

CASE LOMBARDI & PETTIT

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November 13, 2018

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Daniel Mach
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Re: Response to Letter dated November 1, 2018 re: Memorandum to All Residents on May 11, 2018, Concerning HB 2739

Dear Mr. Caballero, Mr. Mach, and Ms. Weaver:

This firm represents Kahala Senior Living Community, Inc., dba Kahala Nui ("Kahala Nui"). We write to respond to the issues raised by you in your letter dated November 1, 2018 (your "Letter").

We wish to state unequivocally that Kahala Nui does not discriminate in respect of residency applications based on any status protected by law. Kahala Nui has never denied residency to any prospective resident of the community on the basis of any protected status, nor has any current or past resident been unlawfully restricted in the use and occupancy of their unit on the basis of any protected status.

Kahala Nui has issued a second memorandum to its residents clarifying its position under the "Our Care, Our Choice Act". Please find a copy of the revised memorandum enclosed with this letter.

Please be advised that Kahala Nui provides a variety of services to its residents, broadly grouped in two categories. First, individuals who live independently reside in Individual Living Residences. As with any apartment complex, nothing prevents residents from having visitors, including personal physicians, in their units. Second, individuals that require assisted living or skilled nursing services receive that care in a separate portion of the Kahala Nui facilities identified as the Hi'olani Care Center.

Your Letter makes reference to the Residency Agreements, executed by all residents as a part of their entrance into the Kahala Nui community. Section 7.23(c) of each Residency Agreement provides notice of a provision of the ground lease applicable to Kahala Nui's actions – but not to the acts, beliefs, or behaviors of the residents themselves. That section states, in relevant part, as follows:

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As required under the terms of the Ground Lease, KSLC will not permit any use or activity in, on or from Kahala Nui morally repugnant to the Roman Catholic Bishop of Honolulu or inconsistent with the doctrines and teachings of the Church, including but not limited to, any activity which promotes, counsels or endorses abortion, euthanasia, induced death or assisted suicide; provided, however, that this prohibition shall not be deemed or construed (i) to refer to the individual acts, beliefs or behavior of residents of Kahala Nui that are not promoted, sponsored or coordinated by KSLC


("Section 7.23(c)", emphasis added). We believe your Letter takes the first part of Section 7.23(c) out of context from the remainder of the section quoted above.

As quoted above, Section 7.23(c) expressly exempts the residents of Kahala Nui from its restrictions. As a result, an ordinary reader applying for residency at Kahala Nui would be informed of two things: (i) the Roman Catholic Church finds certain acts morally repugnant and Kahala Nui has agreed in its ground lease not to promote, counsel or endorse such acts, and (ii) that the prohibition would not apply to his or her individual acts, beliefs or behaviors. The only reasonable conclusion to draw from Section 7.23(c), therefore, is that Kahala Nui itself may not promote, coordinate, or sponsor the prohibited activities and that the prospective resident is being advised accordingly, without limiting the prospective resident's future acts, beliefs, or behavior. That is, Section 7.23(c) does not suggest an unlawful preference, limitation or discrimination; it puts prospective residents on lawful notice of certain unique limitations on the services Kahala Nui provides to its residents.

Accordingly, Kahala Nui does not prevent Independent Living Residents from availing themselves of the provisions of the Act within their units.

Please be advised that a portion of Kahala Nui, *i.e.*, the Hi'olani Care Center, is a "Health Care Facility," as defined under the Act, and that Kahala Nui intends that, as permitted by Section 19 of the Act, it will not participate in providing qualified patients with prescriptions covered by the Act, including by prohibiting health care providers from participating in covered actions while in the Hi'olani Care Center premises.

Please respond directly to our office with any further communication in regards to the issues raised by your Letter.

Very truly yours,

CASE LOMBARDI & PETTIT
Michael R. Marsh

Enclosures

cc: William D. Hoshijo, Executive Director,
Hawaii Civil Rights Commission