

Conciliation Agreement
Between the
U.S. Department of Labor, Office of Federal Contract Compliance Programs and
Manor Pines Convalescent Center

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) evaluated Manor Pines Convalescent Center's establishment (hereinafter "Manor Pines") located at 1701 NE 26th Street, Wilton Manors, Florida 33305, beginning on January 26, 2021. OFCCP found that Manor Pines failed to comply with Executive Order 11246 (E.O. 11246), as amended, and its implementing regulations at 41 CFR Chapter 60.

OFCCP notified Manor Pines of the specific violations and the corrective actions required in a Notice of Violation (NOV) issued on September 22, 2021.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and Manor Pines enter into this Conciliation Agreement (Agreement) and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for Manor Pines' fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O.11246 based on the violations alleged in the NOV. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if Manor Pines violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review Manor Pines' compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Manor Pines will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves Manor Pines of its obligation to fully comply with the requirements of E.O. 11246, its implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. Manor Pines agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.

5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director.
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after Manor Pines submits its final progress report required in Section IV, below, unless OFCCP notifies Manor Pines in writing before the expiration date that Manor Pines has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that Manor Pines has met all of its obligations under the Agreement.
10. If Manor Pines violates this Agreement:
 - i. The procedures at 41 C.F.R. 60-1.34 will govern:
 - a. OFCCP will send Manor Pines a written notice stating the alleged violations and summarizing any supporting evidence.
 - b. Manor Pines shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - c. If Manor Pines is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - d. In the event of a breach of this Agreement by Manor Pines, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.
 - e. Manor Pines may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 CFR 60-1.27, and/or other appropriate relief for violating this Agreement.
11. Manor Pines does not admit any violation of E.O. 11246, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.

13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to “days” in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

III. Technical Violations and Remedies

1. **VIOLATION:** During the period January 1, 2020 through December 31, 2020, Manor Pines failed to keep and preserve complete and accurate personnel and employment records, in violation of 41 CFR 60-1.12(a) and (e), and failed to maintain and/or have available records showing the gender, race, and of each applicant or Internet Applicant as required by 41 CFR 60-1.12(c). Specifically, Manor Pines failed to keep full and complete applications, self-identification forms, records to show the race and gender of each applicant or Internet Applicant, and other general personnel and employment records.

CORRECTIVE ACTION: Manor Pines will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), and will keep and preserve those records for a period of not less than two years from the date of the making of the record or the personnel action, whichever occurs later. However, if Manor Pines has a total workforce of 150 or fewer employees or does not have a government contract of at least \$150,000, the minimum record retention period shall be one year from the making of the record or the personnel action, whichever occurs later, as permitted by 41 CFR 60-1.12(a). Further, Manor Pines, where possible, will maintain and/or have available records showing the gender, race, and ethnicity of each applicant or Internet Applicant as defined in 41 CFR 60-1.3, as required by 41 CFR 60-1.12(c).

2. **VIOLATION.** During the period January 1, 2020 through December 31, 2020, Manor Pines failed to perform in-depth analyses of its total employment process and failed to properly conduct adverse impact analyses and evaluate each individual component of the selection process in accordance with the requirements of 41 C.F.R. § 60-2.17(b), 41 C.F.R. § 60-3.4C and 41 C.F.R. § 60-3.15A. Additionally, Manor Pines failed to identify the percentage of Hispanics in Job Group 2C, Nursing Assistants, and Job Group 9A, Service was substantially less than would be reasonably expected given the availability of Hispanics. As a result, although Manor Pines did set minority placement goals as necessary, Manor Pines did not set separate placement goals for Hispanics in those job groups with underutilization of Hispanics.

CORRECTIVE ACTION. Manor Pines will perform in-depth analyses of its total employment process at least annually to determine whether and where impediments to equal employment opportunity exist, in accordance with the requirements of 41 C.F.R. § 60-2.17(b), and will conduct adverse impact analyses comparing the selection rate of the group with the highest hiring rate to the rates of the other race and ethnic groups. Upon conducting adverse impact analyses, if adverse impact is identified in the total selection process, Manor Pines will evaluate each individual component of the selection process for adverse impact and maintain and have available records or other information showing which selection components have an adverse impact, in accordance with the requirements of 41 C.F.R. § 60-3.4C and 41 C.F.R. § 60-3.15A. Additionally, if Manor Pines identifies underutilization in any specific racial or ethnic group, or any other underrepresented group, Manor Pines will set disaggregated placement goals for any self-identified underutilized area.

IV. **OFCCP Monitoring and Reporting Period**

1. **Recordkeeping.** Manor Pines will retain all records relevant to the findings cited in Section III above, and the reports submitted in compliance as shown below. These records include underlying data and information such as emails, letters, correspondence, Human Resources Information System (HRIS) data, and any other records or data used to generate the required reports. Manor Pines will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Schedule and Instructions.**
 - a. Manor Pines will submit the reports described below electronically to: Valerie Y. McClelland, Assistant District Director, at **Ex (6), Ex (7)(C)** @dol.gov and **Ex (6), Ex (7)(E)** , Compliance Officer, at **Ex (6), Ex (7)(C)** @dol.gov
 - b. Manor Pines and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports or information Manor Pines provides in accordance with this Agreement are customarily kept private or closely-held, and Manor Pines believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, Manor Pines will provide such report to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.
 - c. The progress report shall be due on January 31, 2023 and shall cover the period of October 1, 2021 through December 31, 2022.

3. Reporting Submissions.

- a. Manor Pines shall submit documentation to include the following:
 - i. In response to Violation 1, documentation evidencing that Manor Pines maintained and preserved complete and accurate personnel and employment records, in accordance with 41 CFR 60-1.12(a) and (e), for the period of October 1, 2021 through December 31, 2022. These records shall include the following:
 1. The total number of job seekers for each job group, and the breakdown by race/ethnicity and gender;
 2. The total number of applicants and hires, and the breakdown by race/ethnicity and gender, for each job group, including all full-time, part-time, and temporary workers.
 - ii. In response to Violation 2, documentation evidencing that Manor Pines performed in-depth analyses of its total employment process at least annually to determine whether and where impediments to equal employment opportunity exist, to include adverse impact analyses comparing the selection rate of the group with the highest hiring rate to the rates of the other race and ethnic groups. If Manor Pines identifies any adverse impact in the total selection process, Manor Pines will evaluate each individual component of the selection process for adverse impact and maintain and have available records or other information showing which selection components have an adverse impact. Additionally, if Manor Pines identifies underutilization in any specific racial or ethnic group, or any other underrepresented group, Manor Pines will set disaggregated placement goals for any self-identified underutilized area, and provide documentation of such goals to OFCCP.

4. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts Manor Pines' progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify Manor Pines in writing within sixty (60) days of the date of the progress report that Manor Pines has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies Manor Pines within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines Manor Pines has met all of its obligations under the Agreement.

V. **SIGNATURES**

The person signing this Agreement on behalf of Manor Pines personally warrants that he is fully authorized to do so, that Manor Pines has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on Manor Pines.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Manor Pines, 1701 NE 26th Street, Wilton Manors, FL 33305-1412

DATE: 9/28/21

Ex (6), Ex (7)(C)

Scott Lipman
Chief Operating Officer
Manor Pines Convalescent Center
1701 NE 26th Street
Wilton Manors, Florida 33305-1412

DATE: 09-30-2021

Ex (6), Ex (7)(C)

E. Michelle Hernandez
District Director
Office of Federal Contract Compliance Programs

DATE: September 30, 2021

Ex (6), Ex (7)(C)

Ex (6), Ex (7)(E)

Compliance Officer –Miami
Office of Federal Contract Compliance Programs