

FILED
ALAMEDA COUNTY

JAN 06 2023

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MARINER HEALTH CARE INC., a Delaware
corporation; *et. al.*

Defendants.

Case No.: RG21095881

PRELIMINARY INJUNCTION

GOOD CAUSE APPEARING, THE COURT hereby orders a preliminary injunction as
follows pending final judgment:

PARTIES AND APPLICATION

1. Except as stated below, the parties enjoined by this preliminary injunction are
Defendants ALMADEN OPERATING COMPANY LP, AUTUMN HILLS OPERATING
COMPANY LP, CREEKSIDE OPERATING COMPANY LP, DRIFTWOOD HAYWARD
OPERATING COMPANY LP, DRIFTWOOD SANTA CRUZ OPERATING COMPANY LP,
FREMONT HEALTHCARE OPERATING COMPANY LP, FRUITVALE LONG TERM
CARE, LLC, HAYWARD HILLS OPERATING COMPANY LP, INGLEWOOD OPERATING
COMPANY LP, VERDUGO VISTA OPERATING COMPANY LP, MONTEREY PALMS

**PRELIMINARY INJUNCTION
RG21095881**

1 OPERATING COMPANY LP, PARKVIEW OPERATING COMPANY LP, SAN RAFAEL
2 OPERATING COMPANY LP, PALM SPRINGS OPERATING COMPANY LP,
3 REHABILITATION CENTER OF SANTA MONICA OPERATING COMPANY LP, SANTA
4 MONICA OPERATING COMPANY LP, SKYLINE SAN JOSE OPERATING COMPANY LP,
5 VALE OPERATING COMPANY LP, SAN MARCOS OPERATING COMPANY LP, and to
6 each of their agents, servants, employees, representatives, officers, directors, managers,
7 successors in interest, affiliates, assigns, and subsidiaries, aiders and abettors, as well as any
8 corporation, limited liability company, partnership, or any other legal entity or organization which
9 are controlled, owned, managed, licensed, operated, administered by them and which directly or
10 indirectly controls the operations of the skilled nursing facilities in California (as defined under
11 California Health and Safety Code section 1250(c) and 22 CCR 72103), including those known as
12 Almaden Care and Rehabilitation Center, Autumn Hills Healthcare Center, Creekside Healthcare
13 Center, Driftwood Healthcare Center-Hayward, Driftwood Healthcare Center-Santa Cruz,
14 Fremont Healthcare Center, Fruitvale Healthcare Center, Hayward Hills Healthcare Center,
15 Inglewood Healthcare Center, La Crescenta Healthcare Center, Monterey Palms Healthcare
16 Center, Parkview Healthcare Center, Pineridge Care Center, Palm Springs Healthcare Center, The
17 Rehabilitation Center of Santa Monica, Santa Monica Healthcare Center, Skyline Healthcare
18 Center-San Jose, Vale Healthcare Center, and Village Square Healthcare Center (hereinafter
19 collectively referred to as "Mariner" or "Defendants").

20
21 **INJUNCTION APPLICABLE TO ALL PARTIES**

22 8. Pursuant to Business and Professions Code sections 17203 and 17535, all
23 Defendants are hereby enjoined and precluded from improperly discharging a resident in
24 violation of Federal or California laws and regulations, including but not limited to the following:

- 25 a. Discharging or transferring a resident without giving the resident or
26 resident's representative timely prior written notice in a language and
27 manner they understand, including but not limited to,

- i. violating 42 U.S.C. section 1395i-3(c), 42 U.S.C. section 1396r(c), and 42 C.F.R. section 483.15(c), 483.10(g); and 22 C.C.R. section 72520(a);
- ii. discharging or transferring a resident without sending a copy of the written notice of transfer or discharge to the local Long-Term Care Ombudsman within the time required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c);
- iii. providing written notice to the resident and the resident's representative **for all transfers or discharges**;
- iv. complying with 42 CFR 483.15, except as specified in paragraphs (c)(4)(ii) and (8): the notice of transfer or discharge for **all discharges** must be in writing in a form in compliance with 42 CFR 483.15(c)(5), and made by the facility at least 30 days before the resident is transferred or discharged, with a contemporaneous copy of the notice to the local Long-Term Care Ombudsman within the time required by Cal. Health and Safety Code section 1439.6 and 42 C.F.R. section 483.15(c)(3)(i);
- v. further providing a copy of the notice of transfer or discharge to the Compliance Monitor (as defined in paragraph 11, below), by email or facsimile transmission as directed by the Compliance Monitor at the same time as the notice to the Ombudsman;

9. As to facilities, (1) Rehabilitation Center of Santa Monica, (2) Hayward Hills Healthcare Center, (3) Driftwood Healthcare Center, Santa Cruz, (4) Fremont Healthcare Center, and (5) Parkview Healthcare Center, the Defendants who are involved directly or indirectly in the operation of these five facilities are enjoined from failing to employ an adequate number of qualified personnel to carry out all of the functions of the facility as required by Health & Safety Code §1599.1(a); 22 Cal. Code of Regs §72501(e), and Compliance, at all times, with all applicable state and federal regulatory and statutory requirements regarding the levels at which a

1 skilled nursing facility must provide staffing, including but not limited to, California Health &
2 Safety Code sections 1599.1 and 1276.65; 22 C.C.R. sections 72329, 72329.2, 72501(e) and (g)
3 and 22 C.C.R. section 72527(a)(24); 42 C.F.R. section 483.35; and 42 U.S.C. section 1396r(b)(2),
4 and as required by 42 C.F.R. section 483.70(f).

5 **DEFENDANTS REPORTS ON COMPLAINT**

6 10. Not less than quarterly, commencing on April 1, 2023, and continuing unless
7 modified by the Court, Defendants shall prepare a report reflecting the Defendants' compliance
8 with the requirements of this injunction.

9 **MONITORING COMPLIANCE**

10 11. Pending trial or further order of this Court, a Compliance Monitor (hereinafter
11 whether singular or plural referred to as "Monitor") shall be appointed pursuant to California
12 Business & Professions Code § 17203, and Code Civil Procedure § 639; to determine and report
13 on compliance with the terms of this injunction to the People and this Court as directed. The Parties
14 shall meet and confer, and the People shall recommend one or more Monitors, by written notice to
15 the Court with a copy to counsel for Defendants who may object in writing filed and served within
16 3 Court days of notice. The purpose of the Monitor is to determine compliance with the injunctive
17 terms of this Judgment and to protect the personal and property rights of the residents in the skilled
18 nursing facilities operated by Defendants. Any replacement of a Monitor shall follow the same
19 procedure. Parties shall meet and confer on the form of the order appointing the Monitor.¹² The
20 Monitor shall have access to all records of Defendants' California Nursing Facilities as well as
21 those of defendant Mariner Health Central, Inc. that pertain to the enjoined defendants, including,
22 but not limited to, *Matrix*® or other *cloud-based* or electronic patient records and Defendants shall
23 provide passwords and other required credentials to enable remote access to patient records,
24 including, but not limited to patient/resident charts, medical records, and specifically discharge
25 notices and planning records. As to the five identified facilities in paragraph 9, above, the Monitor
26 shall also have access to records related to staffing, including but not limited to the general ledger
27 of the relevant operating companies. Defendants shall provide reasonable access to the facilities,
28 residents and resident's representatives. The Monitor shall be copied on all reports and notices as

1 required herein and as required to be submitted to any public agency or non-profit by law or
2 regulation regarding the conduct of skilled nursing activities in California. On a periodic basis, to
3 be determined by the Monitor, the defendants shall provide a Report to the Monitor detailing
4 defendants' efforts to comply with this Injunction. The Monitor shall determine the scope and
5 content of this Report after conferring with the parties.

6 13. The Monitor shall be provided access to facilities on an unannounced basis to
7 engage in impromptu checks to ensure ongoing compliance with the injunctive terms herein and
8 reduce the need and expense of ongoing supervision. The Monitor shall prepare compliance
9 reporting to the People on an ongoing basis and to the Court by written report quarterly,
10 commencing on April 1, 2023, and continuing unless modified by the Court. The Monitor shall
11 maintain confidentiality of records as required by law. A copy of written reports shall be provided
12 to both the People and Defendants. Should the report contain any observed deficiencies the
13 Defendants through the appropriate management personnel shall meet and confer with the Monitor
14 regarding the observations and suggestions for improvement. The Monitor's shall report violations
15 of the injunction and suggest compliance methods.

16 14. The Monitor shall maintain confidentiality of records covered by the Federal Health
17 Insurance Portability and Accountability Act of 1996 (HIPAA), California medical privacy laws,
18 and third-party privacy rights, such as employee records and non-public financial records,
19 disclosing them only to Monitor's staff, facility staff, counsel for both parties and their employees,
20 agents and experts, who shall also maintain such confidentiality. The Monitor shall comply with
21 the requirements of 45 C.F.R. § 164.308; 45 C.F.R. § 164.314 and 45 C.F.R. § 164.504, including
22 but not limited to, not disclosing information except as required or allowed by law, employing
23 appropriate safeguards to protect information, reporting to the covered entity any unauthorized or
24 unlawful use or disclosure of the information, and taking steps to ensure that any subcontractors
25 that create, receive, maintain, or transmit protected health information on behalf of the Monitor
26 agree to the same restrictions and conditions. This order shall be deemed "other arrangements" in
27 lieu of a business associate agreement in compliance with 45 C.F.R. § 164.308; 45 C.F.R. § 164.314
28 and 45 C.F.R. § 164.504.

1 15. Defendants may withhold access to records privileged under attorney/client; attorney
2 work product and deliberative process or quality assurance privileges but shall promptly identify
3 such records or files so withheld by a privilege log which shall be provided to the Monitor and
4 plaintiff's counsel. The Monitor shall be available to the Court, the People, Defendants and by
5 subpoena to court or administrative proceedings related to the facilities of Defendants, for
6 testimony regarding the Monitor's observations and opinions.

7 16. The Monitor and the Monitor's staff shall document their activities on an hourly basis
8 and will prepare invoices that segregate costs according to each respective facility of Defendants
9 commensurate with the time allocated to perform duties for the respective skilled nursing facilities.
10 Any dispute in the billing shall first be presented to the Monitor and counsel for the People for the
11 purpose of meeting and conferring upon resolution, and if not resolved, may be presented to this
12 Court upon noticed motion. Pending resolution of the dispute by this Court, the Defendants shall
13 continue to make payments for the services of the Monitor. The Monitor's rate shall not exceed
14 her/his customary rate and shall be consistent with the rate charged by other professionals with
15 similar experience performing such oversight services. The Monitor shall create an annual budget
16 for each calendar year of monitoring for the projected cost of monitoring all facilities as directed
17 by the Court for Monitoring. The Monitor shall not exceed the total budgeted amount without first
18 meeting and conferring with Defendants and Plaintiff and then only with approval by this Court.
19 The reasonable cost of the Monitor shall be borne by Defendants, the Monitor shall be paid by
20 Defendants upon presentment of invoices no more frequent than monthly.

21 17. Any dispute regarding any issue with the Monitor, including but not limited to, the cost,
22 scope or activities of the Monitor will be presented to this Court for resolution following meeting
23 and conferring between parties.

24 18. Either party may for good cause shown, move to modify, add injunctive terms or
25 vacate all or any part of this order upon noticed motion.
26
27
28

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

Dated: January 6, 2022



The Honorable Brad Seligman
JUDGE OF THE SUPERIOR COURT