

1 Matthew Borden, Esq. (SBN: 214323)
borden@braunhagey.com
2 J. Noah Hagey, Esq. (SBN: 262331)
hagey@braunhagey.com
3 BRAUNHAGEY & BORDEN LLP
220 Sansome Street, Second Floor
4 San Francisco, CA 94104
Telephone: (415) 599-0210
5 Facsimile: (415) 276-1808

6 Kelly Bagby (*pro hac vice* submitted herewith)
AARP FOUNDATION LITIGATION
7 kbagby@aarp.org
601 E Street, NW
8 Washington, D.C. 20049
Telephone: (202) 434-2103

9 Attorneys for Plaintiffs
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SACRAMENTO**

13
14 GLORIA SINGLE, CALIFORNIA LONG TERM
CARE OMBUDSMAN ASSOCIATION,

15 Plaintiffs,

16 v.

17 CATHEDRAL PIONEER CHURCH HOMES II,
18 CONGREGATIONAL CHURCH RETIREMENT
COMMUNITY, BIXBY KNOLLS TOWERS,
19 INC., GOLD COUNTRY HEALTH CENTER,
MAYFLOWER GARDENS HEALTH
20 FACILITIES, INC., STOCKTON
CONGREGATIONAL HOMES, INC.,
21 FOUNDATION PROPERTY MANAGEMENT,
INC., RHF MANAGEMENT, INC., AND RHF
22 FOUNDATION,

23 Defendants.
24
25
26
27
28

FILED
Superior Court Of California,
Sacramento
10/02/2017
amacias
By _____, Deputy
Case Number:
34-2017-00220058

Case No.

**COMPLAINT FOR VIOLATIONS OF
PATIENT'S RIGHTS, CALIFORNIA
HEALTH AND SAFETY CODE § 1430(b);
UNLAWFUL BUSINESS PRACTICES,
CALIFORNIA BUSINESS &
PROFESSIONS CODE §§ 17200, et seq.;
DECLARATORY RELIEF**

BY FAX

1 Plaintiffs Gloria Single, by and through her Power of Attorney Aubrey Jones and California
2 Long Term Care Ombudsman Association allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this action to enjoin Defendants' illegal practice of dumping
5 vulnerable nursing facility residents into hospitals.

6 2. To maximize profit through decreased staffing, unscrupulous nursing facilities try to
7 illegally evict the residents who are the neediest of staff time and require the greatest levels of care.
8 One such method is hospital dumping, in which the facility gives away the resident's bed when the
9 resident is temporarily hospitalized and refuses to readmit the resident after she is medically
10 cleared to return home.

11 3. Hospital dumping violates state and federal law, which requires facilities to hold
12 open the beds of residents who have been temporarily hospitalized.

13 4. Plaintiff Gloria Single is 82 years old. She suffers from pulmonary disease, chronic
14 pain, fainting and dementia and requires long-term skilled nursing care. She lives at a skilled
15 nursing facility called Pioneer House.

16 5. Pioneer House is run by a national entity called Retirement Housing Foundation
17 ("RHF"). According to its website, RHF is a "faith-based" organization, rooted in the ideals of the
18 United Church of Christ. RHF's website also claims that part of RHF's "concern for the whole
19 person includes residents, their families and staff and RHF strives to be fair in all relationships."
20 See <http://www.rhf.org/mission-vision-philosophy/>.

21 6. Defendants dumped Ms. Single into a hospital on March 23, 2017, and refused to
22 readmit her once the hospital cleared her to return home. After a hearing before the California
23 Department of Health Care Services ("DHCS"), the State issued a seven-page Order requiring that
24 "Pioneer House must immediately readmit Gloria Single to the first available bed."

25 7. Defendants continue to flout the State's Order and still refuse to readmit Ms. Single.
26 As a result, Ms. Single is spending what may be the last days of her life separated from her
27 husband, who continues to live at Pioneer House. Each day this occurs, Defendants are imposing
28 irreparable and cruel injury on Ms. Single and her family.

1 12. Defendants are all part of the same commonly owned and operated chain of assisted
2 living and skilled nursing facilities that is held in an impenetrable labyrinth of legal entities
3 designed to hide money and evade legal and tax obligations.

4 13. Defendant Cathedral Pioneer Church Homes II, d/b/a Pioneer House (“Pioneer
5 House”) is a skilled nursing facility as defined in Health & Safety Code § 1250(c), and is therefore
6 subject to Health & Safety Code § 1430(b). Pioneer House is located at 415 P Street, Sacramento,
7 California 95814. According to its website, “Pioneer House is part of Retirement Housing
8 Foundation, a national, non-profit organization.” Pioneer House has admitted in public filings
9 under penalty of perjury that Defendant Retirement Housing Foundation (“RHF Foundation”) is its
10 “parent organization,” that it has paid RHF Foundation hundreds of thousands of dollars in related-
11 party fees for “support services” every year, that it has paid Defendant Retirement Property
12 Management (“RHF Property”) over a hundred thousand dollars a year in “related party
13 transactions,” and that the other facilities named as Defendants herein are “commonly owned and
14 controlled.” In papers filed under penalty of perjury with the government, Pioneer House lists its
15 mailing address as 911 N. Studebaker Road, Long Beach, CA 90815, which is also the address for
16 Defendants RHF Foundation, RHF Management Inc. (“RHF Management”), and RHF Property.

17 14. Defendant Congregational Church Retirement Community, d/b/a Auburn Ravine
18 Terrace (“Auburn Ravine Terrace”) is a skilled nursing facility as defined in Health & Safety Code
19 § 1250(c), and is therefore subject to Health & Safety Code § 1430(b). Auburn Ravine Terrace is
20 located at 750 Auburn Ravine Road, Auburn, California 95603-3820 and is part of the same
21 commonly owned and managed chain as Pioneer House and the other facilities named herein.
22 Auburn Ravine Terrace has admitted in public filings under penalty of perjury that RHF is its
23 “parent organization,” that it pays RHF Foundation hundreds of thousands of dollars in related-
24 party fees for “support services” every year, that it has paid Defendant Retirement Property
25 Management over a hundred thousand dollars a year in related party transactions, and that the other
26 facilities named as Defendants herein are “commonly owned and controlled.” Auburn Ravine
27 Terrace lists its mailing address as 911 N. Studebaker Road, Long Beach, CA 90815, which is also
28 the address for Defendant RHF.

1 15. Defendant Bixby Knolls Towers, Inc. (“Bixby Knolls Towers”) is a skilled nursing
2 facility as defined in Health & Safety Code § 1250(c), and is therefore subject to Health & Safety
3 Code § 1430(b). Bixby Knolls Towers is located at 3737 Atlantic Avenue, Long Beach, California
4 90807 and is part of the same commonly owned and managed chain as the other Defendant
5 facilities named herein. Bixby Knolls Towers has admitted in public filings under penalty of
6 perjury that RHF is its “parent organization,” that it pays RHF hundreds of thousands of dollars in
7 related-party management fees every year, that it has paid Defendant Retirement Property
8 Management over a hundred thousand dollars a year in related party transactions, and that the other
9 facilities named as Defendants herein are “commonly owned and controlled.” Bixby Knolls
10 Towers lists its mailing address as 911 N. Studebaker Road, Long Beach, CA 90815, which is also
11 the address for Defendant RHF.

12 16. Defendant Gold Country Health Center (“Gold Country”) is a skilled nursing
13 facility as defined in Health & Safety Code § 1250(c), and is therefore subject to Health & Safety
14 Code § 1430(b). Gold Country is located at 6041 Golden Center Court, Placerville, California
15 95667 and is part of the same commonly owned and managed chain as the other Defendant
16 facilities named herein. Gold Country has admitted in public filings under penalty of perjury that
17 RHF is its “parent organization,” that it pays RHF hundreds of thousands of dollars in related-party
18 management fees every year, that it has paid Defendant Retirement Property Management over a
19 hundred thousand dollars a year in related party transactions, and that the other facilities named as
20 Defendants herein are “commonly owned and controlled.” Gold Country lists its mailing address
21 as 911 N. Studebaker Road, Long Beach, CA 90815, which is also the address for Defendant RHF.

22 17. Defendant Mayflower Gardens Health Facilities, Inc. d/b/a Mayflower Gardens
23 Convalescent Hospital (“Mayflower”) is a skilled nursing facility as defined in Health & Safety
24 Code § 1250(c), and is therefore subject to Health & Safety Code § 1430(b). Mayflower is located
25 at 6570 West Avenue L-12, Lancaster, California 93536 and is part of the same commonly owned
26 and managed chain as the other Defendant facilities named herein. Mayflower has admitted in
27 public filings under penalty of perjury that RHF is its “parent organization,” that it pays RHF
28 hundreds of thousands of dollars in related-party management fees every year, that it has paid

1 Defendant Retirement Property Management over a hundred thousand dollars a year in related
2 party transactions, and that the other facilities named as Defendants herein are “commonly owned
3 and controlled.” Mayflower lists its mailing address as 911 N. Studebaker Road, Long Beach, CA
4 90815, which is also the address for Defendant RHF.

5 18. Defendant Stockton Congregational Homes, Inc. d/b/a Plymouth Square (“Plymouth
6 Square”) is a skilled nursing facility as defined in Health & Safety Code § 1250(c), and is therefore
7 subject to Health & Safety Code § 1430(b). Plymouth Square is located at 1319 N. Madison Street,
8 Stockton, California 95202 and is part of the same commonly owned and managed chain as the
9 other Defendant facilities named herein. Plymouth Square has admitted in public filings under
10 penalty of perjury that RHF is its “parent organization,” that it pays RHF hundreds of thousands of
11 dollars in related-party management fees every year, that it has paid Defendant Retirement Property
12 Management over a hundred thousand dollars a year in related party transactions, and that the other
13 facilities named as Defendants herein are “commonly owned and controlled.” Plymouth Square
14 lists its mailing address as 911 N. Studebaker Road, Long Beach, CA 90815, which is also the
15 address for Defendant RHF.

16 19. Defendant facilities have interlocking officers and directors, including Laverne R.
17 Joseph, Darryl M. Sexton, Frank G. Jahrling, John E. Trinkka, S.M. Simington, Christina E. Potter,
18 Deborah Stouff, John Bauman, and Raymond East. According to RHF’s website, these same
19 individuals are also Officers and Directors of RHF.

20 20. Defendant RHF Management, Inc. (“RHF Management”) is a California corporation
21 located at 911 Studebaker Road in Long Beach, California. Its CEO is Laverne R. Joseph, who is
22 the CEO of RHF Foundation and also serves as an officer and director for some of the facility
23 Defendants. The other Officers and Directors also serve as Officers and Directors for RHF
24 Foundation and the facility Defendants. On information and belief, RHF is the management
25 company that manages Pioneer House and all the other nursing facilities in Defendants’ chain.
26 According to its website, the services RHF provides include “management supervision & financial
27 management” and “corporate-compliance maintenance.”
28

1 21. Defendant Foundation Property Management, Inc. ("RHF Property") is a California
2 Corporation located at 911 Studebaker Road in Long Beach, California. Its CEO is Laverne R.
3 Joseph, who is the CEO of RHF Foundation and also serves as an officer and director for some of
4 the facility Defendants. The other Officers and Directors also serve as Officers and Directors for
5 RHF Foundation and the facility Defendants. On information and belief, RHF owns the real
6 property on which Pioneer House sits and all the other real property used by Defendants' chain of
7 nursing facilities.

8 22. Defendant RHF Foundation purports to be a non-profit corporation. Its Officers and
9 Directors include the same individuals that serve as Officers and Directors of the Defendant
10 facilities, including, without limitation Laverne R. Joseph, Raymond East, Christina E. Potter,
11 Darryl M. Sexton, Frank G. Jahrling, John Bauman, Deborah Stouff, and Stewart M. Simington.

12 23. The true names and/or capacities, whether corporate, individual, associate, or
13 otherwise of DOES 1 through 10, inclusive, are unknown to Plaintiffs, who have therefore sued
14 them by their fictitious names. When their true names and/or capacities are ascertained, Plaintiffs
15 will seek leave to amend this Complaint by inserting their true names and/or capacities.

16 24. Each of the Defendants, including DOES 1 to 10, was the agent, servant and
17 employee of all of the remaining Defendants and in doing the things herein alleged was acting
18 within the course and scope of such agency or employment and with the consent and permission of
19 the remaining Defendants; and were operating together for a single, unified purpose.

20 25. Plaintiffs are informed and believe and thereon allege that DOES 1 to 10 were
21 responsible in some manner for the events and happenings set forth herein. It shall be deemed that
22 whenever and wherever in this Complaint any Defendant, whether specifically named or not, is the
23 subject of any charging allegation, that DOES 1 to 10 are likewise the subject of that charging
24 allegation.

25 JURISDICTION AND VENUE

26 26. The Court has jurisdiction over this action pursuant to Health and Safety Code §
27 1430 which allows enforcement in any court of competent jurisdiction. The California Superior
28 Court has jurisdiction over this action pursuant to California Constitution Article VI § 10, which

1 grants the Superior Court “original jurisdiction in all cases except those given by statute to other
2 trial courts.” The statutes under which this action is brought do not grant jurisdiction to any other
3 trial court.

4 27. Venue is proper herein pursuant to Code of Civil Procedure §§ 395 and 395.5
5 because one or more of the violations alleged in this Complaint arose in the County of Sacramento.

6 **FACTS**

7 28. Ms. Single was admitted as a resident at Pioneer House in November 2016. Her
8 husband also resides there.

9 29. On March 23, 2017, Defendants involuntarily hospitalized Ms. Single at Sutter
10 Medical Center, a general acute care hospital. The same day, the hospital cleared Ms. Single to
11 return home. Thereafter, Defendants refused to readmit her.

12 30. The hospital invited Defendants to assess Ms. Single to see if she could return home.
13 Defendants, however, refused to do so.

14 31. By discharging Ms. Single in this manner, Defendants circumvented the legal
15 process for evicting nursing home residents, which would have accorded Ms. Single numerous
16 substantive and procedural rights, including the right to remain at home while she challenged any
17 decision to discharge her, and the right to have an ombudsman from CLTCOA advocate for her and
18 help explain her rights and choices.

19 32. Left with no other choice, on May 17, 2017, Ms. Single invoked her right to a
20 hearing before the California Department of Health Care Services on whether Defendants were
21 required to readmit her.

22 33. On May 24, 2017, a hearing was held before the California Department of Health
23 Care Services (“DHCS”). The hearing was attended by Ms. Single and Pioneer House. At the
24 hearing, Pioneer House was represented by counsel and presented sworn testimony and evidence.
25 Ms. Single was not represented by counsel.

26 34. After the hearing, the State ruled in Ms. Single’s favor and issued a seven-page
27 Order holding: “Pioneer House must immediately readmit Gloria Single to the first available bed.”
28 A true and correct copy of the State’s Order is attached as **Exhibit 1**.

1 35. Despite the State's Order requiring readmission, Defendants continue to refuse to
2 readmit Ms. Single.

3 36. As a result, Ms. Single is separated from her husband. Each day she is separated
4 from her husband, she suffers brutal and irreparable harm, especially given the deteriorating
5 condition of both of their health.

6 37. Following Defendants' refusal to readmit her, Ms. Single was imprisoned in a
7 hospital for around three months. During that time, she received no activities or stimulation other
8 than television, and stopped talking as a result. In addition to injuring Ms. Single, Defendants'
9 conduct needlessly squandered valuable tax dollars on confining Ms. Single to a hospital bed.

10 38. Because she was unable to endure living in a hospital, Ms. Single eventually agreed
11 to placement at a different nursing facility – until such time she can return home. She still wants to
12 return to living at Pioneer House so she can be with her husband, and so that her son can visit her
13 more easily.

14 39. Because she was confined to a hospital bed for so long instead of walking around at
15 her home, Ms. Single may have permanently lost her ability to walk.

16 **CAUSES OF ACTION**

17 **First Cause of Action**
18 **Violation of California Health and Safety Code § 1430(b)**

19 40. Plaintiffs incorporate the previous paragraphs as though fully set forth herein.

20 41. Health & Safety Code § 1430(b) states that “[a] current or former resident or patient
21 of a skilled nursing facility, as defined in subdivision (c) of Section 1250 . . . may bring a civil
22 action against the licensee of a facility who violates any of the rights of the resident or patient as set
23 forth in the Patient Bill of Rights in Section 72527 of Title 22 of the California Code of
24 Regulations (“C.C.R.”), or any other right provided for by federal or state law or regulation. The
25 suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of
26 the licensee's employees. The licensee shall be liable for up to five hundred dollars (\$500), and for
27 costs and attorney fees, and may be enjoined from permitting the violation to continue”
28

1 42. By failing to provide a timely bed-hold notice, Defendants violated Ms. Single's
2 right to such notice under 42 U.S.C. § 1396r(c)(2)(D)(ii), which requires skilled nursing facilities to
3 issue a bed-hold notice to any resident who is hospitalized prior to or contemporaneously with the
4 hospitalization.

5 43. Defendants violated Ms. Single's statutory rights by refusing to readmit her after she
6 informed Defendants of her desire to return and was medically cleared to do so. 22 C.C.R. §
7 72520(a); Health & Safety Code § 1599.79; 42 U.S.C. § 1396r(c)(2)(D)(iii).

8 44. Defendants effected a transfer or discharge of Ms. Single without following any of
9 the legal requirements for doing so, *e.g.*, providing 30-days' notice, helping find her a new place to
10 live, and making sure that she is properly prepared and oriented.

11 45. Defendants are refusing to comply with a lawful order by the California Department
12 of Health Care Services.

13 46. Defendants' refusal to readmit Ms. Single resulted in her being deprived of the
14 rights as a nursing facility resident to "be fully informed by a physician of [...] her total health
15 status" and was not afforded the opportunity to participate on an immediate and ongoing basis in
16 the total plan of care," in violation of Ms. Single's federal and state rights. 22 C.C.R. §
17 72527(a)(3). 42 C.F.R. § 483.10(c)(iv), (c)(v) and (c)(3).

18 47. Defendants' refusal to readmit Ms. Single resulted in her being deprived of the
19 rights as a nursing facility resident to "receive all information that is material to an individual
20 patient's decision concerning whether to accept or refuse any proposed treatment or procedure." 22
21 C.C.R. § 72527(a)(4).

22 48. Defendants' discharge of Ms. Single and their refusal to readmit her resulted in her
23 being deprived of the rights as a nursing facility resident to "be transferred or discharged only for
24 medical reasons, or the patient's welfare or that of other patients or for nonpayment for her stay."
25 22 C.C.R. § 72527(a)(6).

26 49. Defendants' discharge of Ms. Single and their refusal to readmit her resulted in her
27 being deprived of the rights as a nursing facility resident to "be encouraged and assisted throughout
28 the period of her stay to exercise rights as a patient and a citizen, and to this end voice grievances

1 and recommend changes in policies and services to facility staff and/or outside representatives of
2 the patient's choice, free from restraint, interference, discrimination or reprisal." 22 C.C.R. §
3 72527(a)(7); 42 C.F.R. § 483.10(b)(1).

4 50. Defendants' discharge of Ms. Single and their refusal to readmit her resulted in her
5 being deprived of the rights as a nursing facility resident to "be free from mental and physical
6 abuse." 22 C.C.R. § 72527(a)(10).

7 51. Defendants' discharge of Ms. Single and their refusal to readmit and reunite her
8 with her husband resulted in her being deprived of the rights as a nursing facility resident to "meet
9 with others and participate in activities of social, religious and community groups." 22 C.C.R. §
10 72527(a)(15).

11 52. Defendants' illegal treatment of Ms. Single violates 22 C.C.R. § 72527(a)(12),
12 which requires all nursing home residents "to be treated with consideration, respect and full
13 recognition of dignity and individuality" 42 C.F.R. § 483.10(a)(3).

14 53. Defendants' discharge of Ms. Single and their refusal to readmit and reunite her
15 with her husband resulted in her being deprived of the rights as a nursing facility resident to "be
16 assured privacy for visits by the patient's spouse." 22 C.C.R. § 72527(a)(17).

17 **Second Cause of Action**
18 **Violation of California Business & Professions Code §§ 17200 et seq.**

19 54. Plaintiffs incorporate the previous paragraphs as though fully set forth herein.

20 55. Defendants' conduct alleged herein is unlawful, fraudulent and/or unfair.

21 56. Ms. Single has lost money or property as a result of Defendants' unlawful,
22 fraudulent and/or unfair conduct.

23 **Third Cause of Action**
24 **Declaratory Relief**

25 57. Plaintiffs incorporate the previous paragraphs as though fully set forth herein.

26 58. Through the facts alleged above, an actual and justiciable controversy exists
27 between the parties as to, *inter alia*, whether failure to follow a lawful readmission order by DHCS
28 violates a resident's rights, whether any time a facility fails to follow the bed hold requirements, it
violates a resident's rights, and whether Defendants violated Ms. Single's other rights as identified

1 above.

2 59. A declaration by this Court will be useful in resolving the rights and obligations of
3 the parties.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

6 A. A preliminary and permanent injunction, enjoining Defendants, and each of them,
7 and their contractors, agents, servants and employees and all persons acting under in concert with
8 or for them from:

9 (1) Refusing to readmit Ms. Single;

10 (2) Violating the bed-hold requirement;

11 (3) Refusing to comply with readmission Orders issued by the California
12 Department of Healthcare Services;

13 (4) Discharging any residents without a legally valid reason and without
14 following all of the procedures required by law;

15 (5) Taking any action in retaliation against Ms. Single, including, but not limited
16 to, discharge or transfer from Pioneer House;

17 B. A preliminary and permanent injunction, enjoining Defendants, and each of them,
18 and their contractors, agents, servants and employees and all persons acting under in concert with
19 or for them to adopt procedures to prevent recurring violations of the laws governing the
20 readmission and discharge of residents;

21 C. Appointment of a monitor to ensure compliance with all injunctive relief issued by
22 the Court;

23 D. Damages in the statutory amount of Five-Hundred Dollars (\$500.00) for each
24 violation of Ms. Single's statutory rights, for each day that Defendants continually and wrongfully
25 refuse Ms. Single's readmission and for each of her rights that Defendants have violated;

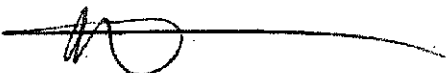
26 E. Declaratory relief, including a declaration that a facility's failure to comply with a
27 lawful readmission order by DHCS and failure to comply with the bed hold requirement both
28 violate a resident's rights under § 1430(b);

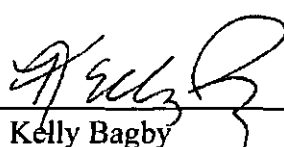
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- F. Costs of suit herein incurred;
- G. Attorney's fees; and
- H. All such other and further relief as the Court may deem just, proper, and equitable.

Dated: October 2, 2017

BRAUNHAGEY & BORDEN LLP

By: 
Matthew Borden

By: 
Kelly Bagby

Attorneys for Plaintiffs Gloria Single and
California Long Term Care Ombudsman
Association

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

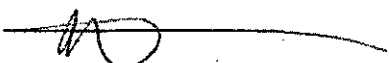
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of all claims and causes of action triable before a jury.

Dated: October 2, 2017

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By: 
Matthew Borden

Attorneys for Plaintiffs Gloria Single and
California Long Term Care Ombudsman
Association

EXHIBIT 1



JENNIFER KENT
Director

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

May 24, 2017

Gloria Single - Patient
c/o Aubrey Jones – Appellant
2944 Loyola Drive
Davis, CA 95618

IN THE MATTER OF THE REFUSAL TO READMIT OF
GLORIA SINGLE
APPEAL NUMBER 17-1251

Dear Ms. Single,

Enclosed is a copy of the refusal to readmit appeal decision in this matter, which was executed on behalf of the Department of Health Care Services. This decision constitutes the Final Decision and Order of the Department.

Sincerely,

Gary Diffenderffer, Chief
Sacramento Section II
Administrative Appeals

Enclosure

cc: Robert Godfrey – Administrator
Pioneer House
415 P Street
Sacramento, CA 95814

See Next Page

Single, Gloria
Page 2

cc: Continued from Previous Page

Department of Public Health
Center for Health Care Quality
165 Capitol Avenue
Sacramento, CA 95814

CDPH_CHCQ_TDA_RTR@CDPH.CA.GOV

Department of Public Health
Office of Legal Services
1415 L Street, Suite 500
Sacramento, CA 95814

CDPHLegalRTR@cdph.ca.gov

1
2
3
4 **BEFORE THE STATE OF CALIFORNIA**
5 **DEPARTMENT OF HEALTH CARE SERVICES**
6 **OFFICE OF ADMINISTRATIVE HEARINGS AND APPEALS**
7

8 In the Matter of the)
9 Refusal to Readmit:)

) REFUSAL TO READMIT
) APPEAL NO. 17-1251

10 Gloria Single - Patient)
11 c/o Aubrey Jones – Appellant)
12 2944 Loyola Drive)
13 Davis, CA 95618)

) **DECISION AND ORDER**

13 **SUMMARY**

14 On March 23, 2017, Pioneer House (a long-term care skilled nursing facility,
15 hereinafter referred to as Facility) advised Sutter Medical Center (a general acute care
16 hospital, hereinafter referred to as GACH) that it could not readmit Gloria Single
17 (hereinafter referred to as Resident) following her treatment at the GACH.

18 On April 26, 2017, Aubrey Jones (Resident’s son, hereinafter referred to as
19 Appellant) filed an appeal with this office, on Resident’s behalf, to assert Resident’s
20 right to readmission pursuant to California Health and Safety Code (CHSC),
21 §1599.1(h)(1).

22 **PRESENTATION AT HEARING**

23 The hearing convened at 12:00 p.m. on Wednesday, May 17, 2017, at the
24 GACH. Participants of the hearing are a matter of record.

25 All testimony was taken under oath and the proceedings were digitally recorded.

26 ///

27 ///

1
2 Documentation and evidence, presented at the hearing, established the
3 following:

4 Resident is a female Medi-Cal beneficiary, 82 years of age, initially admitted to
5 Facility on November 17, 2016. Resident's diagnosis includes chronic obstruction
6 pulmonary disease; Alzheimer's disease; dementia; and a history of concussion and
7 syncope. She suffers from chronic pain and depressive disorders.

8 Resident has recent history of increased agitation and anxiety.

9 II

10 The following summarizes Facility's arguments, related to its decision to refuse
11 Resident's readmission:

12 Facility recounted details, leading up to Resident's transfer to the GACH. Facility
13 stated that, on March 23, 2017, Resident became extremely agitated in the small dining
14 room, where staff and other residents were present, including Resident's spouse.
15 Resident began yelling and throwing plastic utensils. This behavior incited fear in other
16 residents and staff and 9-1-1 was called. Resident exhibited physically aggressive
17 behavior toward the responding police officers. Resident was transferred to the GACH,
18 with police oversight under Welfare and Institutions Code, § 5150; involuntary
19 detention.¹

20 Facility acknowledged that the GACH requested readmission from Facility, later
21 the same day. Facility informed the GACH that it could not readmit Resident. Facility
22 added that Appellant concurred with Facility's determination that Resident needs a
23 different setting. Facility provided Appellant with the names of other SNFs, which are
24 better equipped to address residents with behavioral symptoms.

25 Facility presented testimony and documentation associated with its contention
26 that Resident's behavioral needs cannot be met in that her primary need is a mental
27

¹ Detention of mentally disordered person for evaluation and treatment.

1 health issue; she has no skilled nursing needs; she poses a risk to others; and is
2 independent with her ADLs.

3 Facility cited two conditions, unique to its facility, which hinder its ability to meet
4 Resident's needs. One, Facility is very small, with a population of only 49 residents,
5 limiting areas in which Resident can be redirected to. Second, Resident's spouse
6 resides at Facility and is a trigger for Resident's agitation. Resident is engrossed in her
7 spouse and his activities, in a controlling manner, as well as in interactions that others
8 have with her spouse. Resident interferes with her spouse's meals. Since Resident's
9 transfer, her spouse has had a positive weight gain. He is more relaxed and verbalized
10 appreciation that Resident was no longer at Facility.

11 Facility testified that it received clinical documentation from the GACH, on or
12 about April 17, 2017, which indicated that Resident has had episodes of agitation while
13 hospitalized. Facility again notified the GACH that it cannot readmit Resident.

14 Prior to this hearing, Facility attempted to assess Resident at the GACH and
15 observed Resident in a private room; curled in a fetal position and somnolent. In
16 Facility's opinion, Resident appeared overmedicated, which is not allowed in a skilled
17 nursing facility (SNF). The GACH declined to allow Facility to review Resident's clinical
18 record; hence, it was unable to perform a thorough assessment.

19 Facility presented an order from Resident's attending physician (MD), dated
20 March 17, 2017, wherein he prescribed Depakote sprinkles for her mood disorder after
21 Resident became verbally aggressive toward her spouse. MD documented, on May 16,
22 2017, that Resident has no psychiatric condition, which would provide a basis for
23 administering antipsychotic medications to Resident; as such, psychotropic medications
24 are not recommended. MD wrote that the presence of Resident's spouse triggers the
25 majority of her behavior problems. Based upon these reasons, MD opined, Facility
26 cannot meet Resident's needs.

27 ///

1 III

2 Appellant pointed out that Resident has been at the GACH for eight weeks,
3 without activities or stimuli, except to watch television. She has stopped talking.
4 Appellant characterized Facility's refusal to readmit as "patient dumping," which is both
5 unfair and cruel treatment against a resident with dementia.

6 Appellant agreed to search for alternate placement; however, none of the
7 locations that Facility referred him to accepted Resident. Other SNFs either have no
8 beds or have a lengthy waiting list. Appellant provided a list of one-dozen SNFs in
9 Sacramento and Yolo counties, which he has contacted.

10 Appellant presented a photo of Resident and her spouse interacting, and stated
11 his belief that keeping the two together is the right thing to do.

12 IV

13 The GACH testified that they assessed Resident and she does not have acute
14 care needs for hospitalization; however, Resident was admitted due to Facility's refusal
15 to allow her back.

16 The GACH sent Facility clinical notes, on April 17, 2017, and invited Facility to
17 assess Resident; however, Facility did not accept this offer. The GACH acknowledged
18 that it later denied Facility access to Resident's chart, as Facility had made no
19 arrangements to review her records and Facility's request was not associated with an
20 actual intent to readmit Resident. The GACH pointed out that hospitals typically share
21 information with a receiving facility for the purpose of continuity of care. Such sharing of
22 information is exempted from privacy requirements; however, no such exemption
23 applied at that point and access to Resident's chart would have first required
24 authorization from Appellant.

25 The GACH described two incidences where Resident exhibited increased
26 agitation, as well as her current medication regimen, which includes Zyprexa, Seroquel,
27 Risperdal, and Aricept. The GACH also pursued other SNFs known for accepting

1 residents with behavioral issues; however, there were no admission offers.

2 **ANALYSIS AND CONCLUSIONS**

3 I have reviewed the testimony and documents presented at the hearing.

4 I

5 Title 22, California Code of Regulations (22, CCR.) § 72520, et seq. provides that
6 upon transferring a patient to a hospital, a SNF must inform the resident or their
7 responsible party, in writing, of their right to exercise a bed-hold of seven days. This
8 notice is required each time a resident is hospitalized. A facility that fails to issue this
9 notice, must offer the resident readmission to the first available bed. Equivalent
10 notification and policy requirements are also contained in Title 42 Code of Federal
11 Regulations (42 CFR) § 483.15(d)(1) and (d)(2).

12 I considered Appellant's testimony that Facility did not provide him with a written
13 notice, outlining Facility's bed-hold and readmission policies, at the time of Resident
14 transfer. A bed-hold offer was made verbally. Facility failed to rebut this testimony with
15 evidence of a written bed-hold and readmission policy notice.

16 Resident was evaluated by the GACH and determined to have no acute care
17 need. Accordingly, the GACH requested that Facility readmit Resident, during her bed-
18 hold period; however, Facility refused to accept Resident due to the behavioral
19 problems that precipitated her transfer and are further discussed in Section II below.

20 I noted that the purpose for Resident's hospitalization was to be evaluated. This
21 evaluation was completed in the GACH's emergency department and Resident was
22 determined not to have a need for acute care hospitalization, nor did she qualify for
23 acute psychiatric hospitalization (diagnoses is not a mental illness).

24 Therefore, I find that Facility failed to meet these bed-hold and notification
25 requirements and the remedy to offer readmission to the first available bed applies.

26 II

27 According to 42 CFR § 483.15(e)(1), a facility must establish and follow a written

1 policy permitting residents to return to their previous bed, if available, after the bed-hold
2 period, or to the first available bed if the resident's bed is no longer available. When a
3 facility determines that a resident cannot return, it must comply with the provisions
4 outlined under 42 CFR § 483.15(c). Facility presented no exception to this federal
5 requirement.

6 Due to Facility's refusal to readmit Resident, her hospitalization has now
7 exceeded the bed-hold period. I considered Facility's arguments and the challenges
8 that her behavioral problems present, in view of her hypersensitivity surrounding
9 interactions with her spouse. The key principles that SNFs must employ are to use an
10 individual approach to the problem, including staffing; caregiver training; modification to
11 the physical environment; and other factors that may lessen a resident's distress. In
12 response to Facility's argument concerning Resident's current medication regimen, I
13 agree that Facility will need to follow recommended guidelines in place concerning the
14 necessary documentation, monitoring, and assessment of residents who are admitted
15 from a hospital to a SNF on psychotropic medications, including, the potential for
16 gradual dose reduction.

17 When interventions have failed and a SNF determines that a resident's needs
18 cannot be met, the regulations provide a remedy for SNFs to perform person-centered
19 discharge planning in order to identify an alternate location, which can meet the
20 resident's needs. In such cases, a SNF must also identify the services at the receiving
21 facility that can meet the specific need(s).²

22 In this case, Facility failed to provide Resident with the due process that is
23 required at the time Facility determined that she could not be readmitted, as outlined
24 under 42 CFR § 483.15(c), which include but are not limited to, issuing a written notice
25 indicating the reason for the refusal. Refusing to readmit a resident after hospitalization
26 is an inappropriate means to transact the permanent discharge of a resident.

27

² 42 CFR §§ 483.21 et seq. and 483.15(c)(2)(i)(B)

1 This tribunal finds Facility's refusal is clearly a transfer/discharge within the
2 meaning of this federal law and it is not exempt from the next bed requirement (*St. John*
3 *of God Retirement Care Center v. Department, supra, 2 Cal. App 5th at P. 653*).

4 Therefore, I find that Facility failed to meet these readmission requirements.

5 **SUMMARY OF FINDINGS**

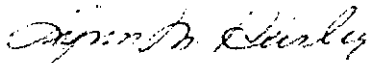
6 Facility failed to comply with 42 CFR § 483.15 pertaining to the transfer and
7 readmission of Resident as follows:

- 8 • Failed to issue a written bed-hold notice, upon transfer;
9 • Failed to readmit Resident during her bed-hold period; and
10 • Failed to readmit Resident to the first available bed.

11 **DECISION AND ORDER**

12 The appeal is GRANTED. Pioneer House must immediately readmit Gloria
13 Single to the first available bed, upon receipt of the clinical records that Sutter Medical
14 Center routinely provides to the receiving facility.

15 This is the FINAL DECISION AND ORDER of the Department. No further
16 administrative remedies are available.³

17
18 

19 LYNN M. HEISLER
20 Hearing Officer

21
22
23
24
25
26
27 5/24/2017

Date

³ If, upon readmission, Facility can support that any of the six reasons for the involuntary transfer of Resident, it may issue a transfer notice. However, this notice and Facility documentation must contain all the required elements to support that the transfer or discharge is appropriate in accordance with Title 42 CFR §§ 483.15 and 483.21.

RECEIVED
CIVIL DROP BOX

2017 OCT -2 PM 3: 56

GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY