

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Proposed Nonrenewal  
of Class A Professional Home Care  
Agency License #362497, Stability Home  
Healthcare, LLC

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on October 15, 2014, at the Office of Administrative Hearings (OAH) in St. Paul, Minnesota. The hearing was held pursuant to a Notice of Hearing issued on August 21, 2014. The OAH hearing record closed at the conclusion of the hearing on October 15, 2014.

Jocelyn F. Olson, Assistant Attorney General, appeared on behalf of the Department of Health (Department).

Ravi Seeley and Alexis Seeley, Co-Owners of Stability Home Healthcare, appeared without counsel on behalf of Stability Home Healthcare, LLC.

**STATEMENT OF THE ISSUE**

Should the application for renewal of Stability Home Healthcare's license to operate a Class A Professional Home Care Agency license be denied?

**SUMMARY OF CONCLUSIONS**

The Department demonstrated that the Licensee made false statements of material fact in the March 28, 2014, application for renewal of its Class A Professional Home Care Agency license when it represented that it had a system in place to conduct criminal background checks on its employees and that it had a registered nurse who was responsible for supervising persons providing home health aide tasks. The Department also established that the Licensee had failed to initiate background studies regarding current and former employees.

As a result, the Administrative Law Judge concludes that the Department has proper grounds to deny renewal of the Licensee's Class A Professional Home Care Agency license.

Based upon the record in this matter, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Stability Home Healthcare, LLC (Stability or Licensee), is a Class A Professional Home Care Agency that is located in the Twin Cities metropolitan area. Its most recent license was effective from May 22, 2013 to May 21, 2014.<sup>1</sup> Ravi and Alexis Seeley are the co-owners of Stability.<sup>2</sup> Mr. Seeley also serves as the Administrator of Stability.<sup>3</sup>

2. Prior to being licensed as a Class A Home Care Agency, Stability was licensed as a Class B paraprofessional agency.<sup>4</sup> Under a Class B license, a provider may perform home care aide tasks and home management tasks.<sup>5</sup>

3. Under a Class A Professional Home Care Agency license, a licensee is authorized to provide nursing, physical therapy, speech therapy, respiratory therapy, occupational therapy, nutritional services, medical social services, and home health aide tasks, or the provision of medical supplies and equipment when accompanied by the provision of a home care service.<sup>6</sup> These services may be provided in clients' homes or in residential settings.<sup>7</sup>

4. The Department received Stability's initial application to operate a Class A professional home care agency on May 15, 2013.<sup>8</sup> Mr. Seeley represented in the application that Stability would, among other things, provide registered nursing services, licensed practical nursing services, speech therapy, occupational therapy, physical therapy, respiratory therapy, and home health aide tasks.<sup>9</sup> Mr. Seeley identified Charles McCollum as the registered nurse responsible for supervision of the home health aide tasks, and he provided Mr. McCollum's nursing license number.<sup>10</sup> Mr. Seeley also represented in Stability's initial license application that Stability had a system in place for performing background checks for all individuals who have direct contact with clients.<sup>11</sup>

5. The Department granted Stability a license to operate a Class A professional home care agency on May 22, 2013.<sup>12</sup>

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<sup>1</sup> Testimony of Joshua Berg; Exhibit 4.

<sup>2</sup> Test. of Ravi Seeley.

<sup>3</sup> Test. of Lisa Jacobson; Test. of R. Seeley; Test. of J. Berg.

<sup>4</sup> Test. of R. Seeley.

<sup>5</sup> See Minn. R. 4668.0012, subp. 3(A)(2); .0110; .0120 (2013).

<sup>6</sup> Minn. Stat. § 144A.43, subd. 3 (2014); Minn. R. 4668.0012, subp. 3(A)(1); Exhibit 2; Test. of J. Berg.

<sup>7</sup> *Id.*

<sup>8</sup> Ex. 3. Alexis Seeley is identified as Alexis Hedding on Stability's initial application. Ms. Seeley changed her name from Hedding to Seeley when she married Ravi Seeley.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4; Test. of J. Berg.

<sup>12</sup> Ex. 2.

6. On March 28, 2014, the Department received Stability's license renewal application.<sup>13</sup> The license renewal application was completed and submitted online by Mr. Seeley.<sup>14</sup>

7. Mr. Seeley represented in Stability's license renewal application that Stability's staff would provide the following services to clients: registered nursing services, licensed practical nursing services, occupational therapy services, speech therapy, physical therapy, and respiratory therapy.<sup>15</sup> Mr. Seeley also indicated that Stability would perform home health aide tasks either directly by staff or on a contract basis.<sup>16</sup>

8. Mr. Seeley represented in Stability's license renewal application that Stability has a registered nurse who is responsible for supervising persons performing home health aide tasks.<sup>17</sup> Mr. Seeley again identified the nurse as Charles McCollum and provided his nursing license number.<sup>18</sup>

9. Mr. Seeley also stated in Stability's license renewal application that Stability had a system in place to conduct criminal background checks on all employees who have direct contact with clients.<sup>19</sup>

10. On May 2, 2014, Josh Berg, the Department's Home Care and Assisted Living Program Manager, received an e-mail from Darlene Zappa, who is employed in the Department's Compliance Monitoring, Licensing, and Certification Division.<sup>20</sup> Ms. Zappa stated in her e-mail message that the Department had received a telephone call from Charles McCollum. Mr. McCollum reported that the St. Louis Park Police Department had notified him that someone at Stability was using his R.N. license number for licensure purposes.<sup>21</sup> Ms. Zappa indicated that Mr. McCollum told her during the telephone call that he had never been affiliated with Stability. He said that he had applied for a position at Stability years earlier, but had declined the offer of employment because Stability did not seem to be "on the up-and-up."<sup>22</sup> Mr. McCollum said that Stability lacked proper paperwork and that something "did not seem right there."<sup>23</sup>

11. On May 6, 2014, Mr. Berg conducted a telephone interview of Mr. McCollum.<sup>24</sup> Mr. McCollum told Mr. Berg that Ravi Seeley had shown up at his house one day with an employment application.<sup>25</sup> Mr. McCollum and Mr. Seeley knew

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<sup>13</sup> Ex. 4.

<sup>14</sup> *Id.*; Test. of R. Seeley.

<sup>15</sup> Ex. 4 at 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Ex. 4 at 8.

<sup>20</sup> Test. of J. Berg; Ex. 5.

<sup>21</sup> Ex. 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Test. of J. Berg; Ex. 6.

<sup>25</sup> *Id.*

each other from having worked together previously at the Golden Living Center nursing home in St. Louis Park.<sup>26</sup> Mr. McCollum stated that he filled out the application and, weeks later, met briefly with a Stability client on two occasions.<sup>27</sup> Mr. McCollum was somewhat uncertain of the dates, but believed that he submitted the application form during the winter of 2011 or 2012, and that he met with the client during the spring of 2012 or 2013.<sup>28</sup> After the two client meetings, Mr. McCollum said that he told Mr. Seeley that he was not coming back to work for Stability. Mr. McCollum stated that he felt uneasy about Stability because it had no paperwork, such as time cards or assessment sheets. He maintained that he never heard from Mr. Seeley again after that time.<sup>29</sup>

12. Mr. Berg sent Mr. McCollum an e-mail message on May 9, 2014, to ask whether he was employed by Stability at the time the renewal application was submitted in March of 2014. By e-mail dated May 10, 2014, Mr. McCollum responded, "I have not had any contact with that company for a long time, it has been at least a year or more since I tried to work for them, and I didn't because I felt that it didn't have all it's [sic] ducks in a row."<sup>30</sup>

13. On May 14, 2014, Lisa Jacobson, a special investigator with the Department's Office of Health Facility Complaints, conducted an on-site inspection of Stability to investigate Mr. McCollum's allegations and to determine if Stability was in compliance with state licensing regulations.<sup>31</sup> As part of her investigation, Ms. Jacobson spoke with Ravi and Alexis Seeley and asked to review Stability's current and past client records and employee personnel files.<sup>32</sup> Mr. Seeley told Ms. Jacobson that Stability's records were not available for review because all of their records, except for two employee time sheets, had been taken by the St. Louis Park Police Department as part of an unrelated investigation.<sup>33</sup>

14. During his conversation with Ms. Jacobson, Mr. Seeley confirmed that Stability did not have a registered nurse on staff, and he indicated that he was not aware that registered nurse supervisory visits were required to be provided under a Class A license. He acknowledged that Stability did not have a registered nurse supervise the performance of home health aide tasks within 14 days after initiation of those services and every 60 days thereafter as required.<sup>34</sup>

15. Mr. Seeley also admitted that Stability had not conducted or submitted background studies on its one current employee or on any previous employees. He told

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<sup>26</sup> Test. of R. Seeley.

<sup>27</sup> Test. of J. Berg; Ex. 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Test. of J. Berg; Ex. 7.

<sup>31</sup> Test. of L. Jacobson; Ex. 8.

<sup>32</sup> Test. of L. Jacobson.

<sup>33</sup> *Id.*; Test. of R. Seeley.

<sup>34</sup> Test. of L. Jacobson; Ex. 8.

Ms. Jacobson that he was not aware that he needed to submit background studies on his employees.<sup>35</sup>

16. The two employee time sheets that Ms. Jacobson was able to review indicated that a home health aide employed by Stability assisted a client with “dressing, walker/wheelchair, lotion to skin, meal preparation, laundry and empty garbage.”<sup>36</sup> That client began receiving services from Stability in February or March of 2014. Mr. Seeley admitted to Ms. Jacobson that there were no RN supervisory visits for this client.<sup>37</sup>

17. Following her inspection of Stability, Ms. Jacobson telephoned the St. Louis Park Police Department to confirm that it had taken Stability’s client files and employee records. A detective with the police department told Ms. Jacobson that she had taken pictures of the records but had not taken Stability’s original documents.<sup>38</sup>

18. As a result of Ms. Jacobson’s investigation, the Department concluded that Stability had violated applicable statutes and rules governing its license by failing to ensure that a registered nurse supervised home health aide tasks and by failing to conduct background studies on its employees.<sup>39</sup> Specifically, the Department found that: (1) Stability violated Minn. R. 4668.0100, subp. 9 (2013), by failing to ensure that a registered nurse supervised staff who performed home health aide tasks for a client within 14 days after initiation of services and every 60 days thereafter; and (2) Stability violated Minn. Stat. § 144.057 (2014) by failing to ensure that background studies were conducted for a current employee or for previous employees.<sup>40</sup>

19. By letter dated May 23, 2014, the Department issued a Statement of Deficiencies in connection with its investigation of Stability. The Department directed Stability to correct the two violations noted above within 14 days of the order.<sup>41</sup> The Department sent the correction order by certified mail along with a cover letter from Michelle Ness, Supervisor of the Office of Health Facility Complaints.<sup>42</sup>

20. By certified letter dated June 11, 2014, the Department notified Stability of its intent to refuse to renew its Class A license on the grounds that the Licensee knowingly made false statements of material facts on its license renewal application and failed to initiate background studies for its current and former employees.<sup>43</sup> The letter notified Stability of its right to request a contested case hearing.<sup>44</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Ex. 8.

<sup>38</sup> Test. of L. Jacobson.

<sup>39</sup> *Id.*; Ex. 8.

<sup>40</sup> Ex. 8 at 4-5 and 6-7.

<sup>41</sup> Test. of L. Jacobson; Ex. 8.

<sup>42</sup> *Id.*

<sup>43</sup> Test. of J. Berg; Ex. 9.

<sup>44</sup> Ex. 9.

21. By letter dated June 26, 2014, Ravi and Alexis Seeley requested a contested case hearing on behalf of Stability.<sup>45</sup>

22. In their June 26, 2014, appeal letter and in hearing testimony, the Seeleys admitted that they did not conduct background studies on Stability employees. They asserted that Stability has had only three clients in the last three years. They indicated that, during the first two years, Stability had only one client and the Seeleys personally provided care to that client. When Stability gained two more clients, the Seeleys hired additional employees who were certified PCAs. Although the Seeleys stated that they checked their employees' references and knew the people they hired personally, they asserted that they were not aware that they needed to initiate background studies.<sup>46</sup> The Seeleys also admitted in the June 26, 2014, appeal letter and in testimony at the hearing that they were not aware that they needed a registered nurse to supervise employees. The Seeleys conceded that there was "no excuse" for their failure to conduct background studies on their employees and for not knowing that they needed to ensure that employees were supervised by a registered nurse.<sup>47</sup>

23. Stability has recently hired a registered nurse.<sup>48</sup>

24. The Seeleys requested that they be given another chance to operate Stability properly in accordance with the statutes and rules governing Class A licenses.<sup>49</sup>

25. On August 21, 2014, the Department issued a Notice of and Order for Hearing initiating the present contested case proceeding.<sup>50</sup> The hearing was held as scheduled on October 15, 2014.

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Commissioner and the Administrative Law Judge have authority to consider the alleged violations by the Licensee pursuant to Minn. Stat. §§ 14.50; 144A.10, subd. 8 (2014).

2. The Licensee received timely and appropriate notice of the charges against it and the time and place of the hearing.

3. The Commissioner has complied with all relevant procedural requirements of statute and rule.

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<sup>45</sup> Test. of J. Berg; Ex. 10.

<sup>46</sup> Ex. 10; Test. of R. Seeley.

<sup>47</sup> *Id.*

<sup>48</sup> Test. of R. Seeley.

<sup>49</sup> Ex. 10; Test. of R. Seeley.

<sup>50</sup> Ex. 1 at 2.

4. The Department has the burden to establish the validity of its claims in this case by a preponderance of the evidence.<sup>51</sup>

5. The Department is responsible for the licensing and regulation of home care providers.<sup>52</sup>

6. A home care provider is an “entity that is regularly engaged in the delivery, directly or by contractual arrangement, of home care services for a fee.”<sup>53</sup> “Home care services” are, in turn, defined to include nursing services, personal care services, home management services, and health-related support services.<sup>54</sup>

7. The Department is authorized to conduct inspections of home health care providers and issue correction orders for violations of home care statutes and rules.<sup>55</sup>

8. Employees of a home care provider are subject to the background study requirements set forth in Minn. Stat. § 144.057.<sup>56</sup> That statute requires home care agencies to perform background studies pursuant to the Background Studies Act set forth in Minnesota Statutes Chapter 245C (2014) with respect to all individuals who have direct contact with or access to clients.<sup>57</sup>

9. The rules applicable to Class A licenses include the following requirements for periodic supervision of home health aide tasks:

After the orientation required by subpart 8 [requiring a registered nurse or therapist to orient each person who is to perform home health aide tasks to each client and to the tasks to be performed], a therapist or a registered nurse shall supervise, or a licensed practical nurse, under the direction of a registered nurse, shall monitor persons who perform home health aide tasks at the client's residence to verify that the work is being performed adequately, to identify problems, and to assess the appropriateness of the care to the client's needs. This supervision or monitoring must be provided no less often than the following schedule:

A. within 14 days after initiation of home health aide tasks; and

B. every 14 days thereafter, or more frequently if indicated by a clinical assessment, for home health aide tasks described in subparts 2 to 4 [pertaining to the administration of medications and the performance of delegated medical or nursing and assigned therapy procedures]; or

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<sup>51</sup> Minn. R. 1400.7300, subp. 5 (2014).

<sup>52</sup> Minn. Stat. §§ 144A.43-.47 (2014) and Minn. R. 4668.0002-.0240 (2013).

<sup>53</sup> Minn. Stat. § 144A.43, subd. 4.

<sup>54</sup> Minn. Stat. § 144A.43, subd. 3.

<sup>55</sup> Minn. Stat. §§ 144.653, subds. 2, 5 (2014); 144A.45, subd. 2.

<sup>56</sup> Minn. Stat. § 144A.46, subd. 5(b).

<sup>57</sup> Minn. Stat. § 144A.057 (2014).

C. every 60 days thereafter, or more frequently if indicated by a clinical assessment, for all home health aide tasks other than those described in subparts 2 to 4.

If monitored by a licensed practical nurse, the client must be supervised at the residence by a registered nurse at least every other visit, and the licensed practical nurse must be under the direction of a registered nurse . . . .<sup>58</sup>

10. The Commissioner of Health may deny renewal of a license if the licensee, or an owner or managerial official of the licensee “knowingly made or makes a false statement of a material fact in the application for a license or in any other record or report required by [Chapter 4668 of the Minnesota Rules]”<sup>59</sup> or “refuses to initiate a background study under Minn. Stat. §§ 144.057 or 245A.04.”<sup>60</sup>

11. The Department has established that the Licensee made two false statements of material fact in its March 28, 2014, application for renewal of its Class A Home Care Agency License submitted by its Administrator: (1) the Administrator falsely represented that the Licensee had a registered nurse who was responsible for the supervision of persons providing home health aide or home care aide tasks; and (2) the Administrator falsely represented that the Licensee had a system in place to conduct criminal background checks for all individuals who have direct contact with clients in their homes or in the community in accordance with Minn. Stat. § 144.057.

12. The Department established that the Licensee failed to perform and refused to initiate background studies on employees in violation of Minn. Stat. § 144.057.

13. The Department has demonstrated that it has grounds to deny renewal of the Licensee’s Class A Home Care Agency license due to the false statements made on the Licensee’s renewal application and the Licensee’s failure to ensure that background studies were performed on employees.

14. Denial of the Licensee’s application to renew its Class A license is in the public interest.

15. The Memorandum below provides a further explanation of the reasons for these Conclusions and is incorporated herein.

Based upon the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

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<sup>58</sup> Minn. R. 4668.0100, subp. 9.

<sup>59</sup> Minn. R. 4668.0012, subp. 15 (E).

<sup>60</sup> Minn. R. 4668.0012, subp. 15 (J). The background study requirements of Minn. Stat. 245A.04 (2014) have been recodified in Minn. Stat. ch. 245C, the Minnesota Background Studies Act.

## RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Department's decision not to renew the Class A Home Care Agency license of Stability Home Healthcare, LLC, on the grounds that the Licensee knowingly made false statements of material fact in its license application and failed to initiate background studies for its current and former employees be **AFFIRMED**.

Dated: November 19, 2014

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Health will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten (10) calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact the Office of the Commissioner of Health, 85 East Seventh Place, Suite 400, St. Paul, Minnesota 55101, telephone (651) 201-5000, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014).

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The Department has established that the Licensee knowingly made false statements of material fact in its license renewal application. The Licensee falsely represented that Charles McCollum, a registered nurse, was the person responsible for the supervision of individuals providing home health aide tasks. The Licensee also falsely represented that it had a system in place for performing criminal background checks for all individuals who have direct contact with clients in their homes or in the community. The Licensee admits that it failed to conduct background checks on any of its current or former employees.

The Department may deny a license renewal application if a licensee knowingly makes a false statement of material fact in an application for a license. The Department may also deny a license renewal application if a licensee fails to initiate background studies under Minn. Stat. §§ 144.057 or 245A.04.

Ravi and Alexis Seeley, the co-owners of the Licensee, admitted in their request for hearing and in testimony at the hearing that Stability did not, in fact, have a registered nurse who was responsible for supervising those who performed home health aide tasks for Stability's clients. This was directly contrary to the representation made on the license renewal application that Mr. McCollum was the RN who was responsible for such supervision.<sup>61</sup> The Seeleys also admitted that Stability had not initiated any background studies with respect to current or former employees despite providing assurances on the renewal application that the Licensee had a system in place to ensure compliance with background study requirements. Mr. Seeley claimed that he knew all of the current and former employees, and contended that background checks were unnecessary. He asserted that he did not realize that Stability needed to have a registered nurse or needed to conduct background studies, and admitted that he had not taken the time to learn the requirements of a Class A home health care license. The Seeleys argued that they are young and have learned from their mistakes, and should be given a second chance to realize their dream of establishing a home health care agency.

The fact that the Seeleys were unaware of the nurse supervision and background check requirements does not provide any justification for their failure to comply with those requirements. It is well-established that ignorance of the law is no defense, and that individuals must comply with applicable laws or suffer the consequences.<sup>62</sup>

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<sup>61</sup> Although Mr. McCollum apparently was involved with Stability for a very brief time in the past, it is evident that his involvement ended long before the renewal application was filed in March 2014.

<sup>62</sup> See, e.g., *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994) (finding that "[t]he trial court erred in thinking it had discretion to take factors such as inexperience in office or ignorance of the law into account in determining whether a violation of [the open meeting law] occurred"); *Teklai v. State*, 2002 WL 418357 (Minn. Ct. App. 2002) (acknowledging the "well-established legal principle that ignorance of the law is no defense"); *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn. Ct. App. 1991), *review denied* (Minn. Feb. 11, 1992) ("[a] property owner is charged with knowledge of whether a local zoning ordinance permits construction undertaken on the property").

It is alarming that the Seeleys applied for their initial Class A license and later sought to renew that license without ensuring that they had a full understanding of the obligations of those who hold a Class A license. The persons who require home care services are particularly vulnerable and, by definition, are dependent on others for assistance. The statute and rules requiring that criminal background checks be performed on employees are designed to ensure that there are proper safeguards before individuals are allowed into the homes of vulnerable clients. The requirement that individuals providing home health aide tasks be periodically supervised by registered nurses is intended to ensure that appropriate services are provided to clients. It is fair to expect that those who undertake to provide home health services will expend the necessary effort to educate themselves about the duties associated with their licensure.

Moreover, Mr. Seeley's lack of familiarity with the requirements of applicable statutes and rules cannot excuse the false and misleading responses that he gave to the questions posed on the renewal form. If anything, the inclusion of those questions on the application form should have prompted the realization that the statute and rules imposed certain obligations on Class A licensees, and motivated Mr. Seeley to take steps to ensure he understood those obligations and complied with them.

The evidence presented at the hearing fully supports the Department's decision not to renew Stability's Class A home health care license. The Department has established that denial of Stability's license renewal application is warranted and in the public interest. The Administrative Law Judge recommends, therefore, that the Department's decision not to renew the Class A Home Care Agency license of Stability Home Healthcare, LLC, be **AFFIRMED**.

**B. L. N.**