

Monitor's Report

Regarding Compliance by Pacifica Companies LLC
Following Purchase of Assets from California-Nevada
Methodist Homes

Prepared for the Office of the Attorney General
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Healthcare Rights and Access Section

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A. Introduction

1. The Legal Context

The failure of a continuing care retirement community (CCRC) can have grievous consequences for the individuals affected, as California law recognizes: “Because elderly residents often both expend a significant portion of their savings in order to purchase care in a continuing care retirement community and expect to receive care at their continuing care retirement community for the rest of their lives, tragic consequences can result if a continuing care provider becomes insolvent or unable to provide responsible care.” (HSC § 1770(b)) In addition to their financial investments, CCRC residents often make intensely personal investments in the creation of the CCRC community as reflected in its multitudinous relationships and its culture. While the transition from a CCRC organizational structure inevitably involves loss and distress, it is also true that it can be managed well or poorly. This report addresses the aftermath of one such transition.

In California, the transfer of charitable healthcare assets to the for-profit market occasions the involvement of the California Attorney General. Per California Corporations Code §§ 5917 & 5917.5, “the Attorney General shall consider any factors deemed relevant to the proposed transfer,” including whether the agreement or transaction may create a significant effect on the availability or accessibility of healthcare services to, or cultural interests of, the affected community. Furthermore, as per Corporations Code § 5919(d)(1), the Attorney General may appoint an expert consultant to monitor compliance with the terms and conditions of the asset transfer.

On March 16, 2021, California-Nevada Methodist Homes (CNMH) filed for bankruptcy. On December 17, 2021, CNMH entered into a Purchase and Sale Agreement with Pacifica Companies LLC (Pacifica) for its two CNMH continuing care retirement communities (CCRCs): Lake Park in Oakland and Forest Hill in Pacific Grove. Lake Park included 143 independent apartments, 37 assisted living apartments, and a 35-bed skilled nursing facility. Forest Hill included 91 independent apartments, 18 assisted living apartments, and a 26-bed skilled nursing facility.

Abbreviations

CCR: California Code of Regulations
 CCRC: continuing care retirement community
 CDSS: California Department of Social Services
 CNMH: California-Nevada Methodist Homes
 HSC: Health and Safety Code
 PGSL: Pacific Grove Senior Living
 RCFE: residential care facility for the elderly
 SNF: skilled nursing facility

Northstar refers to Northstar Senior Living

Pacifica refers to Pacifica Companies LLC

Aspen (Aspen Skilled Healthcare) refers to Lake Park Healthcare Center SNF

Buena Vista (Buena Vista Healthcare, LLC) refers to Forest Hill Manor SNF

Skilled nursing facilities are regulated by the California Department of Public Health and the federal Centers for Medicaid and Medicare Services. Residential care facilities for the elderly (RCFEs), including both the assisted living and independent living sections of these two properties, are regulated by the California Department of Social Services (CDSS).

At Lake Park, Pacifica engaged Aspen Skilled Healthcare (Aspen) to operate the skilled nursing facility and Northstar Senior Living (Northstar) to manage the RCFE. At Forest Hill, Pacifica engaged Buena Vista Healthcare, LLC, (Buena Vista) to operate the skilled nursing facility, now called Forest Hill Manor. A subsidiary of Pacifica itself manages the RCFE, now called Pacific Grove Senior Living (PGSL). Pacifica has shared services agreements with the two skilled nursing facilities for dietary, housekeeping, laundry, maintenance, and utilities.

Following public hearings, the Attorney General issued conditional approval for the \$300 million Purchase and Sale Agreement on September 27, 2022. The approval imposed 18 conditions, including continuance of facility operations for five years, various reporting requirements, quarterly consultations with a Community Advisory Board at each location, and assumption of the residents' pre-existing contracts with CNMH. The approval also included appointment of a Monitor to ensure the facilities' compliance with professional standards of care and several of the conditions.

The sale of CNMH assets to Pacifica was completed and closed on December 6, 2022.

The bulk of this report is devoted to a review of Pacifica's performance at the two facilities in light of the Attorney General's conditions, obligations set by the pre-existing contracts, and California law and regulation.

2. The Monitor's Engagement

The Monitor was appointed in early January 2024 with the following powers: investigate compliance; take complaints; inspect records; interview witnesses; contact and consult the State Ombudsmen regarding the subject facilities; conduct onsite inspections; hire staff, consultants, and experts; recommend the hiring of facility staff and consultants; and make recommendations concerning enforcement, oversight, and surveillance to the Attorney General, including making recommendations to address any breaches in the standard of care, including recommendations concerning the deployment of facility resources to addresses those breaches.

The Monitor's activities since beginning work on January 18, 2024, have included:

- Review of over 200 resident emails sent to the Office of the Attorney General in 2023.
- Review of over 100 resident emails sent to the Monitor in 2024.
- Review of applicable statutes, regulations, and the Attorney General's conditional approval.
- Visits to Lake Park on February 2, 5, 16, and 22, and March 1 and 4, including attendance at two Resident Council meetings.
- Zoom calls with Lake Park Family Council executive committee on February 6 and with full council on February 28.
- Visits to PGSL on February 7-9 and 26-27.

- Visit to Forest Hill Manor on February 8.
- Chart review of a sample of Forest Hill Manor residents.
- Calls with staff from the ombudsman programs, Empowered Aging and Alliance On Aging
- Review of inspection findings from the California Department of Social Services, the California Department of Public Health, and local fire agencies.

In the course of these activities, I was able to amass adequate information to state the findings below with confidence. In this six-week engagement, however, I was unable to examine all the issues in depth. I did not thoroughly examine the full array of non-CCRC contract types, nor all the financial provisions in various CCRC contracts, so I have withheld comment about particular financial disputes between residents and Pacifica. I did not spend enough time onsite at the facilities to directly observe staffing adequacy in each department. I did not directly observe meal preparation and service. Finally, I did not engage a plant infrastructure expert who could recommend a rational sequence of interventions at the facilities.

In performing this review, I was greatly assisted by the cooperation of the executive directors at Lake Park, PGSL, and Buena Vista. Their forthright transparency and willingness to track down documents were critical for an accurate and efficient assessment. Multiple managers and frontline staff were also generous with their knowledge and assistance.

3. The Human and Organizational Context

Communications from residents shortly after the transfer of operations from CNMH to Pacifica showed some evidence of good will toward Pacifica and hopefulness for the future. The “almost two years of difficult Chapter 11 time” were completed. There was acceptance of the dust and disruption that would come with renovations.

There is also some evidence of Pacifica's good intentions at the time of transition. Adam Bandel, Managing Director for Pacifica Senior Living, made a number of positive comments in January 2023, such as, “Pacifica is absolutely committed to improving resident satisfaction at Lake Park.” Attorneys for CNMH submitted reassurance to the bankruptcy court that “The assignment and assumption of the Assumed Residency Agreements will likely foster a positive relationship between the Buyer(s) and Residents.”

From a management perspective, the CCRC structure offers multiple attractive features. Boundaries between the three levels of care – independent living, assisted living, and skilled nursing – are porous, allowing for considerable movement of professional staff, unlicensed caregivers, and support staff. Other resources and services can be shifted across these boundaries. The budget is fungible. There is a single executive team. Dividing this management structure into two or three corporate entities involves obvious difficulties that can challenge even the best transition management plans.

Unfortunately, I could find no evidence of any formal or informal change management effort. To be fair to the new local executive directors, it appears that Pacifica corporate executives failed to instruct them to honor the existing CCRC contracts. In March 2023, in conversation with

Ombudsman staff members, the new PGSL executive director said he had no idea what was in the CCRC contracts and expressed surprise that he was supposed to honor them. The new Lake Park executive director repeatedly made similar comments and thus received a citation from CDSS for violating residents' right "to live in an environment that enhances personal dignity." The actions and communication styles – and lack of communication – garnered both executive directors widespread disapproval, and the residents' good will evaporated.

By March 2023, resident departures were underway at both facilities, often described with considerable poignancy. From Lake Park, at least 25 residents with CCRC contracts left in 2023, some at significant financial sacrifice. The nature of the resident populations had already been undergoing change prior to the sale to Pacifica. CNMH had been offering month-to-month contracts that unlike the CCRC contracts did not contain the critical phrase, "for the rest of your life." Following the sale, the number of month-to-month contracts has increased. One can now sign an independent living contract that forgoes the services for laundry, housekeeping, meals, activities, transportation, observation and consultation, care and supervision, and assistance with activities of daily living. In late February 2024, 37 of 76 PGSL residents were under non-CCRC Pacifica contracts. At Lake Park, over two-thirds of the contracts are still under some version of CCRC (life care, refundable, repayable).

B. Findings

1. Failure to Honor CCRC Contracts

Under the Purchase and Sale Agreement, Pacifica agreed to assume and honor all then-existing resident contracts. The Attorney General's conditional approval reiterated that commitment to "all contracts between Seller and one or more residents and one or more former residents at the Facilities, including, without limitation, all contracts for the occupancy of a unit at a Facility, all life care, all continuing care, and all monthly fee agreements."

Obligations may stem as well from the resident handbook and from a "continuing care promise." The Resident Handbooks have been variably integrated within the body of the contract or as a supplement to it. According to CCRC statutes, "Continuing care promise' means a promise, expressed or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year. Any such promise or representation, whether part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral, is a continuing care promise." (HSC § 1771(c)(9))

Pacifica and Northstar have failed to acknowledge and honor multiple pre-existing contracts.

On March 12, 2023, the Lake Park executive director issued an eviction letter to a long-term resident who had developed cognitive issues. As described in the CDSS citation, the executive director insisted that the resident "would need to be moved to another facility with a memory care unit, or have a 1:1 aide around the clock." The CDSS surveyor "reviewed the originating CCRC contract and observed that it stated that residents who develop memory care conditions

would be retained by the facility.” On February 1, 2024, CDSS substantiated the allegation that the facility illegally issued the eviction notice, resulting in a level B citation.

In March 2023, the PGSL executive director insisted that a long-term resident, who was temporarily in skilled nursing, would need to move to the dementia unit at Park Lane, a Pacifica facility in Monterey, or hire a one-on-one private caregiver if she were to return to her own room in the PGSL assisted living unit. The executive director was not aware of the resident's lifetime benefit of 30-days of routine skilled nursing care. He acknowledged this benefit only after receiving a letter from an attorney with the California Advocates for Nursing Home Reform. The resident's son, who was already concerned about the January 2023 decreases in PGSL assisted living staffing, moved her to a different assisted living facility, not a dementia unit, without hiring a private caregiver.

On January 27, 2023, the Lake Park executive director and nursing staff agreed that a resident should move to assisted living. He was moved to a small temporary room in the assisted living unit, but the executive director insisted that he sign a new contract in order to remain in the assisted living unit. On February 22, 2023, in the first of several communications, the resident's attorney pointed out that the resident already had a contract guaranteeing him "residence, care and services at Lake Park for the rest of your life." On March 2, 2023, the general counsel for Northstar repeated the demand for a new contract: "If your client does not sign an assisted living agreement, we encourage you to find another facility to meet your client's needs." On March 14, 2023, the Deputy Attorney General wrote a demand letter reminding Northstar of the obligation to honor preexisting contracts and describing the resident's improper placement. In April the resident was moved to an appropriate room.

On January 5, 2024, Carl Knepler, the Vice President of Operations for Pacifica Senior Living, wrote that "The contracts that were unnecessarily signed in AL/IL will be voided." As of February 20, 2024, the contracts still had not been voided.

At both Lake Park and PGSL, there were additional eviction notices as well as demands that residents and families hire private duty caregivers. The families, ombudsman staff, and the California Advocates for Nursing Home Reform were largely successful in resisting those efforts. All the CNMH CCRC contracts state that "Methodist Homes discourages the use of private duty personnel."

On February 27, 2024, at my prompting, the PGSL staff discovered that they did not have copies of the contracts for 12 of the 76 current CCRC residents.

2. Failure to Conduct Required Meetings with Residents

The CCRC statutes compel providers to meet semiannually with residents:

“The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and

financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services.” (HSC § 1771.8(c))

The Attorney General's conditional approval requires quarterly meetings:

Pacifica “and any other owner, operator, or lessee” of the two facilities “shall consult with a Community Advisory Board on a quarterly basis. The Community Advisory Board shall consist of 7-12 residents... chosen by the residents.... The Community Advisory Board will provide advice and feedback on a quarterly basis on the quality of care and quality of life being provided to the residents and patients.”

In April and June of 2023, the president of the Lake Park Resident Council wrote to Deepak Israni, Managing Partner for Pacifica, to remind him of Pacifica's obligation to hold quarterly meetings. The first meeting eventually occurred on June 27, 2023, with representatives from Pacifica, Northstar, and Aspen present. A second meeting occurred on December 21, 2023; the Aspen skilled nursing facility was not represented.

In Pacific Grove, the Forest Hill Residents Association began formally asking for a meeting in May 2023. The meeting eventually occurred on September 13, 2023. The Buena Vista skilled nursing facility was not represented. After multiple resident requests, the second meeting has been scheduled for March 20, 2024.

The responsibility to schedule and hold quarterly meetings lies with Pacifica, not the residents. The skilled nursing facilities must be represented.

3. Fee Increases and Transparency

Immediately following the CCRC meeting statute noted above in HSC § 1771.8(c), this section goes on to specify requirements for implementing fee increases:

(d) At least 30 days prior to the implementation of an increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings required in subdivision (c). At least 14 days prior to the meeting to discuss an increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the

provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) A provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than quarterly, with a written explanation of all significant budget variances, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) A provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community and in a conspicuous location on the provider's Internet Web site, a copy of the annual report, including the multifacility statement of activities and a copy of the annual audited financial statement, but excluding personal confidential information.

On May 1, 2023, Northstar sent letters to Lake Park independent living residents announcing fee increases beginning August 1, 2023. The president of the Lake Park Resident Council objected that the budgetary data provided was inadequate. The Lake Park executive director then provided additional data, held a meeting on August 1, 2023, and increased fees on September 1, 2023.

On February 17, 2023, Pacifica sent letters to PGSL assisted living residents announcing fee increases beginning May 1, 2023. On March 27, 2023, Pacifica sent letters to PGSL independent living residents announcing fee increases beginning June 1, 2023. No explanatory meetings were held, and no justification for the fee increases was given other than "increases in all costs."

The Lake Park budgetary information did not provide adequate detail with the written variance explanations needed to justify fee increases, and no information was provided at PGSL. Still due are the "multifacility statement of activities and a copy of the annual audited financial statement" as required by section (g).

Although not in the 2004 contract, the other CCRC contracts I examined all include the provision regarding fee credits: "As a continuing care resident, you shall pay a fee for assisted living or skilled nursing services at Forest Hill Manor/Lake Park (the "Resident Rate") that is less than the rate charged to non-continuing care residents." Neither Pacifica nor Northstar have acknowledged these or the other fee credit contractual provisions.

4. Supportive Health Services and Reappraisals

The more recent CNMH CCRC contracts that I examined, e.g., 2012-2017, include a provision for "supportive health services."

At Lake Park: "Supportive health services will be made available to you during scheduled hours in the Clinic located in the Assisted Living Section. These services include consultations with caregiving staff, blood pressure, dietary and weight monitoring, emergency response, and first aid. Methodist Homes reserves the right to charge for supportive health services and supplies."

At PGSL: "Supportive health services will be made available to you during scheduled hours in a designated area of the Community, under the supervision of the Assisted Living Director. These services include consultations with caregiving staff, blood pressure, dietary and weight monitoring, emergency response, and first aid. Methodist Homes reserves the right to charge for supportive health services and supplies."

Some residents have older CCRC contracts, e.g., 2002-2004, with a different version of this provision.

At Lake Park: "Supportive health services will be made available to you during scheduled hours in the Clinic located in the Assisted Living Section. These services include consultations with licensed nursing staff, blood pressure, dietary and weight monitoring, emergency response and first aid, and are included in your Monthly Fee."

At PGSL: "Supportive health services will be made available to you during scheduled hours in the Clinic located in the Assisted Living Section. These services include consultations with licensed nursing staff, blood pressure, dietary and weight monitoring, emergency response and first aid, and are included in your Monthly Fee."

Severe staff reductions in the assisted living units render these supportive health services impractical. On January 10, 2023, the PGSL executive director wrote to residents, "Beginning March 1st, we will no longer be providing ancillary care services for Independent Living residents from our Assisted Living staff." When I asked the current executive directors and assisted living managers whether the assisted living staff provided any services beyond emergency response, they said no, although several staff members themselves said yes, they would try to help a resident if asked.

The lack of supportive health services is a violation of all the CCRC contracts for residents now in independent living. The situation is yet more problematic for those residents with older contracts that call for the availability of licensed nursing staff. The only licensed nurses are in the Aspen and Buena Vista skilled nursing facilities. They have not been made available to the RCFE residents.

In addition to supportive health services, the CCRC contracts contain provisions for observation and assessment. "When you reside at [Lake Park/Forest Hill], Methodist Homes will regularly observe your health status to identify and help you respond to your dietary, social and health needs and needs for special services." The contracts refer to California's legal requirement for

periodic reassessments. For all RCFE residents, not only those with CCRC contracts, the applicable CCR Title 22 provisions (§ 87463) include the following:

- (a) The pre-admission appraisal shall be updated, in writing as frequently as necessary to note significant changes and to keep the appraisal accurate. The reappraisals shall document changes in the resident's physical, medical, mental, and social condition....
- (c) The licensee shall arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is significant change in the resident's condition, or once every 12 months, whichever occurs first....

These required resident reappraisals have not been performed at Lake Park or PGSL.

5. Security

The CNMH contracts at both Lake Park and PGSL include the provision, "For your security, Methodist Homes maintains a twenty-four (24)-hour emergency call system, a security entrance system and security personnel...." The 2014 Lake Park Resident Handbook elaborates: "A security guard patrols the building and grounds on a regular basis. ... Lake Park's security system includes secured entrance doors, camera monitoring of building entrances and parking areas, visitor identification, and 24-hour-a-day security guard service."

Pacifica eliminated all security personnel services after the sale. At Lake Park, the locking mechanism of the door from the garage into the building stopped working in September 2023, and the locking mechanism of the exterior door to the front entrance stopped working in December 2023. Pacifica also stopped paying for camera monitoring, leading to termination of those services in March 2024.

Based on a surveyor visit on March 20, 2023, CDSS issued a B citation substantiating the allegation for "Facility not providing security personnel per admission agreements." The surveyor documented reports that "there are times when no staff are near the entrance."

Based on a surveyor visit on February 9, 2024, CDSS issue a B citation substantiating the allegation for "Facility is in disrepair." The surveyor "observed that the security door at the front of the building and the security door into the building from the garage were propped."

In October 2023 through a portion of February 2024, the Oakland Police Department reported 15 crimes committed on the sidewalks and streets immediately encircling the Lake Park building, plus well over 1000 crimes within a several-block radius.¹ Several episodes of intruders within the Lake Park building have been well documented.

As of March 4, 2024, the Lake Park security doors had not been repaired in spite of the obvious dangers to residents.

¹ www.crimemapping.com

6. Staff Training

Most of the CCRC contracts include the following provision: "In accordance with California law, there is at least one staff member on duty and on the premises at all times who is trained in CPR (cardiopulmonary resuscitation) and first aid." The legal requirements include the following:

- Ensure that at least one staff member who has cardiopulmonary resuscitation (CPR) training and first aid training is on duty and on the premises at all times. (HSC § 1569.618(c)(3))
- Staff providing care shall receive appropriate training in first aid from persons qualified by such agencies as the American Red Cross. (CCR Title 22 § 87411(c)(1))

At both Lake Park and PGSL, about half of the caregiving staff are said to be up-to-date with their CPR training, and at PGSL they have first-aid training as well. Management could not say, however, whether one of the caregivers with up-to-date training is always on the premises.

California statutes and regulations governing RCFEs include a host of additional staff training requirements (e.g., HSC § 1569.69 and CCR Title 22 § 87411). Neither facility was able to show me documentation of these other required trainings for direct-care staff, either the initial 40 hours or on-going annual 20 hours. (HSC §§ 1569.625(b)(1-2)) At Lake Park, Pacifica cancelled the training vendor contract and has not made another vendor available.

7. Life Safety Preparedness

The 2014 Lake Park Resident Handbook states: "In the event of a real emergency, we must be assured that our warning system operates and that our staff have been adequately trained to deal with the situation. Thus, at regular intervals we conduct tests of the warning system and drills for the staff and occasionally residents."

In June 2023, the Lake Park Resident Advisory Council described the pre-sale life safety preparedness as follows:

"Previously the Disaster Preparedness Team consisted of an administrator, a safety officer, security personnel and a group of designated trained staff and trained residents. The Disaster Preparedness Team leader established the Command Post at the reception desk or at another safe place. The lead team member might be the Executive Director, another member of the administration, or the security guard. There were always an official staff member **and** the security guard on duty, unlike now when we do not know what staff member is available to respond, especially at night and on weekends.

"Resident floor monitors were trained and had walkie talkies. They checked all apartments on their floor and reported their findings to the Command Post. They could also quickly request help if needed. The Command Post personnel remained in contact with the floor monitors and with the designated trained staff. Certain staff members with walkie talkies and the appropriate keys checked all rooms in other parts of the building, especially in the many activity rooms in the basement."

RCFE statutes require that facilities have an emergency and disaster plan and that they perform regular disaster drills.

“A facility shall conduct a drill at least quarterly for each shift. The type of emergency covered in a drill shall vary from quarter to quarter, taking into account different emergency scenarios. An actual evacuation of residents is not required during a drill. While a facility may provide an opportunity for residents to participate in a drill, it shall not require any resident participation. Documentation of the drills shall include the date, the type of emergency covered by the drill, and the names of staff participating in the drill.” (HSC § 1569.695(c))

Both Lake Park and PGSL have readily available disaster plan binders at the front desk. Both facilities received annual fire inspections in 2023. The largest fire-related concern raised for PGSL was the lack of emergency lighting and egress illumination, an issue that remains unresolved.

Neither facility has been performing the required emergency and disaster drills. On February 5, 2024, the CDSS surveyor issued a B citation to Lake Park for failing to conduct these required emergency drills.

Keeping a disaster manual at the front desk will not be helpful if staff and residents have not performed practice drills. In California, we have learned the hard way that failure to prepare for disasters can lead to devastating results. “Training is a key component to successfully managing a disaster event and all facility staff, outside suppliers, volunteers, and residents and their families should have their training needs assessed and appropriate training provided.”²

8. Failure to Keep Facilities Clean, Safe, Sanitary, and in Good Repair

Among the resident rights included in CCRC contracts and set forth in California statute (HSC § 1771.7(c)) are the following:

“To live in an attractive, safe, and well maintained physical environment.”

“To live in an environment that enhances personal dignity....”

The California Code of Regulations (CCR) Title 22 requires that RCFEs “shall be clean, safe, sanitary and in good repair at all times. Maintenance shall include provision of maintenance services and procedures for the safety and well-being of residents, employees and visitors.” (CCR Title 22 § 87303(a)) This section further requires:

“A comfortable temperature for residents shall be maintained at all areas.”

“Faucets used by residents for personal care such as shaving and grooming shall deliver hot water.”

² Hirst SP. Long-Term Care Facilities: Challenges and Technology. Disaster Preparedness for Seniors: A Comprehensive Guide for Healthcare Professionals. 2014:119-34.

The CNMH Lake Park facility opened in 1965. The Pacific Grove building opened as a hotel in 1926 and was acquired by CNMH in 1954. At the time of the sale from CNMH to Pacifica, there was widespread recognition that both facilities were in need of infrastructure repairs. A January 2023 letter from the Lake Park Resident Council acknowledged “antiquated elevators, HVAC, plumbing leaks and roof leaks,” and inquired about the timeline for repairs. In April 2023, the PGSL executive director wrote, “There are plans to replace the Boiler for the South Wing. Corporate is aware of the Boiler problem and will make the decision when the Boiler is to be replaced.”

Pacifica launched a major renovations project in 2023, but it was limited to public spaces painting and replacement of the flooring in both facilities, along with new furniture and fixings. The renovations caused dissatisfaction in both facilities, to be discussed below. As of March 2024, none of the large outstanding infrastructure repairs were done. In January 2024, a summary of issues compiled by the Forest Hill Residents Association expressed concern that “basic plumbing, electrical, and HVAC needs go unaddressed while superficial décor is changed in ways that defy common sense.”

Throughout 2023 and into 2024, numerous email messages from residents at both facilities to management, to the Office of the Attorney General, and to the Monitor testify to days with no hot water, no heat in winter, and dysfunctional elevators. Complaints about no hot water have been most common in the PGSL South Wing, as suggested by the boiler comment above. The maintenance directors for both facilities showed me antiquated electrical, plumbing, and heating systems. I observed puddles of water in both basements during my tours in February 2024.

At PGSL, a CDSS inspection on May 31, 2023, revealed leaking pipes in the underground resident parking garage, creating a puddle “approximately 20 feet by 10 feet in size, and over an inch deep at its deepest point.” This finding led to delivery of a level B citation for “facility in disrepair” on December 21, 2023. In the first week of January 2024, the heating system failed in a separate PGSL structure called the “cottages.” The residents there were given space heaters and offered the option of moving from their home apartments into temporary quarters. I was told that the heating system repair should be completed sometime in March. Until then, in spite of their shortcomings, the space heaters will have to suffice.

The infrastructure issues at Lake Park are illustrated by the following CDSS surveyor report of a visit on December 12, 2023:

“Staff 1(S1) stated that there was a known heating issue within the building and the administrative team has been working to correct it. The parts to fix the boiler had been ordered on 11/07/2023, and were rejected by the ownership group. They were then told that because there was an outstanding balance on the corporate account that the H-Vac technician would not service any of their facilities until that was resolved. The facility decided to contact a different company who scheduled the repairs for December 14, 2023. S1 also stated this heating issue is not affecting the whole building and heaters available for anyone whose room is affected.”

For a full week at Lake Park in mid-February 2024, there was a plumbing problem that caused intermittent spillage of toilet water through the ceiling tiles of the newly redecorated lobby. Residents were repeatedly asked not to take showers or flush toilets for periods lasting from a few hours up to a full day. Residents as far away as the 12th floor were told to come down to the first floor or basement to use the toilet, and when there the toilet paper sometimes ran out. During that same period, the Lake Park garbage was not picked up, leading to a week of overflowing bins in the basement and overflowing receptacles on each of the residential floors.



The garbage accumulation occurred because of Pacifica's failure to pay invoices. At Lake Park, Northstar must submit all invoices to the Pacifica corporate office, which issues checks. This was the first occurrence of an unpaid garbage bill, but other unpaid invoices date back to early 2023. I spoke with three vendors with outstanding invoices, all in small amounts from the perspective of a multi-million-dollar corporation but quite problematic for these small local businesses. One of the plumbers I interviewed had been hired to evaluate Lake Park's aged sewer laterals. He did \$40,000 worth of work before being dismissed without payment.



As noted above, in early 2023 residents expressed some understanding of the need for renovations and expressed tolerance for disruption. They did not anticipate having to live through such a long period of inattention to basic needs. None of the boilers have been replaced. Garbage and toilet problems do not “enhance personal dignity.”

9. Lack of Safe, Comfortable, and Homelike Environment

California statutes establish broad, substantive expectations for RCFE physical environments.

“The Legislature also intends that each residential care facility for the elderly provide a safe, comfortable, and homelike environment for its residents and that it protect residents from physical or mental abuse, neglect, exploitation, or endangerment.” (HSC § 1569.261(d))

The law further states that residents are “to be accorded safe, healthful, and comfortable accommodations, furnishings, and equipment.” (HSC § 1569.269(a)(5))

In addition, research has been accumulating for several decades regarding design principles that should be used to create environments that accommodate for the common age-related conditions of older adults.³

The public spaces renovations done in 2023 at both facilities failed to incorporate age-friendly design principles. The single most consequential decision was to replace carpets with hard tiles. The tile floors appear slick and slippery, and in fact they are. Residents' fall risk is exacerbated when the tiles are wet, which commonly occurs at the entrances of both facilities during rains.

Water on the tiles is difficult to distinguish from the ever-present glare from these new floors. The impact of glare on older adults should not be underestimated. Half of the age 75+ population suffers from cataracts, but the exacerbation of glare effects can begin decades before a cataract diagnosis. Cataracts and other visual impairments should have been taken into account prior to renovation. "In lighting design... lighting level (illuminance) is far less important than lighting glare (luminance). As a result, when lighting is increased in seniors housing in hopes of making the environment clearer for the elders, often the result is lower visual performance (less visibility)."⁴ Glare is a well-established environmental risk factor for falls, which are the leading cause of fatal and nonfatal injuries among older adults.⁵



The tile floors contribute to yet another major source of resident complaint, which is the diminished capacity for conversation in the lobbies and dining rooms. Residential care designers should be well aware that echoes interfere with speech comprehension. "At age 90, reverberant spaces and background noise have a large impact...."⁶ Pacifica has not responded to resident requests for noise abatement strategies.



³ Verderber S, Koyabashi U, Cruz CD, Sadat A, Anderson DC. Residential Environments for Older Persons: A Comprehensive Literature Review (2005–2022). HERD: Health Environments Research & Design Journal. 2023 Apr 19;19:19375867231152611.

⁴ Orfield SJ. Aging Research, Design Education, and the Perceptual Limits in Seniors Housing Design: Development of a Research-Based Design Model for Better Aging Environments. Seniors Housing & Care Journal. 2013 Jan 1;21(1).

⁵ www.cdc.gov/falls/data

⁶ Orfield, op cit.

Compared with the life safety issues discussed above, the capacity for conversation at meals may seem like a nice-to-have rather than an essential. There is abundant evidence to the contrary. The noise levels, in addition to poor food quality, have led many of the residents at both facilities to abandon congregate dining. The lack of shared meals and the reductions in shared activities contribute to social isolation, which is a known health risk. The National Academies of Sciences, Engineering, and Medicine has concluded that

“Social isolation has been associated with a significantly increased risk of premature mortality from all causes, and

“Social isolation has been associated with an approximately 50 percent increased risk of developing dementia.”⁷

The 2023 renovations also ignored Americans with Disabilities Act (ADA) requirements for safety features such as handrails and grab bars. At Lake Park, the last handrails were installed in late February 2024. Prompted by a resident concern about grab bars, on July 16, 2023, Deepak Israni responded, “Yes grab bars will be installed.” The Lake Park grab bars were still on back order as of March 2024.

10. Dietitian Availability and Food Quality

All of the CCRC contracts promise “nutritionally balanced meals.” The 2014 Lake Park Resident Handbook further states, “A registered dietitian is available to consult with residents on an individual basis about their dietary preferences.” There has been no dietitian available to residents at Lake Park or PGSL.

RCFE regulations state that a dietitian or similarly qualified professional should be available to the food services manager:

In facilities licensed for fifty (50) or more, and providing three (3) meals per day, a full-time employee qualified by formal training or experience shall be responsible for the operation of the food service. If this person is not a nutritionist, a dietitian, or a home economist, provision shall be made for regular consultation from a person so qualified. The consultation services shall be provided at appropriate times, during at least one meal. A written record of the frequency, nature and duration of the consultant's visits shall be secured from the consultant and kept on file in the facility. (CCR Title 22 § 87555(b)(17))

There have been no such consultant visits under Pacifica management.

An in-depth evaluation of food quality is beyond the scope of this initial monitoring report. That said, the sheer volume of often bitter complaints testifies to the deterioration of food quality since the sale of the two facilities to Pacifica.

There is some variation of issues between the two facilities, and the professional-quality surveys done at PGSL reflect occasional intervals of improvement. “Every now and then a meal will

⁷ National Academies of Sciences, Engineering, and Medicine. 2020. Social Isolation and Loneliness in Older Adults: Opportunities for the Health Care System. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25663>.

surprise us.” The global rating of dining quality found in both of the first two PGSL surveys, however, was low: a score of 2 out of possible 5.

The short list of issues includes quality of ingredients, menu choices, nutritional value, taste, temperature, freshness, amounts, overcooked vegetables, use of leftovers, lack of fresh fruit, lack of vegetarian options, and lack of culturally appropriate options. Under CNMH, menus listed the nutritional value of items, and a dietitian was available for consultation. After the sale, some residents with heart conditions felt that the meals were an immediate health threat in spite of alleged low-salt options. For some, this has been a major factor in the decision to leave. The turnover of chefs – or the lack of turnover when needed – has been problematic.

CCRC statutes require that a CCRC provider:

“meet in a location that has been designated in the notice of the meeting with the resident association or a resident-elected committee of residents at each of its facilities semiannually and at least 60 days prior to any financial or administrative changes, including, but not limited to, any proposed increase in monthly fees, indebtedness of the provider, expansion or contraction of the community facility, or other changes that would result in a budget variance, or any policies, programs, or services that would materially change the operation or environment of the community, to address concerns of the residents....” (HSC § 1771.8(s)(2)(A))

Based on a CCRC surveyor visit to Lake Park on April 6-7, 2023, CDSS substantiated a complaint of “insufficient food service” and issued a B citation for lack of advance notice and a meeting prior to eliminating the salad bar and buffet dining.

As noted above, the Pacifica facilities have shared services agreements with the onsite skilled nursing facilities for dietary and several other services. The California Department of Public Health conducted a recertification survey at Forest Hill Manor in January 2024. The survey included a review of the PGSL food service and an inspection of the PGSL kitchen. In this report excerpt, “Residents 7 and 4” were in the skilled nursing facility, not PGSL, but their meals were prepared by the PGSL kitchen:

“Based on observation, interview, and record review, the facility failed to accommodate food preferences, and food allergies for two out of seven sampled residents (Resident 7, and 4), when:

1. For Resident 7, milk was not provided in her lunch tray, and;
2. For Resident 4, she was allergic to egg whites and had eggs in her breakfast tray.

“This failure had the potential for decreased meal intake, adverse effects from food allergies, and negative effect on health and well-being for sampled residents.”

The CDPH report includes detailed observations supporting the rationale for this deficiency. The report also includes a deficiency for failure “to ensure food was stored, prepared, distributed, and served in accordance with professional standards for food safety,” based in part on observations of the PGSL kitchen.

11. Staff Reductions and Turnover

Staffing adequacy is challenging to evaluate in a short-term monitoring assignment. The statutory requirement for RCFEs is for “care, supervision, and services that meet [residents’] individual needs and are delivered by staff that are sufficient in numbers, qualifications, and competency to meet their needs.” (HSC § 1569.269(a)(6)) The question is not whether staffing reductions occurred following the transfer from CNMH to Pacifica but whether staffing has been adequate following the reductions. Furthermore, unexpected absences that constrain the delivery of services and generate complaints are a commonplace in organizations. While I acknowledge these uncertainties, I also note that there is reason for concern.

Housekeeping, Dining, and Transportation

A large volume of messages from residents at both Lake Park and PGSL offers testimony that staffing has been inadequate in housekeeping and dining. The October 2023 housekeeping survey conducted at PGSL gathered 60 comments, largely negative. The survey summary concludes that “most residents felt that the housekeepers were courteous and professional, but nearly everyone was dissatisfied or very dissatisfied with the service. The problem wasn’t the housekeepers but the amount of time they were able to devote to each apartment.” Communications from administration have occasionally acknowledged cancellations in housekeeping services and transportation because of staff absences. If multiple departments are too thinly staffed, making adjustments for such absences can be impossible.

Activities

The topic of activities and activity staff rivals that of food in the volume and intensity of post-sale complaints at both Lake Park and PGSL. Among the resident rights delineated in California’s CCRC statutes is the right “to participate in activities that meet individual physical, intellectual, social, and spiritual needs.” (HSC § 1771.7(a)(3)) The “Fact Sheet” included in some of the Lake Park CCRC contracts includes 39 activity options. Following the sale to Pacifica, multiple activities instructors were terminated. Others quit after months of being unpaid; their emails make for poignant reading. The long-serving and beloved chaplain at PGSL was terminated in February 2024.

Given the critical importance of exercise for the health and wellbeing of older adults, residents have been particularly upset by cuts in fitness classes. Whereas under CNMH there had been multiple fitness/exercise options per weekday, there are now many days with no options at all. The aerobic fitness instructors were terminated. At PGSL, all the Tuesday and Thursday exercise classes were cancelled in February 2024; for independent living residents, the remaining Monday, Wednesday, and Friday options were balance class and seated exercise class, along with Tai Chi on Wednesday and Friday. There were no aerobic offerings.

Caregiving Staff

The staff reductions have led to situations in both facilities in which residents returned to their apartments following a stay in the hospital or emergency department and had no one assist them or even check on them.

Staff reductions on the assisted living units have been significant. In some cases, these led to the management demand that residents and families hire private duty caregivers, as noted above. Residents and families have complained about omissions in daily care, failure to assist with walking, medication errors, and late and/or cold meals. On February 20, 2024, the PGSL assisted living manager announced an additional reduction: "This will start March 1. There will be two staff members in the morning two staff members for the p.m. shift and one person for NOC shift. This is a corporate decision."

In addition to assisting residents with medications and activities of daily living as needed (dressing, bathing, hygiene, mobility), the staff members on assisted living units are charged with responding to emergencies throughout the entire facility excepting skilled nursing. Having only one caregiver available for the night shift can have serious consequences, given that residents on the assisted living unit may have pressing needs while the caregiver is responding to an emergency elsewhere. It can also be impossible for one caregiver alone to lift a fallen resident, and falls are common in assisted living.

12. CDSS citations

Among the Attorney General's conditions is the condition that every six months, Pacifica must report any CDSS citations received.

Lake Park truthfully reported receiving no citations in calendar year 2023. In February 2024, however, CDSS delivered eight level B citations to Lake Park, most of which were due to violations occurring in 2023. These are discussed in context in the above sections.

Pacifica also reported that PGSL received no CDSS citations in calendar year 2023. Specifically, on February 7, 2024, an attorney for Pacifica reported that PGSL received no CDSS citations "from 6/1/23 through 12/31/2023." This assertion was false. On December 21, 2024, the CDSS visited PGSL to deliver a B citation for "Facility in disrepair," as described above. A copy of the citation was emailed to the facility that day and posted on the CDSS website thereafter.

C. Discussion

In the introduction I acknowledged that an organizational transition of this magnitude and complexity can pose multiple challenges. Residents were bound to be disappointed by the loss of key staff members and the loss of seamless CCRC services. Such disappointment could have been mitigated by effective communication and leadership. For whatever reasons, Pacifica and Northstar did not provide effective communication and leadership. Bungled transitions are not uncommon among organizations, but the findings above add up to a remarkable total of missteps and violations.

I found no evidence for statements such as that of Adam Bandel, "Pacifica is absolutely committed to improving resident satisfaction at Lake Park." Pacifica has not honored contracts; followed requirements for meetings and financial information; provided supportive services required by contract; secured the facilities from crime; performed required staff trainings; ensured disaster preparedness of staff and residents; kept facilities clean, safe, sanitary, and in good repair; provided a safe, comfortable, and homelike environment; or met requirements for food services. The garbage pileup and plumbing failures at Lake Park were breathtaking to observe. Pacifica's failure to pay invoices beggars belief and has placed the local Northstar staff in an intolerable position.

In lieu of the former CCRC seamlessness, the facilities are making do with arms-length contracts. Northstar has a management contract with Pacifica, and the facilities have shared services agreements with Aspen and Buena Vista. An architectural adage has it that "buildings leak at the intersection of contracts." As important as the contractual provisions are the real-life relationships among organizations and specifically among the teams that must rely on each other across organizational boundaries. In particular, the organizations should not allow residents and families to suffer in the organizational divides. As one frustrated person put it, "Aspen says to talk to NorthStar and NorthStar says to talk to Aspen!" One family member received a large skilled nursing invoice that was found to be inappropriate following a query from the Monitor. In purchasing the CNMH properties, Pacifica agreed to a set of legally binding conditions that are also binding upon "lessees, licensees, assignees, managers, operators or providers" of the properties. The potential for improvement, however, resides within Pacifica.

In spite of its commitment at the time of purchase, Pacifica has exhibited disregard for the Purchase and Sale Agreement provisions, the Attorney General's conditions, and the governing laws and regulations. Considerable relationship repair is now needed between contracted parties and between the organizations and the people they serve. I can posit optimistically that Pacifica owners will discover a newfound respect for the rule of law. Even so, relationship repair will require earnest and sustained efforts.

Both of the current executive directors at Lake Park and PGSL will welcome the ability to make positive changes. The PGSL executive director is new to this role and still needs to develop her own team with competent subordinates. She will also need corporate support.

D. Recommendations

The Attorney General should now require Pacifica to submit a comprehensive plan of correction addressing each of the 12 findings enumerated above. The plan of correction should include the following commitments:

1. Pacifica explicitly recommits to abiding by the Purchase and Sale Agreement provisions, the Attorney General's conditions, and the governing laws and regulations.

2. Pacifica and its "lessees, licensees, assignees, managers, operators or providers" will review and honor the provisions of the pre-existing contracts of current and former residents, and void any new contracts that were inappropriately signed.
3. Pacifica will pay without additional or unusual delay all past, current, and future invoices.
4. Pacifica will adjust the management and shared services agreements as necessary to facilitate compliance with the pre-existing contractual provisions.

Provisions 1 through 4 are predicated on Pacifica's express obligations under the Attorney General's conditional approval of the Purchase and Sale Agreement. The conditions additionally empower the Monitor to address breaches in the standards of care. Because the various infrastructure issues documented above impede the facilities' ability to meet the standards of care regarding the safety and well-being of residents, the plan of correction should also include the following commitment:

5. Pacifica will engage an independent infrastructure renovation consultant to make an initial assessment of infrastructure needs and recommend a reasonable, cost-effective sequence of interventions. Pacifica will make this report available to the Attorney General, who will have the option to refer it to CDSS.

Once the plan of correction is implemented and Pacifica can provide written proof of compliance, the Monitor shall issue a report to the Attorney General and conclude his engagement.

Respectfully Submitted March 4, 2024

Terry E. Hill, MD



Terry E. Hill, MD, FACP
Consultant

Qualifications of Terry E. Hill

- Author of multiple quantitative and qualitative papers on organizational performance and improvement in long-term care and other settings
- Former medical director of multiple community and public sector skilled nursing facilities, adult day health programs, a continuing care retirement facility, and a hospitalist organization
- History of executive leadership, e.g., in Hill Physicians Medical Group, California Prison Healthcare Receivership, and Lumetra, California's Medicare Quality Improvement Organization
- Member of court-appointed compliance monitor team in State of California vs. Mariner Health Care Inc.
- Current engagement in large-scale performance measurement projects by California Department of Health Care Access and Information (former member of the Healthcare Payments Data Program Review Committee and current member of the Data Release Committee) and by Cal Healthcare Compare (member of Board of Directors)
- History of engagement with other performance measurement projects, e.g., Integrated Healthcare Association, California Association of Physician Groups, RAND Center of Excellence on Health System Performance
- History of engagement with nursing workforce issues, e.g., member of the Healthy Aging and Care for Older Adults Subcommittee, California Future Health Workforce Commission, and board president of HealthImpact (formerly California Institute for Nursing and Health Care)
- Associate Clinical Professor - Volunteer, University of California, San Francisco
- Board-certified in internal medicine and geriatrics