



Keiro Pacifica Community Advisory Board
1968 S. Coast Hwy, #3578
Laguna Beach, CA 92651

January 17, 2021

Gene Kanamori
President and Chief Executive Officer
Keiro Services
420 East Third Street, Suite 1000
Los Angeles, CA 90013

RE: A change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action

Dear Mr. Kanamori,

The safety of residents in multiple former Keiro facilities is being impacted by the current COVID-19 pandemic. This letter documents the presence of these risks as "a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action" in late 2015 and early 2016.

An extension on the Conditions on Sales is necessary to appropriately manage immediate risks to the residents, patients, staff, administration, facilities, and community posed by the COVID-19 and novel Coronavirus pandemic.

Pursuant to 11 CCR § 999.5(h)(1), and as a physician with current medical licensure in the states of California (CA#056162) and Hawaii (MD-15565), this letter notifies Keiro that the SARS-COV-2 coronavirus and related variants has infected patients and staff in multiple former Keiro facilities. The Los Angeles County Department of Public Health continues to investigate these circumstances. This epidemic will not be concluded in the next ten business days.

The original conditions of sales expire on or about February 4, 2021. However, it is not possible to conclude these active investigations before expiration of the conditions. Furthermore, it is my professional, medical opinion that these circumstances can not be avoided by the Community Advisory Board, the involved corporate entities, and/or multiple government agencies.

Since February 2020, Kei-Ai Los Angeles, Kei-Ai South Bay, Sakura Gardens Assisted Living Facility, and Sakura Intermediate Care Facility have been instituting non-pharmacologic infectious disease countermeasures. These steps pre-date when city, county, and state authorities mandated action.

On March 4, 2020, multiple levels of government simultaneously reacted to the approaching epidemic in Southern California. Mayor Eric Garcetti signed a "Declaration of Local Emergency" noting "conditions of disaster or extreme peril to the safety of persons and property...as a result of the introduction of the novel Coronavirus (COVID-19)". County Supervisor Kathryn Barger, Los Angeles County Board of Supervisors, issued a "Proclamation of existence of a local emergency by the chair of the Los Angeles County Board of Supervisors and request for state proclamation" as "a result of the introduction of novel coronavirus (COVID-19)". Also, an "Executive order of the chair of the County of Los Angeles Board of Supervisors following proclamation of existence of a local health emergency regarding novel Coronavirus (COVID-19)" was simultaneously issued by Barger, including "a temporary moratorium on evictions" and directives to provide a "health equity lens to inform the delivery of services and outreach". These directives had a direct operational impact on the facilities that remain unquantified before our Community Advisory Board. Such a process would take additional time that does not exist between now and the expiration of the five years of conditions.

Also on March 4, 2020, Gavin Newsom, Governor, State of California, proclaimed a state of emergency which included issuance of fourteen orders, including many orders directly impacting operations at the Community Advisory Board, the Operators, the Office of the Attorney General, Keiro Services, and the communities serviced by the facilities. These impacts are currently unquantified for the Community Advisory Board. Again, such a process would take additional time that does not exist between now and the expiration of the five years of conditions.

On April 24, 2020 (revised May 4, 2020), Eric Garcetti, Mayor of Los Angeles issued a "Public Order Under City of Los Angeles Emergency Authority" which "required COVID-19 testing at skilled nursing facilities". These emergency orders probably slowed contagion by identifying cases that would have gone undiagnosed. This process likely saved many lives early in the pandemic. These orders and the associated mobilization of city services and agencies may have helped to identify contagion inside of the former Keiro skilled nursing facilities. This may have saved lives early in the epidemic. City police, fire, emergency services, and medical staff at the facilities are to be commended for their multi-department coordination.

On August 8, 2020, an order called "Reopening safer at work and in the community for control of COVID-19 access to diagnostic testing through healthcare facilities" was issued by Muntu Davis, MD, MPH, Los Angeles County Department of Public Health. This order required "timely access to Diagnostic Testing" in a "high risk setting".

Despite on-going non-pharmacologic interventions locally and in the facilities, the epidemic continued to escalate across the United States and globally. Recent medical and scientific publications from the United Kingdom suggest that the UK National Health Services saw expansion of Coronavirus cases across several regions of the UK throughout the third and

fourth quarter of 2020. Variants of the SARS-COV-2 were identified through genetic epidemiology. It is possible that similar variants may be present and are developing in the Southern California region due to the large number of infected people.

On December 3, 2020, a "Regional Stay at Home Order" was issued by Erica Pan, MD, Acting State Public Health Officer of the State of California. This order restricted travel in the State of California. On December 6, 2020, a "supplemental order" further restricted travel in the state.

On December 31, 2020, a "Public Order Under City of Los Angeles Emergency Authority" with a "Revised Targeted Safer at Home Order" was signed by Eric Garcetti, Mayor of Los Angeles. The order notes that "on December 5, 2020, our region's hospital intensive care unit (ICU) capacity fell below 15%" and that "our city is now close to a devastating tipping point, beyond which the number of hospitalized patients would start to overwhelm our hospital system, in turn risking needless suffering and death."

On December 29, 2020, a "Revised Temporary Targeted Safer at Home Health Officer Order for Control of COVID-19: Tier 1 Substantial Surge Updated Response" was issued by Muntu Davis, MD, MPH, to reinforce the need for county residents to remain in their residences and to limit close contact with others.

Despite the presence of these multiple orders and declarations, by the date of my authoring this letter (January 17, 2021), the Department of Public Health in the County of Los Angeles has recorded over 1,000,000 infected individuals in the epidemic. Today alone, the County of Los Angeles has 11,366 people with new cases; 7,498 people hospitalized; and 108 deaths reported. Tragically, nearly 14,000 people have lost their lives in circumstances related to COVID-19 in the County of Los Angeles alone.

It is entirely plausible that the reported number of cases significantly underestimates the true number of cases in the community. Asymptomatic, mildly infected people, and other undiagnosed individuals may not have presented to medical offices for testing and diagnosis. In one anecdotal case, I was recently informed of an Orange County community where parents have been refusing to take their sick family members, including children to medical care. A parent describes a community that is actively suppressing the number of confirmed cases. This lack of community response probably prolongs the contagion and epidemic because K-12 schools and businesses that should be closed based upon public health metrics remain open. This also exposes elder care facilities in those same cities to heightened risk of transmission of the disease. Jurisdictional variances exist while the virus does not respect such boundaries.

The widespread community transmission of the Coronavirus seen in 2020 has had a profound impact on the health system. Emergency services, community-based health and medical services, and the healthcare workforce are rate-limited by supply chain issues in medical diagnostics, personal protective gear, and vaccine distribution. These cause workforce shortages and dangerous conditions to healthcare workers involved in direct patient care.

Within the past weeks, there have been delays in off-loading patients from ambulances at emergency rooms. Broadcast and print media report some facilities having lengthy lines of EMS paramedic personnel being unable to off load patients. On difficult evenings, delays of thirty minutes to one hour were being identified in specific centers across the region. ICU capacity has been at 0% capacity for weeks.

These circumstances create added pressure for acute care hospitals to transfer stabilized patients into Skilled Nursing Facilities. This includes the 300-bed, Kei-Ai Los Angeles skilled nursing facility in Lincoln Heights and the 98-bed, Kei-Ai South Bay skilled nursing facility in Gardena. As ER use continues and hospital admissions grow, the pressure to transfer patients to all Skilled Nursing Facilities across the County of Los Angeles remains.

Over the past three weeks, I have received anecdotal, personal reports from colleagues at multiple Southern California hospitals and medical institutions. Multiple hospitals had periods where there were no empty hospital beds, including no room in intensive care units. In these circumstances, patients needed to stay on Emergency Room gurneys overnight. Medical staff, physicians, and nurses at those times had to physically move evaluations to the lobby areas where patients were sick and in desperate need for immediate medical attention to save their lives. In these unforeseen circumstances, other nurses and doctors began triaging patients on sidewalks, under tents, and in the patient's own parked car.

In response, some county jurisdictions began moving mobile hospital units to impacted hospitals. These circumstances are due to the absence of in-patient medical/surgical hospital beds to assist in acute care and are due to the filling of Skilled Nursing Facility beds with convalescing short-term admissions. COVID-19's transmission rates aside, the chronic and long-term effects of COVID-related disease will undoubtedly create additional burden on local and state Medicare and Medicaid budgets. Itemization of these complex relationships can not be achieved in the next two weeks and would likely take months to administratively define.

Even when the beds are available, the high demand on the physical infrastructure in hospitals is creating operational issues at multiple medical centers region wide. In several cases, there were so many patients requiring oxygen that the US Army Corps of Engineers was needed to emergently analyze and re-engineer the oxygen delivery for patient care towers.

In order to verify these statements, I drove past several facilities on Thursday, January 14, 2021. The site of the Sakura Gardens ALF and Sakura ICF had its gates closed to entry with resupply trucks on the driveway and in the middle of Boyle Avenue. White Memorial Hospital had a line of 20 cars on two perimeter roads. Drivers and occupants were attempting to access free COVID-testing in a parking lot near the ER. Tents were visible in their adjacent walkways to assist in operations. The LA County Coroner's office had multiple refrigerated truck units holding the remains of hundreds of LA's citizens because the regular facilities have no space for the dead. In Orange County, mobile hospital units have been deployed across the county to add 25-bed or 50-bed units at five hospitals. Sadly, multiple mortuaries had refrigerator trucks

holding the remains of the dead because the morticians are working at capacity to appropriately handle human remains.

If county hospitals and private health systems are having such challenges in the same city and zones where skilled nursing facilities exist, there should be no doubt about the critical emergency at hand. Furthermore, a proposed reduction in bed capacity, even at the SNF or ICF level, at this time is patently absurd, irresponsible, and unethical. Such a proposal should be removed from consideration at this time.

Under these circumstances, it is clear that these tragic circumstances were unforeseen by the Office of Attorney General. Therefore, this letter certifies this situation in compliance with CCR 11§999.5(h)(1). I encourage Keiro, Pacifica, related companies, and the Office of Attorney General to act with appropriate urgency in these emergency conditions.

Sincerely,

A handwritten signature in green ink, reading "Kenneth H. Hayashida, Jr.", written in a cursive style.

Kenneth H. Hayashida, Jr., MD
California Medical License #A056162
Chairman, Community Advisory Board

Attachments

§ 999.5. Attorney General Review of Proposals to Transfer Health Facilities Under Corporations ...

11 CA ADC § 999.5

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations Currentness

Title 11. Law

Division 1. Attorney General

Chapter 15. Attorney General Regulations Regarding Administrative Enforcement of the Supervision of Trustees and Fundraisers for Charitable Purposes Act

11 CCR § 999.5

§ 999.5. Attorney General Review of Proposals to Transfer Health Facilities Under Corporations Code Sections 5914 et seq. and 5920 et seq.

(h) Amendment of Consent Terms and Conditions

(1) Either the selling or acquiring corporation or entity, or their successors in interest, may request Attorney General approval of any amendment of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under Corporations Code section 5915 or 5921. The sole basis for such a request shall be a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action.

(2) A request for an amendment shall include a description of each proposed amendment, a description of the change in circumstance requiring each such amendment, a description of how each such amendment is consistent with the Attorney General's consent or conditional consent to the transaction, and a description of the efforts of the entity making the request to avoid the need for amendment.

(3) The Attorney General shall issue a decision on the proposed amendments within 90 days of the submission of all of the information set forth in section 999.5(h)(2) of these regulations. The Attorney General shall provide public notice of the proposed amendments. A public meeting shall be held before the decision is made either at the discretion of the Attorney General or upon the request of any person within 7 days of the public notice.

(4) In approving proposed amendments to conditions relating to the operation of a health facility or facility that provides similar health care such as required levels of charity care and continuation of essential services, the Attorney General shall consider the effect of the proposed amendments on the availability or accessibility of health care services to the affected community. The Attorney General shall approve proposed amendments of the use of sales proceeds only if the proposed amendments are necessary to carry out charitable trust purposes, or in the case of a proposed change in charitable purpose only if that change complies with the principles of the cy pres doctrine.

(5) The provisions of section 999.5(g)(2), (3), (4) and (5) shall apply to Attorney General review of proposed amendments of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under Corporations Code section 5915 and 5921.

(6) Unless otherwise provided in the decision consenting to an agreement or transaction, the approval of the Attorney General shall not be required for modifications to the agreement or transaction that are not material to the Attorney General's consent. The provisions of section 999.5(h) shall not limit the authority of the Attorney General to interpret the terms and conditions of any consent decision.