

FILED

Clerk of the Superior Court

MAR 21 2007

By: B. TOM, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

PARKSIDE SPECIAL CARE CENTER,
INC., et al.,

Petitioners,

vs.

SANDRA SHEWRY, DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, et al.,

Respondents.

Case No.: GIC 860574

WRIT OF MANDATE

TO SANDRA SHEWRY, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF
HEALTH SERVICES and THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES,
Respondents/Defendants (collectively, "The Department"):

Petitioners/Plaintiffs PARKSIDE SPECIAL CARE CENTER, INC., BANCROFT
CONVALESCENT HOSPITAL, INC., MT. RUBIDOUX CONVALESCENT HOSPITAL,
LLC and THE CALIFORNIA ASSOCIATION OF HEALTH FACILITIES served and filed
a First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and
Injunctive Relief with respect to the California Standard Admission Agreement for

1 Skilled Nursing Facilities and Intermediate Care Facilities and its accompanying
2 regulations, Title 22, California Code of Regulation, sections 72516 and 73518, ("SAA
3 and implementing regulations").

4 The Petitioners'/Plaintiffs' Motion for Writ of Mandate was heard on August 4,
5 2006 in Department 66 of this Court, and the Court issued its findings and Order on
6 Matter Under Submission on August 10, 2006. Thereafter Counsel for the respective
7 parties served and filed a proposed Writ, objections and reply and argued their
8 respective positions on March 1, 2007. The Court after having taken the matter under
9 submission hereby finds as follows:
10

11
12 The Court hereby directs the Department to vacate and set aside the following
13 provisions of the SAA and implementing regulations and to revise and re-promulgate
14 those provisions of the SAA and implementing regulations in a manner consistent with
15 this Order and the Order of August 10, 2006. Specifically, the SAA and implementing
16 regulations shall provide the following:
17

18 **1. Authorization for Disclosure of Medical Information.** The
19 Authorization for Disclosure of Medical Information shall comply with all of the
20 mandatory requirements of the Federal Health Insurance Portability and Accountability
21 Act (H.I.P.P.A.).
22

23 **2. Thirty (30) day written notice of room change.** Room changes
24 shall not require thirty (30) days written notice. Notice of room changes shall comply
25 with the existing legal requirements that changes may be made upon "reasonable
26 notice" to the resident determined on a case by case basis in accord with Health and
27 Safety Code section 1599.78 and other applicable federal requirements.
28

1 3. **Resident's right to voluntarily leave a facility.** Notice to residents
2 regarding their right to voluntary right leave a facility shall be clarified to exclude from
3 that right those residents under involuntary commitments and those suffering from
4 severe cognitive impairment.
5

6 4. **Liability of 3rd Parties.** Any notice to a resident's personal representative
7 shall include language that signing in a representative capacity does not, in and of itself,
8 result in personal liability of the representative for debts of the resident.
9

10 5. **Posting requirements.** The SAA and implementing regulations shall
11 not impose posting requirements in addition to pre-existing statutory and regulatory
12 requirements.
13

14 6. **Provisions regarding Refunds.** Provisions regarding refunds in the
15 SAA and implementing regulations must conform to Health and Safety Code section
16 1599.70(b).
17

18 7. **Program Flexibility.** The DHS shall establish and follow guidelines
19 and time tables in the implementation of the program flexibility provisions pursuant to
20 Health and Safety Code Section 1276 consistent with Health and Safety Code section
21 1599.61(g).
22

23 8. **THE DEPARTMENT IS HEREBY ORDERED** to set aside any
24 enforcement actions that may have been brought pursuant to the SAA and
25 implementing regulations, prior to the Department's withdrawal of the SAA on
26 September 29, 2006, that are inconsistent with the Order of this Court.
27

28 //

//

1 Further, the Department is to serve and file a return to this writ within one
2 hundred and twenty (120) days of the issuance of this writ, demonstrating compliance or
3 good faith efforts toward compliance with this writ.
4

5
6 The foregoing writ shall issue forthwith.

7
8 IT IS SO ORDERED.
9

10
11
12 Date: MAR 21 2007

CHARLES R. HAYES

HONORABLE CHARLES R. HAYES,
Judge of the Superior Court

MAR 21 2007

By: B. TOM, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CASE NO. GIC 860574

CLERK'S CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION
[CRC 2008]

I hereby certify that at the time of transmission I was at least 18 years of age and not a party to this legal proceeding. On MAR 21 2007, beginning at 2:10 pm, I caused to be transmitted to the parties listed below the **four page Writ of Mandate** by facsimile machine at the fax number shown pursuant to California Rules of Court, Rule 2008. The facsimile machine used complied with Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008, the machine printed a transmission record of the transmission, a copy of which is attached to the declaration contained in the Court file.

CARY W. MILLER, ESQ.
Hooper, Lundy & Bookman, Inc.

(619) 230-0987

MARK E. REAGAN, ESQ.
Hooper, Lundy & Bookman, Inc.

(415) 875-8519

MICHELE WONG, ESQ.
Deputy Attorney General
California Department of Justice

(213) 897-2805

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

MICHAEL M. RODDY,
Clerk of the Superior Court

By:

