

Attachment No. HO 1

Staff Report for Use Permit No. 2008-033

Dated July 7, 2009

CITY OF NEWPORT BEACH

HEARING OFFICER STAFF REPORT

July 7, 2009
Agenda Item 1

TO: Thomas W. Allen, Hearing Officer

SUBJECT: Newport Coast Recovery
1216 West Balboa Boulevard
• Use Permit No. 2008-033

APPLICANT: Newport Coast Recovery, LLC

CONTACT: Dave Kiff, Assistant City Manager
(949) 644-3002 or dkiff@city.newport-beach.ca.us

Janet Johnson Brown, Associate Planner
(949) 644-3236 or jbrown@city.newport-beach.ca.us

PROJECT SUMMARY

This is a use permit application to allow the continued operation of an existing licensed adult (males only) residential care facility providing a licensed treatment environment with a total occupancy of 29 persons. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008.

A reasonable accommodation application has also been submitted and is addressed separately.

RECOMMENDATION

Staff recommends that the Hearing Officer conduct a re-opened public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

- Deny the request for a Use Permit based on an inability to make a finding that the operator, Newport Coast Recovery, acts in compliance with State and local law (finding based on NBMC §20.91A.060.A.8).

BACKGROUND

As you are aware, the two of us were present and served as staff (along with contract planner Debby Linn) for your decision on the Use Permit request by Newport Coast Recovery (1216 West Balboa Boulevard). These hearings were held on December 8, 2008 and January 12, 2009. On January 12, 2009, you determined that Use Permit No. 2008-033 be denied.

At the City Council's meeting on April 14, 2009, the City Council took an action to remand the Use Permit back to you to consider evidence acquired after your hearing on January 12, 2009 was closed.

This memorandum addresses only the new information learned after the close of the Use Permit hearing but relevant now that the Use Permit hearing has been re-opened. The information directly affects staff's recommendation on one finding (NBMC §20.91A.060.A.8) and obligates us to recommend denial of the Use Permit based on an inability to make this finding.

I. NEWLY-ACQUIRED INFORMATION

Between the January 12, 2009 hearing and today, two cases of note have come to the City's attention – in both cases, by parents of persons staying at Newport Coast Recovery. One case (Case #1) resulted in a Notice of Violation (Complaint #19-CR-20090327105641) being issued to Newport Coast Recovery by the California Department of Social Services (DSS) for a violation of California Health and Safety Code §1508. CA HSC §1508 reads as follows:

§1508. No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a community care facility in this state, without a current valid license therefor as provided in this chapter.

No person, firm, partnership, association, or corporation within the state and no state or local public agency shall provide specialized services within a community care facility in this state, without a current valid special permit therefor as provided in this chapter.

Except for a juvenile hall operated by a county, or a public recreation program, this section applies to community care facilities directly operated by a state or local public agency. Each community care facility operated by a state or local public agency shall comply with the standards established by the director for community care facilities.

As used in this chapter, "local public agency" means a city, county, special district, school district, community college district, chartered city, or chartered city and county.

The Notice of Violation is attached as Exhibit 1. State ADP has an ongoing investigation about this same issue.

The finding that cannot now be made is the following:

NBMC §20.91A.060 Finding A: That the use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows: ...

8. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

More detail about Case #1 and a description of Case #2 follows.

Case #1. On or about April 1, 2009, a mother who claimed to have a 17 year-old child in treatment at Newport Coast Recovery (NCR) for cocaine addiction contacted City staff. The information staff received from the boy's mother was troubling, and casts considerable doubt upon whether the Appellant manages this treatment facility in accordance with the law.

Among the troubling issues identified by Staff:

- NCR knowingly accepted two minor boys for treatment at NCR in apparent violation of their license from ADP. NCR further told DSS investigators that they held an "adolescent waiver" that allows treatment of minors at the NCR facility. ADP officials told the City on Friday,

April 3, 2009 that there is no record of NCR having an “adolescent waiver” authorizing Newport Coast to treat adolescents.

- There are allegations that one of the minors was instructed by NCR Staff to lie about his age if asked;
- One of the minor boys was taken off-site in another resident’s personal vehicle, where the minor relapsed. The minor boy was then removed from NCR’s facility and taken to a sober living facility in Costa Mesa (“Rutger’s House”) without notifying the child’s parents;
- When Newport Beach and Costa Mesa Police found the child, NCR staff told the NBPD Officer that they would not take him back into the NCR facility because he was a minor, effectively abandoning him. The boy’s family is in Nevada (mother) and the Central Valley (father), and he had no means to get home;

In an effort to allow NCR to defend itself and to include such defense in the record for this hearing, on April 18, 2009, City staff sent the below e-mail to Mr. Michael Newman of NCR, which was received by NCR’s counsel but never answered.

From: Kiff, Dave
Sent: Saturday, April 18, 2009 3:40 PM
To: Michael Newman
Subject: Requests

Hi Mike –

If you would like, please run these questions by Mr. Polin or Mr. Brancart.

In preparation for the remanded use permit hearing, I have these requests. I regret that they sound like leading questions – they do indeed raise serious issues. As such, I would like to allow you a chance to help me understand your perspective.

- First, it is my understanding that you have asserted to a representative of DSS that Newport Coast Recovery has an adolescent waiver from ADP. Yet ADP told me that they have no record of this. Question: Can you clarify this and show me whether or not you have an adolescent waiver? ADP could be in error. I would note that your website, at one point at least, read: “Newport Coast Recovery is a 29-bed all male facility 18 years of age or older.”
- Second, your website at one point read, “If a client relapses, he is not discharged, but is instead taken to a detox unit for urgent treatment lasting at the least, 72-hours before being re-admitted to our facility to work on the major issues causing his relapse. The staff concentrates on helping the client work through the relapse process.” (sic) It is my understanding that one individual, Mr. _____, did relapse but was taken to Rutgers House, which appears to me to be a less intensive care situation. Questions: What is the actual process when someone relapses at Newport Coast? Was Mr. _____’s removal from your facility different from typical processes, and if so, why?
- Thirdly, I know that you have asserted that the Hearing Officer’s denial should have been overturned because Newport Coast provides a unique service in the community, that being “the only ‘Men’s only’ primary care facility in Newport. Other facilities require 30 days of primary care prior to entrance.” To me, that implies that Newport Coast offers “Day 1” non-medical detoxification services, something that ADP does indeed license. But I do not see on ADP’s records where Newport Coast is authorized to provide non-medical detox services. The classification on ADP’s list for Newport Coast is “RES” versus “RES-DETOX”. All that said, I may misunderstand the

continuum of care, and there may be a primary service that is not called detox. Question: Can you please assist me in learning more about whether ADP would consider you a primary care facility?

- Fourth, we need to schedule the hearing. I would like to do that the week of May 18-22, but need to communicate with you to check your calendar.

Thank you,

Dave Kiff
Assistant City Manager
City of Newport Beach
949-644-3002

Case #2. In late June 2009, City staff (Dave Kiff) was approached by a father and son who wanted to discuss the son's time with Newport Coast Recovery. Again, this family's description of the son's time at NCR raises several troubling business practices:

- Son stayed there about five days. Son had come out of Pat Moore Foundation after a 72-hour stay. Mr. Mike Newman visited son "every day" at Pat Moore, asking him to come to NCR.
- Father paid \$10,000 to Newman in advance of son's stay.
- Son left NCR after about five days because there was no effective treatment – a MFCC came and talked to him for 20 minutes, the rest of the day was basically unsupervised. "The schedule they give you is very fluid."
- Son's friends were able to check him in and check him out – during his first days there.
- Son left one evening and the NCR staff didn't know he was gone 'til 9:00 a.m. the next day.
- When father tried to get the \$10,000 back, or a pro-rated portion of it after son left, Mr. Newman was unavailable, despite saying he would give the money back.
- NCR website's pledge of "home-cooked meals" equated to a \$55/week Albertson's card, with meals prepared on your own.
- When son came back to get papers, NCR gave him "about 3-4 pages of the 50+ pages" son signed.
- Son thinks that NCR deleted son's parents names from the contact information from son's form (son is not a minor).
- NCR lost son's passport and car title, despite it being "in the (NCR) safe."
- In early afternoon during a visit to attempt to find Mr. Newman, father walked in the building through an open door, with no controls. Father walked towards the back trying to find someone, and one male client was in a room watching TV. The client brought father back to the kitchen to a closed door and found the manager. Newman has never met with father after initial payment of the \$10,000.
- Father spoke of researching NCR further on the Internet, and noting that NCR's website exaggerates its qualities and qualifications – case in point is that NCR states that it has a different (higher) rating from the Better Business Bureau than NCR actually has. Staff attempted to verify this, and found up to four instances where this may be true.

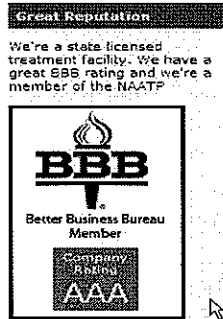
Questionable Information on NCR's Website

NCR's website (viewed on June 29, 2009) may lead the reader to infer the following:

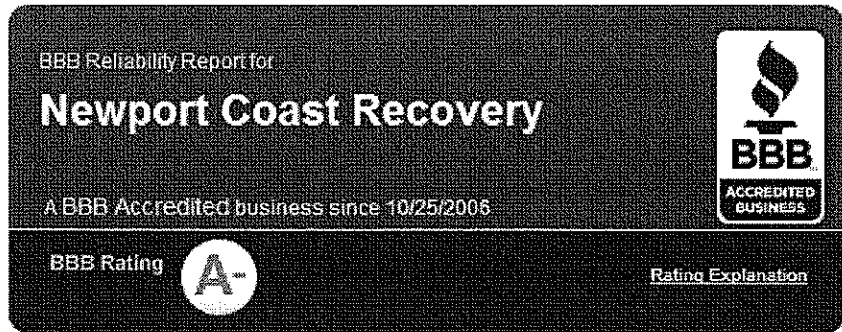
- That NCR is an "AAA" rated company by the Better Business Bureau (BBB). The BBB actually shows it as an "A-" rated firm, and apparently is not aware of NCR's violation from DSS for housing minors without a DSS license.

BBB Rating Information

NCR Website – 6-29-09



BBB Website – 6-29-09



- That NCR is state-licensed (it is) and certified. In California, residential treatment facilities like NCR must be licensed by ADP to provide one or more of five types of residential treatment. State ADP certification is a voluntary program for non-residential treatment programs. NCR is not eligible to receive this ADP certification. It is uncertain what certification NCR refers to when it states the below:

*"Newport Coast Recovery (NCR) is a state licensed **and certified** (emphasis added) inpatient drug and alcohol treatment facility offering gender specific treatment for men with addiction and co-occurring disorders. Our highly structured live-in program is 12 step based that incorporates a holistic philosophy"*

- That NCR is a member of the National Association of Addiction Treatment Providers ("NAATP"). The NCR website has a logo of the NAATP on it. The NAATP's website shows no record of having NCR as a current member.

What the NCR Website Says (6-29-09)

"(NCR is) .. Licensed by the California ADP, member of the National Association of Addiction Treatment Providers." "NCR is a member of NAATP..."

- That their medical director, Dr. Michael Rudolph, is a board-certified addiction medicine director. We have found no evidence that Dr. Rudolph is board-certified in addiction medicine – his office claims he is board-certified in Emergency Medicine. A website for another facility that Dr. Rudolph is affiliated with, "First House" in Costa Mesa says:

First House Website: *He (Dr. Rudolph) is currently a member of the American and California Societies of Addiction Medicine and is board eligible in the field of Addiction Medicine.*

NCR Website: *All of our case managers are state certified alcohol and drug counselors and our therapists are professionally licensed. Our Medical Director, Michael Rudolph, M.D., is a board certified addiction medicine doctor.*

Conclusion on Newly-Acquired Evidence. Given the above, especially Case #1, City staff is unable to recommend to the Hearing Officer that the finding based on NBMC §20.91A.060 – A (especially A.8) can be made. Additionally, NCR's website information shows a pattern of

providing apparently inaccurate information to readers (and potential clients) that overstates NCR's qualifications and standards.

Staff recommends a denial of this Use Permit application based on the inability to make the finding associated with NBMC Section 20.91A.060.A.8.

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Exhibit No. 1

Department of Social Services Notice of
Violation



CDSS

JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
COMMUNITY CARE LICENSING DIVISION
770 The City Drive, Suite 7100 • Orange, CA • 92668
(714) 703-2840 • FAX (714) 703-2868 • www.ccid.ca.gov



ARNOLD SCHWARZENEGGER
GOVERNOR

April 1, 2009

Newport Coast Recovery
1216 West Balboa Blvd.
Newport Beach, CA. 92661

SUBJECT: NOTICE OF OPERATION IN VIOLATION OF LAW

REFERENCE: Unlicensed Operation

You are hereby notified that the above referenced facility is operating without a license which is a violation of California Health and Safety Code, Section 1508. This section prohibits any person, firm, partnership, association, or corporation within the state from operating, establishing, managing, conducting, or maintaining a Community Care Facility in the state without first obtaining a license. In accordance with Health and Safety Code Sections 1540, 1541, 1547, and other applicable laws, your continued operation without a license could result in civil and/or criminal action being taken against you.

Effective since 09/16/88, licensing regulations require the assessment of civil penalties for operation without a license. California Code of Regulations, Section 80058, indicates that:

A \$200.00 per day penalty shall be assessed for the continued operation of an unlicensed facility the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law and has not submitted a completed application as required. The \$200.00 per day penalty shall continue until the operator ceases operation or submits a completed application.

You may file an application for a license by contacting the Mike Valentine at (714) 292-5537. Continued operation pending licensure is a violation of law.

Licensing Program Analyst
Orange County Children's Residential District Office

COMPLAINT INVESTIGATION REPORT

This is an official report of an unannounced visit/investigation of a complaint received in our office on **03/27/2009** and conducted by Evaluator Mike Valentine

PUBLIC

COMPLAINT CONTROL NUMBER: 19-CR-20090327105641

FACILITY NAME: Newport Coast Recovery	FACILITY NUMBER: Unlicensed
ADMINISTRATOR:	FACILITY TYPE: UNLIC
ADDRESS: 1216 West Balboa Blvd.	TELEPHONE:
CITY: Newport Beach	STATE:
CAPACITY: 0	ZIP CODE: 92661
	DATE: 04/01/2009
MET WITH: Eric McCoy	TIME BEGAN: 01:00 PM
	TIME COMPLETED: 01:40 PM

ALLEGATION(S):

- 1 | Unlicensed Care- Facility is providing care and supervision for minors at the above address.
- 2 |
- 3 |
- 4 |
- 5 |
- 6 |
- 7 |
- 8 |
- 9 |

INVESTIGATION FINDINGS:

- 1 | Based on investigation, there is concrete information received that facility did have 2 minors residing at their
- 2 | facility and facility representatives confirmed the same. The 2 minors are no longer residing at facility as of this
- 3 | date.
- 4 |
- 5 | Thus above Allegation is substantiated, a Notice of Operating in Violation of the Law letter was issued.
- 6 |
- 7 | Exit interview conducted, copy of the NOV letter, LIC 811, and this report provided.
- 8 |
- 9 |
- 10 |
- 11 |
- 12 |
- 13 |

Substantiated

Estimated Days of Completion:

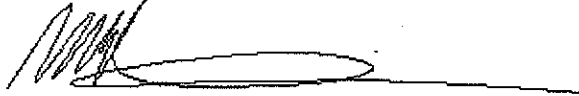
SUPERVISOR'S NAME: Lya Johnson

TELEPHONE: (951) 782-4207

LICENSING EVALUATOR NAME: Mike Valentine

TELEPHONE: (714) 292-5537

LICENSING EVALUATOR SIGNATURE:



DATE: 04/01/2009

I acknowledge receipt of this form and understand my appeal rights as explained and received.

FACILITY REPRESENTATIVE SIGNATURE:



DATE: 04/01/2009

COMPLAINT INVESTIGATION REPORT (Cont)

FACILITY NAME: Newport Coast Recovery
DEFICIENCY INFORMATION FOR THIS PAGE:

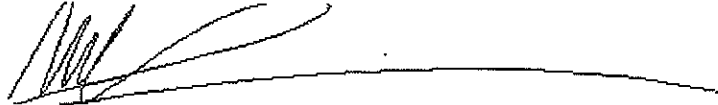
FACILITY NUMBER: Unlicensed
VISIT DATE: 04/01/2009

Deficiency Type POC Due Date / Section Number	DEFICIENCIES	PLAN OF CORRECTIONS(POCs)
Type A 04/01/2009 Section Cited 80006(a)(c)	1 Unlicensed Operation- This facility was operating 2 Unlicensed when facility accepted to minors under 3 the age of 18 years old, which is a Health and 4 Safety violations. 5 6 7	1 Minors are no longer residing at facility and facility 2 will not accept any residents under the age of 18 3 years old from this date and after. 4 5 6 7
	1 2 3 4 5 6 7	1 2 3 4 5 6 7
	1 2 3 4 5 6 7	1 2 3 4 5 6 7
	1 2 3 4 5 6 7	1 2 3 4 5 6 7

Failure to correct the cited deficiency(ies), on or before the Plan of Correction (POC) due date, may result in a civil penalty assessment.

SUPERVISOR'S NAME: Lya Johnson
LICENSING EVALUATOR NAME: Mike Valentine
LICENSING EVALUATOR SIGNATURE:


TELEPHONE: (951) 782-4207
TELEPHONE: (714) 292-5537



DATE: 04/01/2009

I acknowledge receipt of this form and understand my appeal rights as explained and received.

FACILITY REPRESENTATIVE SIGNATURE:



DATE: 04/01/2009