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FILED
ALAMEDA COUNTY

JAN 27 2016

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CALIFORNIA ADVOCATES FOR NURSING
HOME REFORM (CANHR); GLORIA A.; and
ANTHONY CHICOTEL, AS TAXPAYER,

Petitioners,

v.

RONALD CHAPMAN, M.D., as Director of the
California Department of Public Health,

Respondent.

Case No. RG13700100

JUDGMENT

Pursuant to the Court's Order Granting Petition for Writ of Mandate in Part, and Denying in Part,
filed June 24, 2015, it is hereby ORDERED, ADJUDGED and DECREED that:

1. The Petition is granted in part as to Petitioners' first, seventh and eighth causes of action ,
and that Petitioners are accordingly entitled to a Peremptory Writ of Mandate commanding Respondent:

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I.

(A) That the use of Health and Safety Code section 1418.8 is prohibited to the extent that said section does not require that the resident be adequately notified in writing:

(1) When a determination has been made by the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility, pursuant to Health and Safety Code section 1418.8, subdivisions (a) and (b), that a medical intervention requiring informed consent has been prescribed or ordered, and that the physician and surgeon have determined that the resident lacks capacity to provide informed consent to the proposed medical intervention, in that the resident is unable to understand the nature and consequences of the proposed medical intervention, including its risks and benefits, or is unable to express a preference regarding the intervention;

(2) When a determination has been made by the attending physician and surgeon, pursuant to Health and Safety Code section 1418.8, subdivision (c), that there is no person with legal authority to make decisions regarding medical interventions on behalf of the resident because the physician and surgeon have not identified a person designated under a valid Durable Power of Attorney for Health Care, a guardian, a conservator or next of kin, who is willing and can serve as a healthcare decisionmaker for the resident, nor any other person designated by law to serve as a health care decisionmaker for the resident;

(3) That a medical intervention has been prescribed or ordered by the attending physician and surgeon that requires informed consent, and that as a result of the determinations above, an interdisciplinary team comprised of the resident's attending physician, a registered professional nurse with responsibility for the resident, and other appropriate staff based on the resident's needs, as well as a patient representative, where practicable, will review the physician's determinations and prescribed medical intervention(s) to determine if the prescribed medical intervention(s) requiring informed

1 consent may be initiated, except in emergency situations as provided in section 1418.8, subdivision (h);
2 and additionally, that any further prescribed interventions will continue to be overseen using this team
3 approach unless or until a person with legal authority to make decisions concerning the resident's health
4 care is identified, or the physician, interdisciplinary team or a court determine that the resident has, or
5 has regained capacity to make decisions concerning a prescribed medical intervention;

6 (4) That the resident may challenge, in a judicial proceeding, any of the above determinations or
7 the decision to provide a medical intervention.
8

9 II.

10 (A) That the use of Health and Safety Code section 1418.8 is prohibited for the administration of
11 antipsychotic drugs to residents unless authorized pursuant to the procedures set forth in Probate Code
12 section 3200 et seq., except in emergency situations as emergencies are defined under California law;

13 (1) Provided, however, that for those residents already receiving an antipsychotic drug pursuant
14 to the process set out in section 1418.8, subdivision (e), the facility is prohibited from continuing to
15 implement the prescription or order for such drug, after 180 days following issuance of this writ, absent:

16 (a) notification in writing of the right to contest the above determinations and decision set forth in I.
17 above; and (b) implementation by the Department of procedural safeguards consisting of either a judicial
18 finding of incompetency as in *In re Qawi* (2004) 32 Cal.4th 1 or *Keyhea v. Rushen* (1987) 178
19 Cal.App.3d 526, or an independent review process with notice and opportunity to be heard as in
20 *Washington v. Harper* (1990) 494 U.S. 210.
21

22 III.

23 (A) That the use of Health and Safety Code section 1418.8 is prohibited to make end of life
24 decisions regarding the withholding or withdrawal of life-sustaining treatment for residents, except to
25 the extent consistent with the resident's individual health care instructions, if any, and other wishes, to

1 the extent known;

2 (1) Provided, however, that a physician or facility may decline to comply with an individual
3 health care instruction or health care decision that requires medically ineffective health care or health
4 care contrary to generally accepted health care standards applicable to the physician or facility pursuant
5 to Probate Code sections 4735 and 4736; and

6 (2) Provided that for those residents for whom a decision regarding the withholding or
7 withdrawal of life-sustaining treatment has already been made pursuant to section 1418.8, subdivision
8 (e), the facility is prohibited from continuing to maintain or implement the decision after 90 days
9 following issuance of this writ, unless consistent with Paragraph III(A); and that

10 (3) Section 1418.8, subdivision (e), may be used to provide or initiate hospice or comfort care to
11 a resident, unless inconsistent with the resident's individual health care instructions, if any, and other
12 wishes, to the extent known, or if such care would not be in the resident's best interest.
13

14
15 2. The Petition is denied as to Petitioners' second, third, fourth, fifth and sixth causes of action,
16 and except as otherwise granted as to the first, seventh and eighth causes of action.
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18 3. This Judgment and issuance of the Writ are stayed for 61 days from the date this Judgment is
19 entered.
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21 **IT IS SO ORDERED.**

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24 DATED: 1-27-2016

25 
Evelio M. Gillo
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG13700100

Case Name: California Advocates for Nursing home Reform vs. Ronald Chapman, M.D.

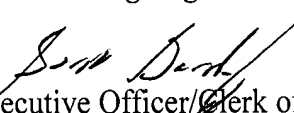
1) Judgment

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing Judgment was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

January 29, 2016


Executive Officer/Clerk of the Superior Court
By M. Scott Sanchez, Deputy Clerk

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