122-30-16 Appendix A, Defendant was required to file an incident report with the Lucas County Board within 24 hours of R.C.'s death.

30. To date, Defendant has not filed an incident report concerning R.C.'s death with either the Department or the Lucas County Board. The filing of a notice with the Department would have triggered an immediate review of and investigation into the causes and circumstances of R.C.'s death.

31. Ms. Brank's telephone call to the Lucas County Board on November 20, 2020 is the only known notification to either the Lucas County Board or the Department.

32. At least four (4) persons with mental illness currently reside at either Clara Mae I or Clara Mae II.

**Count One: Statutory Injunctive Relief Against Clara Mae I Under R.C. 5119.34**

33. The Director repeats and incorporates by reference all allegations set forth in Paragraphs 1-31 of the Complaint, as if fully set forth herein.

34. This is a claim for statutory injunctive relief under R.C. 5119.34(N)(1).

35. R.C. 5119.34(N)(1) provides: "The director of mental health and addiction services may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director's judgment, there is a present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a present danger to the health or safety of any residents of the facility."

36. Based on the facts alleged in Paragraphs 1-29 of the Complaint, the Director judges that there is a present danger to the health and safety of the occupants of Clara Mae I.

37. If the Court enjoins Defendant from continuing to operate Clara Mae I, the Department will be able to work with the Lucas County Board to immediately relocate the residents of Clara Mae I to safe residential facilities in Lucas County.

38. Danger to the health and safety of the occupants of Clara Mae I will continue unabated without preliminary and permanent injunctive relief prohibiting Defendant from continuing to operate Clara Mae I.

**Count Two: Alternative Injunctive Relief Against Clara Mae I Under Civ.R. 65**

39. The Director repeats and incorporates by reference all allegations set forth in Paragraphs 1-31 of the Complaint, as if fully set forth herein.

40. The Director believes she is entitled to preliminary and permanent injunctive relief by statute. This is an alternative claim for preliminary and permanent injunctive relief under Civ.R. 65.

41. The Director is entitled to preliminary and permanent injunctive relief to abate the current risks to the health and safety of the residents of Clara Mae I.

42. The Director will suffer irreparable harm if Defendant continues to operate Clara Mae I, which poses a continuing health and safety risk to the residents of that facility.

43. Issuance of the requested injunction will not harm third parties. To the contrary, it will protect the persons currently residing at Clara Mae I.

44. Issuance of the requested injunction will serve the public interest by ensuring the protection of mentally ill persons in Ohio.

45. The Director has no other adequate remedy at law.

**Count Three: Statutory Injunctive Relief Against Clara Mae II Under R.C. 5119.34**

46. The Director repeats and incorporates by reference all allegations set forth in Paragraphs 1-31 of the Complaint, as if fully set forth herein.

47. This is a claim for statutory injunctive relief under R.C. 5119.34(N)(1).

48. R.C. 5119.34(N)(1) provides: “The director of mental health and addiction services may petition the court of common pleas of the county in which a residential facility is located for an order enjoining any person from operating a residential facility without a license or from operating a licensed facility when, in the director’s judgment, there is a present danger to the health or safety of any of the occupants of the facility. The court shall have jurisdiction to grant such injunctive relief upon a showing that the respondent named in the petition is operating a facility without a license or there is a present danger to the health or safety of any residents of the facility.”

49. Based on the facts alleged in Paragraphs 1-29 of the Complaint, the Director judges that there is a present danger to the health and safety of the occupants of Clara Mae II.

50. If the Court enjoins Defendant from continuing to operate Clara Mae II, the Department will be able to work with the Lucas County Board to immediately relocate the residents of Clara Mae II to safe residential facilities in Lucas County.

51. Danger to the health and safety of the occupants of Clara Mae II will continue unabated without preliminary and permanent injunctive relief prohibiting Defendant from continuing to operate Clara Mae II.

**Count Four: Injunctive Relief Against Clara Mae II Under Civ.R. 65**

52. The Director repeats and incorporates by reference all allegations set forth in Paragraphs 1-31 of the Complaint, as if fully set forth herein.



53. The Director believes she is entitled to preliminary and permanent injunctive relief by statute. This is an alternative claim for preliminary and permanent injunctive relief under Civ.R. 65.

54. The Director is entitled to preliminary and permanent injunctive relief to abate the current risks to the health and safety of the residents of Clara Mae II.

55. The Director will suffer irreparable harm if Defendant continues to operate Clara Mae II, which poses a continuing health and safety risk to the residents of that facility.

56. Issuance of the requested injunction will not harm third parties. To the contrary, it will protect the persons currently residing at Clara Mae II.

57. Issuance of the requested injunction will serve the public interest by ensuring the protection of mentally ill persons in Ohio.

58. The Director has no other adequate remedy at law.

**Prayer for Relief**

WHEREFORE, Plaintiff prays the Court:

A. Pursuant to R.C. 5119.34(N) and/or Civ.R. 65, issue a preliminary injunction prohibiting Defendant from continuing to operate Clara Mae I, prohibiting the admission of any new residents to Clara Mae I, and ordering the relocation of current residents of Clara Mae I to another licensed residential facility.

B. Pursuant to R.C. 5119.34(N) and/or Civ.R. 65, issue a permanent injunction prohibiting Defendant from operating Clara Mae I, prohibiting the admission of any new residents to Clara Mae I, and ordering the relocation of any current residents of Clara Mae I to another licensed residential facility.

C. Pursuant to R.C. 5119.34(N) and/or Civ.R. 65, issue a preliminary injunction prohibiting Defendant from continuing to operate Clara Mae II, prohibiting the admission of any new residents to Clara Mae II, and ordering the relocation of current residents of Clara Mae II to another licensed residential facility.

D. Pursuant to R.C. 5119.34(N) and/or Civ.R. 65, issue a permanent injunction prohibiting Defendant from operating Clara Mae II, prohibiting the admission of any new residents to Clara Mae II, and ordering the relocation of any current residents of Clara Mae II to another licensed residential facility.

E. To the extent allowed by applicable law, award Plaintiff attorneys' fees and costs of suit.

F. To the extent allowed by applicable law, order Defendant to pay the costs of this litigation and such other further relief as this Court deems just.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

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**Certified Mail Return Receipt Requested: 70180040000116191346**

August 11, 2020

Clara Brank, Owner  
Clara Mae's Adult Family Home I  
72 San Raphael Avenue  
Toledo, Ohio 43607

Re: Proposed Revocation of Class II Residential License

Dear Ms. Brank:

This letter is to advise you that the Ohio Department of Mental Health and Addiction Services (Department) is proposing to revoke the facility license for Clara Mae's Adult Family Home I, 72 San Raphael Avenue, Toledo, Ohio 43607 (Facility). This action arises from violations of Ohio Administrative Code (OAC) Sections 5122-30-13, 5122-30-14, 5122-30-15, 5122-30-21, 5122-30-23, 5122-30-28 and 5122-30-31. The full text of the applicable rules is attached to this letter.

This action is being taken pursuant to the Department's authority to inspect licensed facilities and revoke licenses upon a finding that such facilities are not in compliance with Administrative Rules, and a pattern of serious noncompliance with the Administrative Rules, in accordance with Ohio Revised Code (ORC) Section 5119.34 and OAC Rule 5122-30-04 and 5122-30-05; and is being conducted in accordance with ORC Chapter 119.

**Findings**

This action arises from a complaint-based survey conducted on January 17, 2020 and unannounced surveys conducted on June 22, 2020 and on July 16, 2020, which resulted in substantiated findings of a significant nature. The reasons for this proposal are more fully set forth below.

1. Based on observations, resident interviews and owner statement; the owner is preparing only two meals for the Facility residents each day, breakfast and dinner, at her personal residence. The meals are placed in individual Styrofoam containers labeled with the resident's name and transported to the Facility by the owner. Based on resident interviews, the residents are provided bread and lunch meat or peanut butter to make a sandwich for

- lunch; they are sometimes provided oranges for lunch. The owner does not have a food service license. This is a violation of OAC 5122-30-13(A) and (M)(2).
2. The Facility did not have a record of the prior 30 day's menus. This is a violation of OAC 5122-30-13(H).
  3. The resident agreements reviewed contained a statement that the phone located in the Facility is only for business use and the residents must use their cell phones to make personal calls. There was no telephone to which the residents had access at all the times in the Facility. This is a violation of OAC 5122-30-14.
  4. Based on resident interviews and observations; residents purchase toilet paper when they run out of it, and the owner tells residents that they use too much toilet paper and they must buy it when it runs out. This is a violation of OAC 5122-30-15(E).
  5. Based on resident and owner/staff interviews, staff are only in the Facility two times a day to provide breakfast and lunch and assist with medications. This is not enough to meet the needs of the residents in the home. The residents stated that they must call the owner if they need assistance. This is a violation of OAC 5122-30-21(A)(1).
  6. The minimum staffing pattern is not specified in the resident agreement. This is a violation of OAC 5122-30-21(A)(2).
  7. Based on interviews with the residents and owner, staff are not available in the Facility when resident 3, who is currently prescribed PRN medication, is present. The owner or staff are only at the Facility to deliver meals at approximately 9:30 am and between 6:30 pm-7:00 pm daily. This is a violation of OAC 5122-30-21(L)(4).
  8. Based on interviews with residents and owner, the Facility owner does not stay in the group home for an hour after medications are self-administered. The owner stated that she is aware of the requirement but does not stay in the Facility for the one hour after assisting with self-administration of medication as required. This is a violation of OAC 5122-30-21(L)(5).
  9. Records showing compliance with OAC 5122-30-31 were not available for staff members 2 and 3. This is a violation of OAC 5122-30-23(A)(4)(d).
  10. The owner stated that she maintains the resident records at her home. Resident records had to be brought from the Facility owners' home and were not at the Facility when they were requested. This is a violation of OAC 5122-30-23(C).
  11. Medications were stored unlocked and in a resident bedroom. In resident 3's bedroom, a prescription bottle of 600mg Ibuprofen was observed on the dresser. This is a violation of OAC 5122-30-28(F).

12. Insulin was stored unlocked in the refrigerator. This is a violation of OAC 5122-30-28(G).
13. The Facility did not have a record of the completion of the required database checks for staff members 2 and 3. This is a violation of OAC 5122-30-31(C)(3).
14. The Facility did not have documentation that staff members 2 and 3 had submitted a statement attesting that they had not been convicted of or pleaded guilty to a disqualifying offense as required by rule. This is a violation of OAC 5122-30-28(C)(6).
15. The owner reported that the BCI criminal records clearance had not been completed for staff members 2 and 3. This is a violation of OAC 5122-30-28(C)(7).

The Department has reviewed these alleged violations and is proposing to revoke your license. This letter is to advise you that you have a right to a hearing should you wish to contest these allegations. If you wish to request a hearing, please send your request to Howard Henry, Ohio Department of Mental Health and Addiction Services, 30 East Broad Street, 36th Floor, Columbus, Ohio 43215, or you may call him at 614-752-8365. You must request a hearing within thirty days of the mailing of this letter.

At a hearing you may appear in person or be represented by an attorney. You may present evidence and examine witnesses appearing for and against you. You may also present your position, contentions, or arguments in writing rather than appear in person for a hearing. If you are a corporation or a limited liability company, you must be represented at the hearing by an attorney licensed to practice in the state of Ohio.

Be advised that if you fail to request a hearing within thirty days of the mailing of this letter, the Department may consider the charges and evidence against you and may impose the penalty provided above. If you have questions, please contact the Office of Legal Services at 614-752-8365.

Sincerely,



Lori Criss  
Director

pc: Melissa Frederick, JD, Deputy Director, Legal and Regulatory Services  
Howard Henry, JD, Staff Counsel, Legal and Regulatory Services  
Denise Cole, JD, MSN, RN, Supervisor, Office of Licensure and Certification  
Beverley Laubert, Chief, Office of the State Long-Term Care Ombudsman, ODA  
Scott Sylak, Executive Director, Mental Health & Recovery Services Board of Lucas County  
Licensure File



**Certified Mail Return Receipt Requested: 70180040000116191339**

August 11, 2020

Clara Brank, Owner  
Clara Mae's Adult Family Home II  
68 San Raphael Avenue  
Toledo, Ohio 43607

Re: Proposed Revocation and Proposed Refuse Renewal of Class II Residential License

Dear Ms. Brank:

This letter is to advise you that the Ohio Department of Mental Health and Addiction Services (Department) is proposing to revoke the facility license for Clara Mae's Adult Family Home II, 68 San Raphael Avenue, Toledo, Ohio 43607 (Facility). This letter is also to advise you the Department is proposing to refuse renewal of the facility license for the Facility. This action arises from violations of Ohio Administrative Code (OAC) Sections 5122-30-13, 5122-30-14, 5122-30-15, 5122-30-16, 5122-30-19, 5122-30-21, 5122-30-22.1, 5122-30-23, 5122-30-28 and 5122-30-31. The full text of the applicable rules is attached to this letter.

This action is being taken pursuant to the Department's authority to inspect licensed facilities and revoke licenses upon a finding that such facilities are not in compliance with Administrative Rules, and a pattern of serious noncompliance with the Administrative Rules, in accordance with Ohio Revised Code (ORC) Section 5119.34 and OAC Rule 5122-30-04 and 5122-30-05; and is being conducted in accordance with ORC Chapter 119.

**Findings**

This action arises from a complaint-based survey conducted on January 17, 2020, unannounced surveys conducted on June 22, 2020 and on July 16, 2020, and an incident reported on July 2, 2020; which resulted in substantiated findings of a significant nature. The reasons for this proposal are more fully set forth below.

1. Based on observations, resident interviews and owner statement; the owner is preparing only two meals for the Facility residents each day, breakfast and dinner, at her personal residence. The meals are placed in individual Styrofoam containers labeled with the

resident's name and transported to the Facility by the owner. The owner does not have a food service license. Based on resident interviews, the residents are provided bread and lunch meat to make a sandwich for lunch. There are not enough food items in the Facility to accommodate the current three residents for lunch daily. There is a 15-hour lapse between breakfast and dinner and a nutritious snack was not available for the residents. This is a violation of OAC 5122-30-13(A) and (M)(2).

2. The Facility did not have a one-week supply of staple foods and a two-day supply of perishable foods. This is a violation of OAC 5122-30-13(D)(1).
3. The Facility did not have a record of the prior 30 day's menus. This is a violation of OAC 5122-30-13(H).
4. There was a chicken carcass on a plate uncovered in the refrigerator. The chicken was not stored in a manner that protects it against contamination and spoilage. This is a violation of OAC 5122-30-13(I).
5. The resident agreements reviewed contained a statement that the phone located in the Facility is only for business use and the residents must use their cell phones to make personal calls. There was no telephone to which the residents had access at all the times in the Facility. This is a violation of OAC 5122-30-14.
6. Bedroom two smelled of urine. This is a violation of OAC 5122-30-15(C).
7. The Facility was unclean. The floors needed sweeping. The resident bedroom floors were dirty. This is a violation of OAC 5122-30-15(D).
8. The residents' bedrooms were unclean. The floors were dirty, there was old dirty masking-type tape on the floor of one bedroom. The tops of the dresser areas in several rooms were dirty and in need of cleaning. This is a violation of OAC 5122-30-15(G).
9. There was a large amount of broken glass on the ground outside at the back of the Facility. The floor in bedroom three had an area that the flooring was broken, and the floor was soft and gave in when stepped upon. The door to the closet in the living room was not in good repair. Resident dressers had missing knobs. The closet door in one bedroom was off the track and not capable of closing. The door and track on a resident closet were broken and located inside the closet with resident personal belongings. This is a violation of OAC 5122-30-15(L).
10. There was a mattress observed on the ground in the back yard and there were used condoms lying in the grass around the mattress. There were used condoms observed lying on the ground in the front yard of the home. There was a broken bed frame lying outside against the side of the Facility. This is a violation of OAC 5122-30-15(M).

11. The refrigerator was unclean. There was dried food particles and dirt on all the shelving and inside the drawers. The drawers had a layer of a brown substance in the bottom vegetable storage doors. The bottom shelf that covers the vegetable storage doors was missing. There were spilled food items on the shelves and dripped down the front of the refrigerator. This is a violation of OAC 5122-30-15(O).
12. The bathroom was unclean with a ring in the tub and toilet. The enamel finish in the tub needed repair: e.g., the metal was showing through the surface. The grout was dirty and appeared to have mold. The bathroom was dirty: e.g., there was hair, soap scum and dirt on the counter and in the sink area. The kitchen had food debris on the counters and floor. This is a violation of OAC 5122-30-15(P).
13. The Facility owner failed to submit an incident report after the owner was made aware of an instance of suspected abuse at the Facility. Resident 3 informed the owner that resident 2 had pushed her down and choked her in December 2019; however, there was no documentation of the reported incident nor was there notice of the incident as required by rule. This is a violation of OAC 5122-30-16(E).
14. Based on resident and owner/staff interviews, staff are only in the Facility two times a day to provide breakfast and lunch and assist with medications. This is not enough to meet the needs of the residents in the home. The residents stated that they must call the owner if they need assistance. This is a violation of OAC 5122-30-21(A)(1).
15. Based on resident interviews, record review, and owner interview, the behavior of resident 2 and resident 4 caused residents 1 and 3 to be afraid. Resident 3 reported that residents 2 and 4 were having men at the home during all hours and if they called to complain to the owner, residents 2 and 4 would physically assault them. According to documentation in resident 2's file, the owner became aware of the behavior of residents 2 and 4 in December 2019 but did not increase the amount of time spent supervising in the Facility. Resident 3 reported she would often lock herself in her room to ensure her safety. On the day of the complaint visit, the owner verbally confirmed that she was aware of the allegations of men in the home and had told the residents that men were not permitted in the bedroom or to spend the night. The owner installed a video camera in the common areas; however, the owner had not installed batteries, so the camera was not operational. This is a violation of OAC 5122-30-21(A)(1).
16. The minimum staffing pattern is not specified in the resident agreement. This is a violation of OAC 5122-30-21(A)(2).



17. Based on interviews with the owner, the owner had knowledge that resident 2 and 4 had men coming in and out of the Facility at various hours. The owner stated that she told the residents they were not allowed to have men in their bedrooms. The owner stated that she had installed a security camera but had not installed batteries, so it was not operational. The owner failed to increase supervision levels at the home to address the resident's need for ongoing supervision. This is a violation of OAC 5122-30-21(L)(2).
18. Based on interviews with the residents and owner, staff are not available in the Facility when residents 2 and 3, who are currently prescribed PRN medication, are present. The owner or staff are only at the Facility to deliver meals at approximately 9:30 am and between 6:30 am-7:00 pm daily. This is a violation of OAC 5122-30-21(L)(4).
19. Based on interviews with residents and owner, the Facility owner does not stay in the group home for an hour after medications are self-administered. The owner stated that she is aware of the requirement but does not stay in the Facility for the one hour after assisting with self-administration of medication as required. This is a violation of OAC 5122-30-21(L)(5).
20. Based on interviews with the owner, the owner had knowledge that residents 2 and 4 had men coming in and out of the Facility at various hours. The owner stated that she told the residents they were not allowed to have men in their bedrooms. The owner stated that she had installed a security camera but had not installed batteries, so it was not operational. Residents 1 and 3 reported being afraid of resident 2. The owner is not providing adequate supervision to ensure their safety. This is a violation of OAC 5122-30-22.1(E)(7).
21. Based on interviews with the owner, the owner had knowledge that residents 2 and 4 had men coming in and out of the Facility at various hours. The owner stated that she told the residents they were not allowed to have men in their bedrooms. The owner stated that she had installed a security camera but had not installed batteries, so it was not operational. Several residents reported that one of the residents in the home was observed having men come to the home reportedly to have sex with her and another resident. Residents also reported that if residents called to complain to the owner, residents 2 and 4 would physically assault the residents. The owner did not ensure the reasonable protection from physical, sexual and emotional abuse, neglect, and exploitation of the residents who reside in the home. This is a violation of OAC 5122-30-22.1(E)(8).
22. Records showing compliance with OAC 5122-30-31 were not available for staff members 2 and 3. This is a violation of OAC 5122-30-23(A)(4)(d).

23. The owner stated that she maintains the resident records at her home. Resident records had to be brought from the Facility owners' home and were not at the Facility when they were requested. This is a violation of OAC 5122-30-23(C).
24. Medications were stored unlocked and in a resident bedroom. In resident 2's bedroom, a prescription bottle of 800mg Ibuprofen was observed on the nightstand. This is a violation of OAC 5122-30-28(F).
25. Medications were not being given as prescribed. Residents 2 and 3 had medications that were prescribed 3 times a day, but the medication log showed it being given two times a day. The owner also reported only assisting with medications two times a day. This is a violation of OAC 5122-30-28(C).
26. Insulin was stored unlocked in the refrigerator. This is a violation of OAC 5122-30-28(G).
27. The Facility did not have a record of the completion of the required database checks for staff members 2 and 3. This is a violation of OAC 5122-30-31(C)(3).
28. The Facility did not have documentation that staff members 2 and 3 had submitted a statement attesting that they had not been convicted of or pleaded guilty to a disqualifying offense as required by rule. This is a violation of OAC 5122-30-28(C)(6).
29. The owner reported that the BCI criminal records clearance had not been completed for staff members 2 and 3. This is a violation of OAC 5122-30-28(C)(7).
30. On July 2, 2020, it was reported that resident 2 was prevented from visiting with her SSA from the Lucas Country DD Board and was prevented from moving from the Facility. This is a violation of OAC 5122-30-19(A) and 5122-30-22.1(E)(5), (17), (25), and (32).

The Department has reviewed these alleged violations, is proposing to revoke your license, and is proposal to refuse renewal of your license. This letter is to advise you that you have a right to a hearing should you wish to contest these allegations. If you wish to request a hearing, please send your request to Howard Henry, Ohio Department of Mental Health and Addiction Services, 30 East Broad Street, 36th Floor, Columbus, Ohio 43215, or you may call him at 614-752-8365. You must request a hearing within thirty days of the mailing of this letter.

At a hearing you may appear in person or be represented by an attorney. You may present evidence and examine witnesses appearing for and against you. You may also present your position, contentions, or arguments in writing rather than appear in person for a hearing. If you are a corporation or a limited liability company, you must be represented at the hearing by an attorney licensed to practice in the state of Ohio.

Be advised that if you fail to request a hearing within thirty days of the mailing of this letter, the Department may consider the charges and evidence against you and may impose the penalty provided above. If you have questions, please contact the Office of Legal Services at 614-752-8365.

Sincerely,



Lori Criss

Director

pc: Melissa Frederick, JD, Deputy Director, Legal and Regulatory Services  
Howard Henry, JD, Staff Counsel, Bureau of Legal and Regulatory Services  
Denise Cole, JD, MSN, RN, Supervisor, Office of Licensure and Certification  
Beverley Laubert, Chief, Office of the State Long-Term Care Ombudsman, ODA  
Scott Sylak, Executive Director, Mental Health & Recovery Services Board of Lucas County  
Licensure File

THE OHIO DEPARTMENT OF MENTAL HEALTH  
AND ADDICTION SERVICES  
30 E. Broad St., 36<sup>th</sup> Floor  
Columbus, Ohio 43215

In the Matter of

**Clara Mae's Adult Family Home I**  
and  
**Clara Mae's Adult Family Home II,**

**Respondent**

Ronda Shamansky  
Hearing Examiner  
Case No. MHAS 2007

October 14, 2020  
**Journal Entry of Consolidation  
with Notice of Hearing Date;  
Scheduling Order**

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**Appearances:** For the Ohio Department of Developmental Disabilities: Dave Yost, OHIO ATTORNEY GENERAL, and Trista Turley-Martin, and Andrew Fraser, Assistant Attorneys General, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3400. Telephone: (614) 387-3387. Email: trista.turleymartin@ohioattorneygeneral.gov; andrew.fraser@ohioattorneygeneral.gov.

For the Respondent Facilities: Phillip Browarsky, PHILLIP BROWARSKY & CO, LLC, 43 South Huron St., Toledo, Ohio 43604. Telephone: (419) 534-2200. Email: pbrowarsky@aol.com

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The Ohio Department of Mental Health and Addiction Services ["MHAS" or "the Department"] has appointed the undersigned attorney to serve as its Hearing Examiner in the above-captioned cases. **By agreement of the parties, the hearing is scheduled to be held on Thursday, December 10, 2020 and Friday, December 11, 2020, beginning at 9:00 a.m. each day, unless otherwise agreed by the parties. The parties have further agreed that the hearing will be conducted using videoconference software, due to the ongoing pandemic.** Additional hearing days will be added if they are needed.

**In the interests of efficiency, this hearing is ordered to be a consolidated hearing, with evidence concerning the allegations against Clara Mae Adult Family**

**Home I and Clara Mae Adult Family Home II, as detailed in the August 11, 2020 Notices of Opportunity for Hearing, presented in a single hearing.**

The following scheduling order will apply to this hearing. An original of any document required to be filed by the rules applicable to these proceedings shall be filed with the Department, with simultaneous service of a copy upon the opposing party and, with exceptions as noted below, with the Hearing Examiner. Service by email is acceptable upon the Hearing Examiner. All filings shall contain a certificate of service indicating the date and manner that a copy of the document was served on the opposing party, as well as the name, address, and telephone number of the person submitting the motion or brief, and shall be appropriately captioned to indicate the name of the respondent.

**REQUEST FOR CLARIFICATION**

Any request for clarification or modification of any provisions of this scheduling order shall be filed no later than October 20, 2020.

**SUBPOENAS**

Upon written request of either party, the Department will issue subpoenas to compel the attendance and testimony of witnesses and the production of books, records and papers at the administrative hearing. Subpoena requests shall be submitted to the MHAS Bureau of Legal and Regulatory Services, ATTENTION: Howard Henry, Staff Counsel, 30 E. Broad St., 36<sup>th</sup> Floor, Columbus, Ohio 43215, using the form provided or prescribed by the Department. The completed form bearing the name, address, and service information, must be received by the Department no later than October 29, 2020 at 4:00 p.m. either by postal mail or by email, with the request sent to Howard Henry at the address above. The original signed request must be received by the Department in order to constitute compliance with this order.

Each subpoena shall indicate on whose behalf the witness is required to testify, and shall be directed to the sheriff of the county where the person to be served resides or is found. Copies of the subpoena requests shall be mailed to the opposing party or representatives using the address information shown above. Each subpoena request shall specify the name and address of the individual to be served and the date, time and location at which the witness is to appear at the administrative hearing. In each case the subpoena

should instruct that the witness is to appear at the beginning of the scheduled hearing, with directions to call in advance of the hearing to confirm the exact time for appearing at the hearing. If the subpoena includes a *duces tecum* request, the specific documents or tangible things to be produced at the administrative hearing shall be listed in the request.

Upon motion filed not later than seven days after a request for subpoena has been filed, and for good cause shown, the Department or its attorney Hearing Examiner may order any subpoena to be quashed. The non-moving party may file a response no later than three days after service of the motion to quash or at least one day prior to the date of compliance, whichever is earlier, and either party may request oral argument on the merits of the motion, but absent such a request oral argument will be deemed waived. In the event that the number of subpoenas requested appears to be unreasonable, the Department's Hearing Examiner may require a showing of necessity thereof, and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation and in the absence of the timely filing of a motion to quash, subpoenas shall be issued within five days of the Department's receipt of each properly prepared subpoena request. In the absence of a timely filed motion to quash, the Department's failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed. The Department shall make a reasonable attempt to notify any witness whose subpoena was served on the witness and was thereafter quashed. Witnesses may not be subpoenaed to prehearing conferences.

#### **STIPULATIONS**

The parties are encouraged to enter into stipulations of any undisputed issues of fact, procedure, law, or authenticity of documents. If time permits, those stipulations will be reduced to writing and submitted to the hearing examiner in advance of the hearing, for inclusion in the record of the case.

#### **DEPOSITIONS IN LIEU OF APPEARANCE**

Upon written motion of any representative of record, and upon service of that motion to all other representatives, the attorney Hearing Examiner may order that the testimony of a witness be taken by deposition in lieu of live testimony, and that any

designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

- (1) The witness will be unavailable to attend or will be prevented from attending a hearing;
- (2) The testimony of the witness is material; and
- (3) The testimony of the witness is necessary in order to prevent a failure of justice.

In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for the attorney Hearing Examiner's consideration of the motion of a representative to take a deposition in lieu of live testimony.

The representatives shall agree to the time and place for taking the deposition in lieu of live testimony, and shall arrange for the depositions to be completed by not later than November 20, 2020. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney Hearing Examiner shall set the time and fix the place of deposition. At a deposition taken pursuant to this order, representatives shall have the right, as at hearing, to fully examine witnesses. The attorney Hearing Examiner has the discretion to be present at the deposition in lieu of testimony at hearing. A transcript of any deposition taken under this order shall be filed with the Department not later than December 9, 2020, and shall be offered into evidence at hearing by the representative requesting the deposition, in lieu of the witness's live testimony at hearing, and may also be offered by the party responding to the request for the preservation of such testimony. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony shall be borne by the Department. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor. Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition or transcript of prior testimony is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this order shall be construed to permit the taking of

depositions for purposes other than for use at the evidentiary hearing now scheduled in this matter. A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from deposition in lieu of appearance or from a prior proceeding, the offering representative shall make available by not later than December 9, 2020, the entire transcript.

**MOTIONS, BRIEFS, MEMORANDA AND PLEADINGS**

Any party seeking to present motions *in limine* or other prehearing motions shall do so on or before November 20, 2020. All motions, unless made upon the record at the hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds thereof, and shall be filed with the Department, with copies to all opposing parties and to the Hearing Examiner. All motions except for motions filed subsequent to the close of the hearing shall be made no later than 4 p.m. on November 20, 2020, unless express exception is granted by the attorney Hearing Examiner or through a provision of the Department's rules. Within seven days after service of a written prehearing motion, a response to that motion may be filed. A movant may reply to a response only with the permission of the attorney Hearing Examiner.

Any party may make objections to the evidentiary and legal rulings made by the hearing examiner. If the hearing examiner does not admit certain evidence, the party seeking admission may make a proffer of that evidence, which will become part of the record of the case.

All motions, briefs, memoranda and other pleadings are subject to the following requirements:

(a) If any unreported court decision is cited, a copy of the decision will be attached to the pleading.

(b) All briefs, memoranda, motions and other pleadings are to be filed with the MHAS Bureau of Legal and Regulatory Services, ATTENTION: Howard Henry, Staff Counsel, 30 E. Broad St., 36<sup>th</sup> Floor, Columbus, Ohio 43215, with copies sent to opposing counsel and the hearing examiner, and shall include a certificate of service. This requirement does not



apply to the delivery of documents intended to be used as evidence at the hearing. Those documents are to be exchanged between the parties in the manner provided for by this order.

(c) Only those pleadings, orders, and other documents filed with MHAS will be part of the official record of the case.

#### **OPTION TO PRESENT CASE IN WRITING**

The burden of establishing just cause for taking the action described in the Notice of Opportunity for Hearing is upon the Department. Subject to the prior approval of the hearing examiner, the respondent facility, through its attorney or representative, may choose to present its case entirely in writing, provided that that request is made by the facility on or before November 9, 2020. Any request to present a case in writing must be filed with the MHAS Bureau of Legal and Regulatory Services, ATTENTION: Howard Henry, Staff Counsel, 30 E. Broad St., 36<sup>th</sup> Floor, Columbus, Ohio 43215, with copies sent to opposing counsel and the hearing examiner. The written statement and any accompanying documents must be sent to Mr. Henry at the address above, with copies to opposing counsel and the hearing examiner, by November 27, 2020.

If the respondent facility elects to present its case in writing, the Department may also elect to present its case in writing. Once a party has elected to present its case in writing, it may withdraw that request upon written motion and a showing of good cause.

Nothing in this order is to be construed as preventing the Department from compelling the attendance of the respondent facility or other witnesses at the hearing and questioning the facility or other witnesses as if on cross-examination. Nothing in this order is to be construed as preventing the respondent facility from examining any witnesses or evidence presented by the Department at the hearing.

#### **PREHEARING EXCHANGES**

The parties shall mark each exhibit they intend to introduce at the hearing (with the State using numbers and the Respondent using letters). At the time of the hearing, the party intending to introduce an exhibit shall present the original (or certified copy) plus one copy for the Hearing Examiner, and one copy for the opposing party. On or before 4 p.m. on November 20, 2020, the parties shall exchange information providing the name,

address, and phone numbers of each witness the party intends to call as a witness, and shall identify each document intended to be introduced at hearing. A notice disclosing the name of each witness and a brief summary of each document shall be filed with the Department contemporaneously with the exchange. Failure without good cause to comply with this direction may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused. The parties are further directed to prepare and exchange with each other copies of the exhibits each intends to introduce at the hearing. These copies are to be exchanged by November 20, 2020, with service considered effective upon mailing.

Where the party intends to present an exhibit that is not a document, the exhibit shall be made available for inspection by adverse counsel not later than November 20, 2020. Copies of the exhibits are not to be served upon either the Department or the Hearing Examiner in advance of the hearing, but both parties shall file with the Department a notice identifying the exhibits presented and a list of witnesses the party intends to call. Any written report prepared by an expert for use during the evidentiary hearing must be exchanged by November 20, 2020. Any written report by an expert required to be exchanged under this order shall set forth the opinions to which the expert will testify and the bases for such opinions. The failure of a party to produce a written report from an expert fully conforming to the terms of this order may for good cause shown result in the exclusion of that expert's testimony at hearing.

The failure of a party to produce an exhibit under the terms of this order may result in the exclusion of that exhibit from evidence, unless good cause is shown or the exhibit is offered to rebut evidence presented at the hearing. The failure of a party to identify a lay or expert witness under the terms of this order may result in the exclusion of that witness's testimony at the hearing, unless good cause is shown.

When a party exchanges its exhibits and witness list with the opposing party, it shall file a certificate documenting the service of those exhibits and the witness list with the Department, directed to the MHAS Bureau of Legal and Regulatory Services, ATTENTION: Howard Henry, Staff Counsel, 30 E. Broad St., 36<sup>th</sup> Floor, Columbus, Ohio 43215, with copies sent to opposing counsel and the hearing examiner. If any party intends to introduce

documents containing confidential information, such a document shall be marked as sealed and accompanied by a Confidential Key, which will be marked and submitted as an exhibit at the hearing.

**CONTINUANCES; PRE-HEARING CONFERENCE; TEST OF VIDEOCONFERENCE**

The evidentiary hearing now scheduled to begin on December 10, 2020 shall not be delayed upon motion by a representative unless a showing of reasonable cause and proper diligence is presented. Before granting any continuance or delay, consideration shall be given to harm to the public that may result from delay in proceedings, and the inconvenience that will result from rescheduling the appearances of witnesses. In no event will a motion for a continuance by a representative, requested less than seven days prior to the scheduled date of the hearing be granted unless it is demonstrated that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.

**There will be a final prehearing conference on Monday, November 23, 2020, at 3:00 p.m. that will also serve as a test of the videoconference software, to ensure that all participants are able to join the conference.** Additional purposes of this conference will be to confirm the need for an evidentiary hearing, explain the hearing procedures, and resolve any remaining prehearing issues raised by the parties' motions. **The parties are asked to provide email addresses of every person intended to participate in the hearing** to Howard Henry at the Ohio Department of Mental Health and Addiction Services, by email at [howard.henry@mha.ohio.gov](mailto:howard.henry@mha.ohio.gov) on or before November 20, 2020, so that those participants may be sent invitations with links to join the videoconference. If there is a separation of witnesses at the hearing, each witness will be asked to join the conference when it is time for that witness's testimony.

Either party may request a clarification or correction of this entry, by October 20, 2020. Either party may contact the hearing examiner to discuss procedural matters (i.e, scheduling and other non-substantive matters) using the contact information below.

**Restatement of Schedule**

1. **October 20, 2020:** Request for clarification or correction of this prehearing entry;
2. **October 29, 2020:** Requests for subpoenas and subpoenas *duces tecum* must be received by the Department.
3. **November 9, 2020:** Deadline for facility's election to present case in writing in lieu of evidentiary hearing; Brief and any supporting documents due **November 27, 2020.**
4. **November 20, 2020:** Exchange of witness lists and copies of all exhibits; exchange of expert reports; filing of pretrial motions; completion of depositions in lieu of testimony.
5. **November 23, 2020:** Final prehearing telephone conference at 9:00 a.m.
6. **December 10 and 11, 2020** at 9:00 a.m.: Evidentiary hearing on all matters not resolved through any motions *in limine* via videoconference. Additional days will be added if needed.

It is so ordered.

October 14, 2020

Date

*Ronda Shamansky*

Ronda Shamansky  
Hearing Examiner

245 E. Gay St.

Columbus, OH 43215

(614) 648-8388 Fax: (614) 224-9080

ronda.shamansky@gmail.com

**CERTIFICATE OF SERVICE**

I certify that the original of this document was served upon the Ohio Department of Nursing at its offices in Columbus, Ohio, by email on October 14, 2020, with instructions that the Department is to forward time-stamped copies of the entry to all parties of record. A copy of this document was also emailed to the Assistant Attorneys General and to Respondent's counsel on this date.

*Ronda Shamansky*

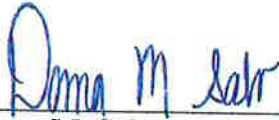
Ronda Shamansky, Hearing Examiner

**VERIFICATION OF COMPLAINT**

STAT OF OHIO )  
COUNTY OF Lorain ) SS:  
)

I, Donna M. Sabo, being of sound mind, age of majority, and being duly cautioned and sworn in accordance with law, make the following statements based upon personal knowledge:

1. I am currently over the age of eighteen years old, and am competent to testify to the information contained in this statement and in the Verified Complaint.
2. I am employed as a Supervisor and Manager of Training and Product Development in the Bureau of Licensure and Certification of the Ohio Department of Mental Health and Addiction Services.
3. I have read the foregoing Verified Complaint and the factual allegations therein are true and correct to the best of my knowledge.



**Donna M. Sabo**  
Supervisor/Manager of Training and Product Development  
Bureau of Licensure and Certification  
Ohio Department of Mental Health & Addiction Services

Sworn to and subscribed in my presence this 24<sup>th</sup> day of November, 2020.



Notary Public, State of Ohio

AMANDA STONE  
Notary Public, State of Ohio  
My Commission Expires June 19, 2021