

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Ayer Valley Rehab and Nursing,
Petitioner,

No. PHNH-25-0231

Dated: May 1, 2025

v.

**Department of Public Health, Division of
Health Care Facility Licensure and
Certification,**
Respondent.

ORDER OF DISMISSAL

At a point in time not specified in the record, respondent the Department of Public Health, Division of Health Care Facility Licensure and Certification (department) found an “immediate jeopardy” at the petitioner’s nursing facility. On March 13, 2025, the department updated the petitioner that “the immediate jeopardy . . . was removed,” but that other deficiencies remained; apparently the petitioner was not then given details about the nature of the deficiencies. The department imposed an immediate ban on admissions to the facility, prompting the petitioner to request a hearing. *See* 105 C.M.R. § 153.015(D).

The governing statute allows the department to “restrict” a facility’s license, including by “requiring a facility to limit new admissions.” G.L. c. 111, § 71(n)(3). A restriction may be imposed prior to a hearing only if “the suspension is due to an emergency.” § 71(n)(1). Consistent with this statutory command, the department’s regulations differentiate between “jeopardy” cases and other cases. “If . . . jeopardy exists . . . the [department] may issue an order that the long-term care facility limit or not admit any new residents *as of the date of the order.*” 105 C.M.R. § 153.015(B) (emphasis added). In all other circumstances, an immediate ban on admissions cannot take immediate effect; the licensee must instead be afforded “a reasonable opportunity to correct the cited deficiencies.” § 153.015(C).

Either as a result of the foregoing provisions or otherwise, the department rescinded the ban on admissions at the petitioner's facility soon after the petitioner requested a hearing. The petitioner's specific grievance is therefore moot. *See* 801 C.M.R. § 1.01(7)(g)(2); *Fannie Mae v. Branch*, 494 Mass. 343, 347-48 (2024). Accordingly, it is hereby ORDERED that this appeal is DISMISSED.¹

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

¹ In any future cases of an immediately effective ban on admissions, the petitioner facilities may consider asking for a prehearing conference to be held within a matter of days. If there should emerge a pattern of immediate bans being rescinded before they can be reviewed, an exception to the usual mootness rule might potentially arise. *See M-class Mining, LLC*, 42 F.M.S.H.R.C. 491, 497 (2020); *Affinity Mining Co.*, 83 Interior Dec. 236, 242-43 (1976).