



# **LONG TERM CARE & HEALTH CARE**

**360°**



## ABOUT OUR PRACTICE

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**Morris Polich & Purdy LLP** is one of the nation's leading law firms specializing in the representation of both long term care facilities and health care facilities of all sizes. We have the extensive and necessary expertise to successfully represent and protect our clients in litigation, mediation, arbitration, trial and appeal.

We represent a wide range of providers including:

- Skilled nursing facilities
- Retirement hotels
- Assisted living facilities
- Board and care facilities
- Adult day care facilities
- Home health providers
- Hospice care providers
- Residential care facilities for the elderly
- Specialty hospitals
- Management companies for the providers
- Consulting companies for the providers

Our successes include the representation of our clients in over 650 civil actions, involving:

- Elder abuse
- Wrongful death
- Medical malpractice
- Negligence
- Wrongful termination
- Fraud
- Unfair business practices
- Violation of patient's rights
- Assault and battery
- Class action for violation of statutory rights
- Infliction of emotional distress
- Discrimination
- Citation appeals
- Restraining Orders

- Administrative law hearings for license revocation and exclusion

We counsel clients in matters concerning:

- Licensing and regulatory issues
- Investigations
- Privacy issues under HIPAA and state laws
- Fraud and abuse
- Risk management
- Ethics

We are intimately familiar with the complex web of state and federal regulations governing long term care and health care facilities, including Title 22, OBRA and HIPAA, the importance of compliance with these regulations, as well as the regulations' impact on civil lawsuits.

Our attorneys have expertise in the daily operational issues facing long term care and health care facilities, as well as the disease etiology of the elderly that assists them in the early identification and analysis of the unique claims in long term care law.

Our attorneys keep abreast of changes in long term care and health care law, as well as the ways in which the courts are ruling on long term care and health care cases, which enables them to implement the most effective strategies on behalf of their clients.



## A CROSS SECTION OF OUR EXPERIENCE

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- *Garrison v. Superior Court* - We represented the facility at both the trial and appellate court levels, and persuaded a California Court of Appeal to uphold the trial court's ruling that a "health care decision" includes whether to sign an optional, revocable arbitration agreement offered as part of an admissions process.

In *Garrison*, the California Court of Appeal held that the signing of an optional and revocable arbitration agreement, offered as part of an admissions package by a skilled nursing facility, was a binding "health care decision" under California's Health Care Decisions Law.

The unanimous, published opinion meant that an adult child, acting under a durable power of attorney for health care given to him/her by an elderly parent, could enter into a binding arbitration agreement on behalf of his/her parent when admitting the parent to a skilled nursing facility. Durable powers of attorney for health care are specifically authorized under California's Health Care Decisions Law. However, no case prior to *Garrison* had interpreted the meaning of a "health care decision" under the statute.

- *Hogan v. Superior Court* - After the trial court denied our motion to compel binding arbitration, we appealed this ruling, and, in a published opinion, the Court of Appeal reversed the trial court's ruling and ordered the trial court to revisit the issue. Upon reconsideration, the trial court granted our client's motion to compel binding arbitration.

- We represented two long term care companies who operate a total of more than 50 skilled nursing facilities in a class action brought by class representative Erin Brockovich for alleged multiple violations of the Medicare Secondary Payor Act. Brockovich filed more than 30 lawsuits in Federal Court against some of the country's largest hospitals and nursing home chains. We obtained a dismissal for our clients on the grounds that Brockovich was not injured as a result of the alleged actions and had no standing to serve as a plaintiff.

The dismissal was upheld on appeal by the 9th District.

- *Smith v. LTCM* - The Department of Fair Employment and Housing sued our client, a nursing home, for disability discrimination, alleging that the administrator was terminated for requesting an extended leave for a serious medical issue. Plaintiff sought damages in the mid-six figures as well as reinstatement. On the eve of trial, the matter resolved for the cost of defense paid pursuant to an extended payment schedule.
- *Huezo v. Country Oaks* - We represented a skilled nursing facility which plaintiff sued for wrongful discharge as a result of her termination following seven years of employment with our client. We were able to settle the case for \$4,000 shortly after the filing of the lawsuit.

## A CROSS SECTION OF OUR EXPERIENCE (CONTINUED)

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- When one of our clients sold its facility and assisted its residents in finding new facilities, we represented the owner and its agents against claims for breach of contract, violation of local rent control ordinances, as well as various torts.
- We aggressively challenge the pleadings at every stage, and have successfully convinced courts, at both the state and federal level, to dismiss claims for elder abuse and punitive damages from plaintiffs' complaints on the grounds that plaintiffs had not pled sufficient facts. In some instances, we have even been successful in getting plaintiffs' counsel to voluntarily drop the cause of action for elder abuse and reduce the case to a simple medical malpractice claim.
- We have coordinated, filed for, and obtained temporary and permanent restraining orders to protect employees and residents of facilities against abusive and harassing visitors and family members. We have also assisted facilities in the involuntary eviction of residents who were a danger to other residents and staff, or who no longer needed the level of care afforded by the facility.

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#### **A PARTIAL LIST OF OUR CLIENTS:**

- Accredited Home Health
- Allied World Assurance Company
- American Empire Group
- Beta Healthcare Group
- CAP-MPT
- Covenant Care
- Emeritus Senior Living
- Genesis Healthcare
- Hamlin & Burton Liability Management
- Hanover Insurance Group
- Health Quality Management Group, Inc.
- IronHealth Insurance
- James River Insurance Company
- Kinsdale Insurance
- LivHOME
- Longwood Management, Inc.
- Motion Picture & Television Fund
- New Vista Health Services
- PCH Treatment Center
- ProAssurance Mid-Continent Underwriters
- Rockport Healthcare
- S n F Healthcare
- Sedgwick Claims Management Services
- Sunrise Assisted Living/Sunrise Senior Living

#### **SEMINARS WE PROVIDE:**

We regularly provide accredited presentations and seminars on industry hot-topics such as:

- Risk management before the lawsuit occurs
- The nuts and bolts of elder abuse litigation
- Involuntary transfers
- Eviction
- Limiting exposure through proper facility documentation
- Financial abuse
- Navigating the liability risks raised by MDS 3.0
- Restraining orders

#### **WE ARE ASSOCIATE MEMBERS OF:**

- LeadingAge California
- California Association of Health Facilities
- California Assisted Living Association
- California Association for Adult Day Services
- Assisted Living Federation of America
- American Health Lawyers Association



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