



“Surviving.....The PERFECT STORM”
A Complex Enforcement Case Analysis





VIRGINIA DEPARTMENT OF SOCIAL SERVICES: DIVISION OF LICENSING PROGRAMS

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VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
(DSS)
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DIVISION OF LICENSING PROGRAMS
(DOLP)





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AGENDA



- Objectives of Presentation
- Virginia Department of Social Services Division of Licensing Programs Overview
- Virginia Enforcement Process Overview
- Case Introduction & Licensing Administrator’s Actions & Perspective
- Licensing Inspector’s Actions & Perspective
- Wrap-up, Questions & Answers 



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OBJECTIVES 

- Provide an overview of Virginia’s DOLP & licensing enforcement process
- Review simultaneous enforcement actions in one region
- Identify issues and strategies
- Share lessons learned
- Encourage use of available tools
- Develop trust/belief in the process

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MISSION STATEMENT


The mission of the Division of Licensing Programs is to protect the health, safety and well-being of children and vulnerable adults served in regulated care settings through a comprehensive program of regulatory oversight and related provider services.





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DSS Licensing Authority

- Code of Virginia Title 63.2 Welfare (Social Services) Subtitle I
- General Procedures and Information for Licensure
- Regulations for Background Checks for Assisted Living Facilities, Adult Daycare Centers and Child Welfare Agencies
- Standards for each Licensed Program




Division of Licensing Programs

<p>ADULT</p> <ul style="list-style-type: none">• Assisted Living Facilities (ALF)• Adult Day Care Centers (ADCC) 	<p>CHILDREN</p> <ul style="list-style-type: none">• Child Day Centers (CDC)• Religious Exempt CDC• Family Day Homes (FDH)• Family Day Systems (FDS)• Voluntarily Registered FDH (VRFDH)• Certified Pre-Schools (CP)• Child Welfare<ul style="list-style-type: none">– Child Caring Institutions (CCI)– Children Residential Facilities (CRF)– Licensed Independent Foster Homes (IFH)– Licensed Child Placing Agencies (LCPA) 
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Licensing Operational Responsibilities

- ❖ Conduct Inspections
- ❖ Issuance of Licenses
- ❖ Impose Enforcement Actions
- ❖ Investigate Complaints & Allegations
- ❖ Offer Provider Trainings
- ❖ Provide Technical Assistance & Consultations



Inspection Results & Reports


- Licensing Representative
 - Acknowledgement of Inspection
 - Violation Notice
 - Supplemental Information
 - Inspection Summary
- Licensee
 - Plan of Correction
 - Request for Desk Review
 - Second Step Review



Enforcement Options

- Technical assistance and consultation
- Problem Solving Conference
- Provisional License
- Intensive Plan of Correction (IPOC)
- Intermediate Sanction
- Ultimate Sanction

“Begin with least punitive action needed ... and progress”



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Sanctions

<p><u>INTERMEDIATE</u></p> <ul style="list-style-type: none">• Probation• Reduce Capacity• Mandate Training• Civil Penalty• Require Licensee to Contact• Prevent Licensee from Receiving Public Funds• Prohibit New Admissions	<p><u>ULTIMATE</u></p> <ul style="list-style-type: none">• Denial of Licensure• Revocation• Summary Suspension (ALF & CRF)• Injunction• Require Licensee to Contract w/ qualified person to manage or operate on an interim basis (ALF & ADCC)• Petition the Court to Appoint a Receiver (ALF & ADCC)
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A Licensing Administrator’s Perspective




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THE CREW: 


- Licensing Inspectors (All 5 Adult Inspectors involved)
- Licensing Administrator
- Home Office staff: Commissioner, Director, Associate Directors, Program Specialists, Program Consultants
- Office of Attorney General
- Board of Long Term Care
- State and Regional Adult Protective Services (APS) and Auxiliary Grant (AG) Staff
- Local Agencies-5 Different Localities (APS, Health, Fire, Building)..... Even local Politicians and Media!

...We need a bigger boat! 

FACILITY DATA								
FACILITY NAME	1 ST LICENSE ISSUED	CAPACITY	LICENSE EXPIRATION DATE	FACILITY STATUS	TOTAL # MONTHS LICENSED	TOTAL # DOCUMENTED INSPECTIONS	# COMPLAINT INSPECTIONS	ENFORCEMENT ACTIONS
FACILITY #1	12/1/03	34	6/30/15	Voluntarily Closed Spring 2015	137 months	45	12 (6 valid)	2 Provisional Licenses
FACILITY #2	12/1/05	30	12/5/12 (closed July 2013)	CLOSED pending Denial	92 months	29	6 (4 valid)	1 Provisional License & 1 IPOC; DENIAL OF RENEWAL
FACILITY #3	2/26/09	94	8/25/12 (closed October 2013)	CLOSED/ REVOKED	55 months	42	21 (14 valid)	REVOCAION
FACILITY #4	9/15/10	54	9/14/12 (closed November 2012)	CLOSED; failed to renew	27 months	19	10 (7 valid)	1 Provisional & 1 IPOC
FACILITY #5	4/1/11	98	9/30/12 (closed June 2013)	CLOSED/ DENIED	27 months	21	11 (6 valid)	DENIAL OF RENEWAL
FACILITY #6	9/6/11	90	3/5/12 (closed February 2013)	CLOSED/ DENIED	18 months	27	13 (10 valid)	DENIAL OF RENEWAL; REQUEST FOR INJUNCTION
		400--loss of 366 beds in enforcement			356-total months--(combined) of operation	183-total # documented inspections---	73-total # complaint inspections---	14

 **Competing Forces** 

- ONGOING **COMMUNICATION** WITH MULTIPLE PARTIES
- **MEETINGS** WITH PROVIDER AND OTHER PARTIES
- 4 **INFORMAL CONFERENCES**
- **HEARINGS:**
 - » 1 INJUNCTION HEARING
 - » 1 ADMINISTRATIVE HEARING
 - » 3 BOARD OF LONG TERM CARE HEARINGS
- **PREPARATION/INTERACTION** WITH ATTORNEYS
- ONGOING **MEDIA** INQUIRIES
- MULTIPLE **FOIA** REQUESTS
- REGULAR “**DEBRIEFING**” REGARDING FACILITY ISSUES
- **MONITORING** CLOSURES AND RELOCATION OF HUNDREDS OF RESIDENTS
- **MANAGEMENT** OF ROUTINE ADMINISTRATIVE DUTIES
- **SUPERVISION** OF 14 INSPECTORS AND 600+ OTHER PROGRAMS



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lifesavers



- **SUPPORT** of co-workers in Regional office
- **FIELD ASSISTANCE** from home office consultants and other regions on inspections
- **GUIDANCE AND SUPPORT** from home office management staff 
- Open **COMMUNICATION** at all levels
- Opportunities to “**VENT**” *appropriately!* 
- **FAITH** (personal and professional)

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Lessons Learned by New LA

- **INSPECTORS** are the key 
- **Communication** is crucial 
- Assign multiple inspectors to same licensee
- Regularly review internal processes with staff
- Identify **Red Flags** to report 
- Enforcement process must be understood
- Consistent interpretation and implementation is a continuous goal..... 

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Lessons Learned by New LA

- Understand licensing regulations/processes
- Recognize **STAFF** strengths 
- Teamwork is essential 
- **BELIEVE** in the “system”
- Remain professional and focus on the **mission**
- Persistence pays off 
- Don’t be afraid to ask for **HELP!**
- Survival IS possible—and you can emerge **STRONGER!!!** 

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**A Licensing Inspector’s
Perspective**



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“DO IT FOR THEM...”



**Protect the Safety of children and
vulnerable adults through regulatory
oversight**


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FACILITY #3

Between July 2012 and July 2013

- ❖ 8 Monitoring inspections
- ❖ 4 Complaint inspections

Total of **179** violations cited



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FACILITY #4

Between March 2011 and August 2012

- ❖ 3 Monitoring inspections
- ❖ 1 IPOC
- ❖ 10 Complaint inspections (7 valid)
- ❖ 3 Other inspections

Total of **112** violations cited.



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FACILITY #5

Between November 2012 – June 2013

- ❖ 3 Complaint inspections (3 valid)
- ❖ 3 Monitoring inspections

Total of **129** violations cited.



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FACILITY #6

Between August 2011 & November 2011

- ❖ 2 Monitoring inspections
- ❖ 8 Complaints inspections (5 valid & 3 not valid)
- ❖ 5 Other inspections

Total of **21** violations

Between April 2012 and January 2013

- ❖ 1 Renewal inspection
- ❖ 5 Monitoring inspections
- ❖ 5 Complaint inspections (all valid including one “master” complaint)

Total of **156** violations



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COMPETING FORCES




- Managing regular caseloads
- Arranging inspection teams
- Meetings, consulting with community partners & updates for all
- Preparation of inspection documents



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HANDLING THE LOAD


- Preplanning is essential
- Accept help from other, it is a team effort this is a marathon not a sprint
- Evidence from multiple sources strengthens your case.



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NAVIGATING CHALLENGES


- Limited violation fields in the system
- Standards that support the true weight of the violation
- Ultimate sanction VS Lesser penalties
- Lengthy preparation time for detailed violation notices
- Clear, Concise & Defensible



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MORE...



- Negative effects on residents
- Same non-compliance time after time
- Cite and re-cite until corrected
- Changing leadership-who’s in charge?



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LIFE SAVERS



- Personal faith
- Debriefing each inspection with the team and my LA
- Belief that the process has value and that it works
- Focus on the goal of ensuring resident safety
- Not getting dragged into being the friendly consultant we’re the “regulatory-body not regulatory buddy”

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LESSONS LEARNED

- Clear, Concise & Defensible
- No turning back to lessor sanctions
- Providers talk among themselves
- I am not alone
- The plan works





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And the voyage continues.....





Hopefully *calmer* waters are ahead.....



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CLOSING/SUMMARY

*Learning To Do,
Doing To Learn,
Earning To Live,
Living To Serve.*

 **QUESTIONS** 

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