

GARDEN STATE CLE LESSON PLAN

A 2.5 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

NURSING HOME LITIGATION

WITH

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Program Description

Sometimes, the most helpless and vulnerable of our relatives, friends and neighbors suffer horribly as a result of negligence by nursing homes and assisted living facilities. This CLE course will provide you with in-depth information about how the law works to protect the victims of this type of institutional misconduct.

I. INTRODUCTION

- Citation: Nursing Home Responsibilities and Rights of Residents, N.J.S.A. 30:13-1 et seq. and N.J.A.C. state regulations follow the statute
- Omnibus Budget Reform Act (“OBRA”), 42 CFR 483, almost complete consistency between the federal and state schemes

II. THE CAUSE OF ACTION

- Grounded in statute and in negligence
- Fees and costs can be shifted via statute
- State court cases in every instance per this counsel’s choice
- What is a nursing home? Is it an assisted living facility (ALF)? It depends: does it quack like a duck?
- CCRC: Continuing Care Retirement Facility
- Example: death in nursing home. Was the party a proper candidate for a nursing home, and not the ALF where she was placed? Was she evaluated as a high fall risk?

III. OMBUDSMAN EXISTS TO HELP THE ELDERLY IN MANY WAYS

IV. IT'S ABOUT DIGNITY

- There are aggravating factors in these cases that juror across the country reward with substantial verdicts
- They don't want their loved ones to die in agony; their verdict is a societal decision
- Document your case with video
- Nursing homes are multimillion dollar operations, even the "dumpy" looking ones
- They are all licensed by the State: ALFs and Nursing Homes
- Patients range from a high age of 106 and youngest of very young with catastrophic injuries and living in a nursing home

V. NEGLIGENCE, RECKLESSNESS AND INDIFFERENCE

- Corporate greed and trickle down instructions often result in injuries, and some witnesses actually come in and tell the truth about what corporate told the local home to do as for staffing, etc.

VI. HANDLING OF THE SUIT

- Preserve evidence
- File suit
- Conduct the depositions after you talk to the client about who took care of them, the lower the better for starters. Look for the “former” (former employees who are out of the business altogether, not ones at other nursing homes who may fear a mark on their employment file)
- Litigation control group members no longer employed are NOT fair game. Defense will try to characterize as many people as possible as LCG members to whom the Plaintiff may not speak.

- Corporate designee depositions are critical.
Example: What was your policy about taking photos? of wounds?
FRCP 30(b)(6) and Rule 4:14-4
- Consider SKYPE or video depositions, phone depositions, etc.

VII. TYPES OF CASES

- Supervision
- Staffing
- Negligence
- Gross negligence
- Recklessness
- Plans of correction (POC)
- Public records requests

VIII. ELOPEMENT CASES

- Notice of patient leaving the nursing home
- Falldown for smoker on the way to a door customarily left open for staff smokers
- Wandering, wander guard electronic device
- TV and other electronic monitoring: safety trumps independence

IX. HOT BUTTON JURY ISSUES

- Lying example. False charting: discovery of falsification when comparing black and white with color copies of a medical chart altered by the Defendant Nursing Home