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7 ATTORNEYS FOR PLAINTIFFS
BRUCE ANDERSON, JOHN WILSON,
8 ROBERT AUSTIN and CALIFORNIA
ADVOCATES FOR NURSING HOME
9 REFORM

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

14 BRUCE ANDERSON, JOHN WILSON,)
ROBERT AUSTIN, and CALIFORNIA)
15 ADVOCATES FOR NURSING HOME)
REFORM, a California non-profit corporation)

16 Plaintiffs,)

17 v.)

18 DIANA DOOLEY, in her official capacity as)
19 Secretary of the CALIFORNIA DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)

20 Defendant.)
21 _____)

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiffs Bruce Anderson, John Wilson, Robert Austin and California Advocates for
2 Nursing Home Reform (“CANHR”) allege as follows:

3 **INTRODUCTION**

4 1. This action for prospective injunctive relief seeks to stop California Secretary of
5 Health and Human Services Diana Dooley from willfully violating federal laws that protect
6 vulnerable nursing home residents from being forcibly removed from their homes and dumped into
7 hospitals. This conduct has severely injured Plaintiffs, resulted in resident dumping across the
8 State and cost California residents over \$70,000,000.

9 2. California nursing facilities often dump Medi-Cal residents by refusing to allow
10 them to return home after they have been temporarily hospitalized. Facilities do this to increase
11 revenues and make space for more lucrative Medicare and private pay residents.

12 3. Federal law protects against such resident dumping by requiring states to establish a
13 hearing process for the readmission of nursing home residents who have been temporarily
14 hospitalized that must “promptly ... provide for admission or readmission of an individual to a
15 facility if the hearing decision is favorable to the applicant or beneficiary.” 42 C.F.R. § 431.246(a).

16 4. California refuses to comply with this law. The California Department of Health
17 Care Services (“DHCS”) affords displaced residents a hearing, but will not enforce its own
18 decisions. Nor will the California Department of Public Health (“CDPH”). Secretary Dooley, who
19 oversees DHCS and CDPH, has refused to make the agencies stop their shell game of inaction.

20 5. Plaintiffs Anderson, Wilson and Austin all have won their federally-mandated
21 DHCS readmission hearings. Because the State will not enforce their readmission hearing orders,
22 however, none of them has been able to return home. Plaintiff Anderson has been confined in a
23 hospital bed and chemically restrained with mind-numbing drugs for almost five months. He is not
24 sick. He can walk and could be socializing instead of living in isolation. Plaintiff Wilson won his
25 hearing back in June and has not been able to return to home to his familiar caregivers and friends.
26 After winning his hearing back in May, Plaintiff Austin grew so demoralized from being
27 warehoused in a hospital with no possibility of escape, he accepted a temporary transfer to a
28 facility 400 miles from his nearest family member.

1 the facility to readmit Mr. Anderson. The State has not enforced the DHCS Order. Since winning
2 his hearing, Mr. Anderson was been warehoused at Sutter General Hospital, where he is generally
3 confined to a bed, is receiving large doses of antipsychotic drugs, is far from his family and is not
4 engaging in any therapeutic or social activities.

5 13. Plaintiff John Wilson is an individual residing in California and former resident of
6 St. Johns Valley Sub-Acute skilled nursing facility. On June 26, 2015, he won his readmission
7 hearing. St. Johns Valley Sub-Acute, however, has refused to comply with DHCS's readmission
8 hearing order. The State has not enforced the DHCS order. Since winning his hearing, Mr. Wilson
9 has been warehoused at St. Johns Valley Hospital. He is not engaging in any therapeutic or social
10 activities.

11 14. Plaintiff Robert Austin is an individual residing in California and former resident of
12 Capital Transition Care skilled nursing facility. He won his readmission hearing on May 22, 2015.
13 Capital Transition Care, however, refused to comply with the DCHS readmission hearing order.
14 The State has not enforced the DHCS order. After winning his hearing, Mr. Austin was
15 warehoused in Kaiser South Hospital Sacramento for over a month, where he did not engage in
16 therapeutic or social activities. At that point, he was transferred hundreds of miles away from his
17 family to a nursing home in Los Angeles.

18 15. Plaintiff CANHR is a statewide nonprofit organization that has been dedicated to
19 improving the care and quality of life for California's skilled nursing facility residents for more
20 than 30 years. CANHR sponsors legislation, lobbies at the State and federal level to protect the
21 rights of California residents and has been active helping residents, including Plaintiffs Anderson,
22 Wilson and Austin, obtain readmission to their homes after temporary hospitalization.

23 16. Defendant Diana Dooley is being sued in her capacity as the California Secretary of
24 Health and Human Services.

25 FACTS

26 **A. The Dumping Epidemic**

27 17. Resident dumping is one of the biggest problems California skilled nursing facility
28 residents face. Federal law prohibits discharging a resident from a skilled nursing facility except

1 under very limited circumstances. Facilities, however, illegally dump residents, *i.e.*, forcibly kick
2 the residents out of their homes, if the facilities think they can make more money by doing so. For
3 example, when a resident's ability to pay comes exclusively from Medi-Cal, which is often the
4 case, a facility has a strong financial motivation to get rid of that resident and replace him or her
5 with someone who is either a private pay resident or who is receiving money from Medicare in
6 addition to Medi-Cal. For such individuals, nursing facilities can receive more than \$500 per day.
7 Facilities have similar incentives for residents who require substantial amounts of care. Because
8 facilities receive a flat rate from Medi-Cal, such residents cut into the facility's profit and are less
9 desirable than healthier and more compliant ones.

10 18. When a resident can no longer receive Medicare funds or requires "too much" care
11 facility will often look for a way to get rid of the resident and fill his or her bed with someone who
12 is a more lucrative client. One such method is hospital dumping. The nursing facility sends the
13 resident to a hospital for a medical or mental health condition. But when the hospital discharges
14 the resident, the facility refuses to take the resident back.

15 19. As detailed below, federal law protects against hospital dumping. For over 10 years
16 now, however, the State of California has been in violation of federal law. The result is that
17 residents are forcibly removed from their homes, their familiar surroundings, friends and caregivers
18 and warehoused in hospitals. This practice has a devastating impact on residents, including
19 Plaintiffs, and has cost California residents tens of millions of dollars.

20 20. Skilled nursing facilities receive on average \$190 per day for a Medi-Cal resident.
21 The cost of a hospital bed, however, is \$1,800 per day. Plaintiff Wilson won the right to be
22 readmitted 136 days ago. Warehousing him in the hospital has needlessly cost \$218,960 – which is
23 paid for by California citizens. He is but one of thousands of residents who have been dumped in
24 hospitals across the state. Many never even exercise their right to a federally mandated
25 readmission hearing because, as detailed below, the process is futile.

26 **B. The Statutory Framework**

27 21. The federal-state relationship concerning skilled nursing facilities is set forth in the
28 Medicaid Act, which was enacted in 1965 as Title XIX of the Social Security Act.

1 22. All 50 states participate in the Medicaid Act. To participate in the Medicaid Act, a
2 state must comply with the provisions therein and CMS regulations. *See, e.g., Katie A. ex rel.*
3 *Ludin v. Los Angeles County*, 481 F.3d 1150, 1153-54 (9th Cir. 2007) (“Medicaid is a cooperative
4 federal-state program that directs federal funding to states to assist them in providing medical
5 assistance to low-income individuals. . . . Once a state enters the program, the state must comply
6 with the Medicaid Act and its implementing regulations.”).

7 **C. The Nursing Home Reform Act**

8 23. The Nursing Home Reform Act amended the Medicaid Act, and was codified in the
9 Social Security Act, 42 U.S.C. §§ 1395i-3, 1396r (1999). Section 1395i-3 applies to any facility
10 that accepts Medicare reimbursement, while section 1396r applies to any facility that accepts
11 Medicaid reimbursement.

12 24. The Nursing Home Reform Act’s requirements regarding notice, hearings and
13 appeals for discharges, 42 U.S.C. §§ 1395i-3(c), 1396r(c), generally apply to all residents,
14 including residents who are ineligible for reimbursement under both Medicare and Medicaid.

15 25. The Nursing Home Reform Act requires the Secretary of the Department of Health
16 and Human Services to promulgate regulations setting standards for appeals and requires the states
17 to comply with these regulations. 42 U.S.C. §§ 1395i-3(e)(3), (f)(3), 1396r(e)(3), (f)(3) (1999).

18 26. The federal regulations governing appeals procedures for transfers and discharges
19 from skilled nursing facilities and nursing facilities are contained in 42 C.F.R. Part 431, Subpart E-
20 Fail Hearings for Applicants and Recipients, 42 C.F.R. §§ 431.200 to 431.250 (1999).

21 27. An involuntary transfer or discharge from a nursing home is allowed only for one of
22 six reasons: 1) the resident has failed to pay, 2) the facility is going out of business, 3) the resident
23 no longer needs nursing facility care, 4) the resident needs a higher level of care, 5) the resident's
24 presence endangers the health of others, or 6) the resident's presence endangers the safety of others.
25 A resident is entitled to an appeal hearing, and the notice of proposed transfer/discharge must
26 include information on appeal rights.

27 28. The Nursing Home Reform Act directs each state to establish a system for
28 adjudicating residents’ appeals of involuntary transfers and discharges in compliance with federal

1 standards. 42 U.S.C. §§ 1395i-3(e)(3), 1396r(e)(3). The Nursing Home Reform Act obligated the
2 agency now called CMS to set standards for these systems. 42 U.S.C. §§ 1395i-3(f)(3), 1396r(f)(3).

3 **D. The Applicable Federal Regulations Governing Readmission Hearings**

4 29. In response to Congress's mandate to establish rules for state hearing procedures,
5 CMS essentially adopted the federal Medicaid fair hearing regulations with some slight
6 modifications. 42 C.F.R. §§ 431.241(c), 483.204(b).

7 30. Under CMS regulations, the hearing process must be carried out by the state's
8 Medicaid agency or, if the hearing is held instead "at the local level," and the resident must have "a
9 right of appeal to a State agency hearing." 42 C.F.R. § 431.205(b). The hearing is conducted "[b]y
10 one or more impartial officials," and must be held "[a]t a reasonable time, date, and place." 42
11 C.F.R. § 431.240(a)(1), (3).

12 31. The federal regulations enacted by CMS further require state agencies to enforce the
13 federally-mandated hearing decisions:

14 The agency must promptly make corrective payments, retroactive to
15 the date an incorrect action was taken, and if appropriate, provide for
16 admission or readmission of an individual to a facility if - (a) The
17 hearing decision is favorable to the applicant or recipient; or
18 (b) The agency decides in the applicant's or recipient's favor before
19 the hearing.

20 42 C.F.R. § 431.246.

21 32. The reason Congress and CMS have required states to create an expedient and
22 enforceable readmission hearing process is that failing to readmit residents is extremely harmful to
23 their wellbeing. It also undermines the reimbursement scheme created under the Medicaid Act,
24 which requires nursing facilities to accept all residents, regardless of how they pay and regardless
25 how much care they need.

26 33. Federal and state law explicitly recognize the exceptional physical and mental toll
27 that changes in residence can have on nursing home residents. The Supreme Court has
28 acknowledged the great risk of transfer trauma, resulting in death or serious injury, whenever
nursing home residents are moved from their homes. *See O'Bannon v. Town Court*, 447 U.S. 773
(1980). To prevent unnecessary transfer trauma, federal policies require that nursing homes provide

1 careful preparation and orientation to all residents before discharging them. Department of Public
2 Health State Operations Manual, Tag F204, Interpretive Guidelines, § 483.12(a)(7).

3 34. California law also recognizes the severe harm that often accompanies residential
4 changes. *See* Cal. Health & Safety Code § 1336.2. The California Legislature has codified its
5 interest in protecting nursing facility residents from “transfer trauma” see Health & Safety Code §
6 1325, defined as: ‘death, depression, or regressive behavior, caused by the abrupt and involuntary
7 transfer of an elderly resident from one home to another, resulting in a loss of familiar physical
8 environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of
9 an abrupt break in the small routines of daily life, and the major loss of visits from friends and
10 relative who may be unable to reach the new facility.’ Cal. Health & Safety Code § 1771(t)(2).

11 35. A nursing home may not use a hospital visit as a pretext for evicting a resident. Any
12 time a resident is transferred, he or she must be given the opportunity to hold his or her bed. 42
13 C.F.R. § 483.12(b). If the resident exercises his or her bed hold and his or her need for acute care
14 hospitalization ends within seven days, the facility must readmit the resident.

15 **E. Defendant’s Failure to Adhere to Federal Law**

16 36. Defendant has refused to comply with federal law. As detailed below, it has created
17 a pointless appeal process that the State refuses to enforce, which does not provide for prompt
18 readmission after a successful hearing.

19 **1. Defendant Creates a Hearing Process with No Enforcement Mechanism**

20 37. As noted above, federal law provides that in addition to providing residents with a
21 readmission hearing, a state “must promptly ... provide for admission or readmission of an
22 individual to a facility if [t]he hearing decision is favorable to the applicant.”

23 38. In the hearing process established by California, readmission hearings are conducted
24 by DHCS. However, DHCS does not enforce its hearing decisions.

25 39. In 2008, CDPH issued a Memorandum (DOM 08-19) stating that it was not
26 obligated to enforce the decisions of hearing officers relating to appeals of evictions by nursing
27 home residents. A true and correct copy of said memorandum is attached as **Exhibit 2**.

28

1 40. Because DHCS does not enforce its own decisions and neither does CDPH, there is
2 no agency in California that enforces DHCS readmission orders. Thus, the State has not provided
3 residents with their right to an administrative procedure that provides for prompt readmission if
4 they are successful.

5 **2. Plaintiffs Have Been Denied Their Right to Readmission**

6 41. Plaintiffs Anderson, Wilson and Austin are among the many individuals who have
7 won their readmission hearings, yet been denied readmission because Defendants refuse to enforce
8 the decisions.

9 42. In failing to provide Plaintiffs Anderson, Wilson and Austin with a proper hearing
10 procedure, the State has violated federal law and deprived them of their right to due process and
11 their property right to a bed.

12 **F. Plaintiffs' Efforts to Persuade the State to Comply with the Law**

13 43. On July 31, 2015, Plaintiff CANHR sent a letter to DHCS asking DHCS to enforce
14 Mr. Anderson's successful appeal so that he could return home.

15 44. On August 6, 2015, DHCS responded, stating:
16 **administrative case. Please note that once the Office of Administrative Hearings and**
17 **Appeals issues its final order, it does not retain jurisdiction in the matter and has no**
authority to enforce its own orders.

18 45. On August 14, 2015, CANHR responded, by explaining the DHCS could enforce its
19 own decisions if it elected to do so, and asking "please let us know what steps are being taken, who
20 else is involved and how we can help."

21 46. DHCS responded on August 21, 2015, stating:

22 **Please note that once the Office of Administrative Hearings and**
23 **Appeals issues its final order, it does not retain jurisdiction in the matter and has no**
24 **authority to enforce its own orders.**

25 47. The letter from DHCS reiterated that DHCS was "looking at this issue" but did not
26 explain why it would not enforce its own decisions or explain what it was doing to "look into" it.
27 **does not assign responsibility to the Department to enforce these decisions. We are in**
28 **the midst of looking at this issue, and the Department will circle back with you as it**
considers the appropriate action to take.

1 48. On October 7, 2015, CANHR met with Secretary Dooley and requested her to make
2 the agencies over which she has oversight follow the law. Secretary Dooley represented that the
3 State was “doing something” to fix the problem, but would not say what it was other than that
4 DHCS and CDPH were meeting to discuss a solution. Secretary Dooley did not promise that the
5 State would end its illegal practice soon, or ever. She did not make any effort to legally justify the
6 State’s conduct or explain why California residents should bear the costs of nursing facilities’
7 refusals to readmit residents, notwithstanding the clear dictates of CMS and federal law.

8 49. On October 13, 2015, CANHR sent Secretary Dooley a letter explaining that “Our
9 clients live in everyday fear that their loved ones will die behind the cold gray walls of a hospital
10 instead of living at home. No person should be put in that position – especially when there are
11 State agencies and federal laws that expressly exist to protect them from this precise circumstance.
12 Our duty to our clients dictates that we protect them from further and unnecessary delays.”

13 50. The letter further explained that “fixing the problem is not difficult. For example,
14 failure to follow a DHCS readmission order is a breach of DHCS 9098, the Medi-Cal Provider
15 Agreement for Institutional Providers, punishable by temporary suspension from receiving Medi-
16 Cal funds, pursuant to paragraph 25c of that Agreement. If DCHS were to simply invoke its
17 contractual right to withhold funds until a nursing facility complied with a DHCS admission order,
18 the industry’s dumping practice would end, and our clients could go back home.”

19 51. The letter finally stated that given the ease of fixing the problem and the irreparable
20 injury to Plaintiffs, Plaintiffs would file suit absent immediate relief from the State. On November
21 4, 2015, the State wrote back listing various enforcement actions it could take, none of which
22 involved enforcing DHCS readmission hearing orders or would provide any relief to Plaintiffs or to
23 the other residents who are suffering from the State’s failure to follow the law. To date, the State
24 has not provided such relief and is in violation of federal law.

CAUSES OF ACTION

First Cause of Action – 42 U.S.C. § 1983

27 52. Plaintiffs repeat and reallege the allegations of the Paragraphs above as if fully set
28 forth herein.

EXHIBIT 1



DEPARTMENT OF HEALTH & HUMAN SERVICES

CENTERS FOR MEDICARE & MEDICAID SERVICES

Consortium For Quality Improvement and Survey & Certification Operations

Western Division of Survey & Certification

Refer to: WCDSC-PP

May 17, 2012

Debby Rogers, Deputy Director
Center for Health Care Quality
1615 Capitol Avenue, MS 0512
Sacramento, CA 95814

Dear Ms. Rogers,

Thank you for CDPH's inquiry dated October 7, 2011 requesting guidance and direction from our office regarding whether State Survey Agencies are responsible for enforcing Transfer/Discharge Appeal (TDA) and Refusal to Readmit (RTR) hearing decisions. I apologize for the extended period since your initial request.

The State plan is defined at 42 CFR 430.10 as "a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements for title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department." §431.10(a) describes the basis and purpose of the State agency as "This section implements section 1902(a)(5) of the Act, which provides for designation of a single State agency for the Medicaid program." 431.200, states the State plan is required to "provide an opportunity for a fair hearing to any person whose claim for assistance is denied or acted upon promptly," including an appeals process for any person who "is subject to a proposed transfer or discharge from a nursing facility." §431.202 mentions, "A State plan must provide that the requirements of §§431.205 through 432.246 of this subpart are met." These sections include the language found at §431.220(a)(3) that the State agency must grant an opportunity for a hearing to the following, "Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged." In addition, §483.246 includes, "The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if (a) The hearing decision is favorable to the applicant or recipient; or (b) The agency decides in the applicant's or recipient's favor before the hearing."

The CMS cannot advise CDPH or DHCS which department should enforce TDA/RTR decisions, as CMS statute is silent on which State entity is responsible. However, the CMS regulations are clear that the State Agency must promptly make corrective actions.

Denver Regional Office
1600 Broadway, Suite 700
Denver, CO 80202

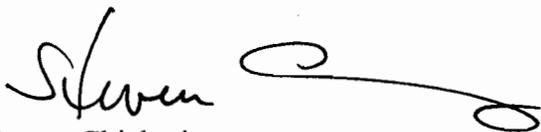
San Francisco Regional Office
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707

Seattle Regional Office
2201 Sixth Avenue, RX-48
Seattle, WA 98121

One statement in the letter mentions that CDPH staff will cite facilities at the “D” level for findings of inappropriate discharge and refusal to readmit. Although this level of deficiency may fit some situations, our office does not want the CDPH District Offices to feel this is the only severity and scope designation that can be used. We encourage CDPH Licensing and Certification personnel to review Appendix P, section IV-E, Psychosocial Outcome Severity Guide, including the portion subtitled, Application of the Reasonable Person Concept. Other severity and scope levels may apply, including a “G” level deficiency (severity level 3, actual harm that is not immediate jeopardy).

Thank you for your attention to this matter. If you have further questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven", followed by a long, horizontal, decorative flourish that ends in a small loop.

Steven Chickering
Associate Regional Administrator
Western Division of Survey and Certification

cc: SMA

EXHIBIT 2

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



MARK B HORTON, MD, MSPH
Director



ARNOLD SCHWARZENEGGER
Governor

October 23, 2008

DOM 08-19

TO: District Office Managers and Supervisors

SUBJECT: Transfer and Discharge Appeal (TDA) Decisions

This DOM addresses transfer and discharge appeal decisions and the release of these decisions to the public. The procedure for handling transfer and discharge appeals is discussed in the Licensing and Certification (L&C) Policy and Procedure Manual Section 618.01. The TDA hearings provide SNF/NF's residents a forum for opposing a proposed involuntary transfer/discharge out of the facility. The authority for the hearing is found in the Code of Federal Regulations, specifically Section 483.12 (a) (2) which states:

The facility must permit each resident to remain in the facility and not transfer or discharge the resident from the facility **unless**:

- (i) The transfer and discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (iii) The safety of individuals in the facility is endangered;
- (iv) The health of the individuals in the facility would otherwise be endangered;
- (v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, or Medicaid (Medi-Cal)) to stay at the facility;
- (vi) The facility ceases to operate.

In addition, facilities must permit a resident to return to the facility under certain conditions. Section 483.12 (b) (3) states:

- A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident –
- (i) requires the services provided by the facility;
 - (ii) is eligible for Medicaid (Medi-Cal) nursing facility services.

DOM 08-19
Page 2
October 23, 2008

The L&C Policy and Procedure Manual, Section 618.07 further states: "The decision whether the proposed transfer/ discharge is appropriate shall be rendered by the Administrative Appeals Hearing Officer (HO) after an informal hearing is conducted in the transferring facility." The hearing officer's decision will represent the Department's final decision. Neither the facility nor the recipient has any further administrative appeal rights under this process. This does not mean that the parties involved cannot pursue other remedies such as a writ to Superior Court.

The hearing is between the resident and the facility. Licensing and Certification is not a party involved in the proceedings or bound by the decision. Rather, the transfer and discharge process provides a hearing mechanism for these disputes between residents and facilities as required by 42 CFR 483.204 and Subpart E of Part 431.

Licensing & Certification does not issue citations based upon TDA decisions alone. Yet, L&C does investigate the same complaints that resulted in the resident's request for a TDA hearing. If during the complaint investigation process, L&C finds a violation of state or federal law that warrants the imposition of state or federal remedies, those remedies may be applied.

L&C is charged with enforcing a broader spectrum of State and Federal laws than just those that pertain to transfer and discharge and for that reason, L&C may not reach the same conclusion as the TDA hearing decision. For example, if a resident was not given proper notice of a discharge, the Transfer/Discharge Appeal (TDA) decision may conclude that the facility cannot discharge the resident. However, if the facility produces sufficient evidence that the resident's health status changed so that the facility can no longer provide adequate care for the resident, then L&C will not require the facility to re-admit the resident, because Health and Safety Code 1418.6 provides that a long-term health care facility shall not accept or retain a patient for whom it cannot provide adequate care.

TDA decisions are NOT subject to release to the public, even in redacted form, under State and Federal law, specifically Welfare & Institution Code § 14100.2 and 42 CFR Part 431. These are decisions in private disputes between individual patients and their health care providers, and the decisions contain highly personal, confidential medical information. **Please do not release any TDA appeal decision, even in redacted form.**

If you have any further questions, please contact your respective Branch Chief.

Sincerely,

Original Signed by Pamela Dickfoss for Kathleen Billingsley, R.N.

Kathleen Billingsley, R.N.
Deputy Director
Center for Health Care Quality

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bruce Anderson, John Wilson, Robert Austin, and California Advocates for Nursing Home Reform

(b) County of Residence of First Listed Plaintiff Sacramento (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew Borden; J. Noah Hagey; Eva Schueller
BraunHagey & Borden, LLP
220 Sansome St., 2nd Floor, San Francisco, CA 94104

DEFENDANTS

California Department of Health and Human Services, Diana Dooley, Secretary

County of Residence of First Listed Defendant N/A (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: This is an action for prospective injunctive relief seeking to stop California Secretary of Health and Human Services Diana Dooley from willfully violating the federal laws that protect vulnerable nursing home residents from being forcibly removed from their homes and dumped into hospitals.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/09/2015

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.