



National Association of Women Judges

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Protecting Our Elders: Problems and Solutions – Defense Perspective

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# United Nations

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June 15<sup>th</sup> World Elder Abuse Awareness Day

- U.N. Resolution 66/127

“It represents the one day in the year when the whole world voices its opposition to the abuse and suffering inflicted to some of our older generations.”

# Sample “Elder Abuse” Acts

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- Arizona – Adult Protective Services ACT  
A.R.S. 46-455 and 456
- California – Elder Abuse and Dependent Adult Civil  
Protective Act  
W&I Code 15657
- Connecticut – Protective Services for the Elderly  
C.G.S. 17a-412 and 17b-450
- Florida – Nursing Home Act – Fla.Stat.Chapter 400 and, Adult  
Protective Services Act-Fla.Stat. Chapter 415
- Illinois – Nursing Home Care Act  
210 I.L.C.S. 45/I

# Sample “Elder Abuse” Acts

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- Nevada – Elder Abuse, Neglect, Exploitation & Isolation Laws  
N.R.S. 41.1395
- New Jersey – Nursing Home Responsibilities and Rights of Residents Act  
N.J.S.A. 30:13-1 to 30:13-17
- No. Carolina – Protection of the Abused, Neglected or Exploited Disabled Adult Act  
G.S. 108A – Article 6
- Oregon – Elderly Persons with Disabilities Abuse Prevention Act  
O.R.S. 124.005-124.040
- Washington – Vulnerable Adult Act  
R.C.W. 74.34

# Long Term Care Litigation Issues

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- A. Clinical Issues
- B. Documentation Issues
- C. Policy & Procedure Issues
- D. Regulatory Issues
- E. Corporate Malfeasance Issues

# Regulatory Issues

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- Annual Survey
  - Substantial Compliance
  - Scope and Severity
    - A thru D not substandard care
    - G or higher is substandard care
  - Pattern Issues
  - Regulatory Violations may Support **Negligence Per Se**
  - California Health & Safety Code §1430(b)

# Corporate Malfeasance Issues


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- Staffing levels
- Production Per Patient
- “Profits over Patient Care/Safety”
  - Reptile Lawyer Theme



# Long Term Care Industry Solutions

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- 1) Improved – Communication with patients and families at intake and throughout admission
  - 2) Improved – Communications with staff and physicians with electronic medical records
  - 3) Improved – Training
  - 4) Improved – Medication, equipment and treatment options
  - 5) Improved – Staffing levels/staffing retention
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# Defense Counsel Responsibilities:

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- 1) Distinguish – Medical Negligence from Elder Abuse
- 2) Distinguish – Regulatory Related issues from care related issues
- 3) Distinguish – Documentation issues from care related issues
- 4) Distinguish – Revenue and cost related issues from care related issues
- 5) Distinguish – Natural progression of aging/disease process from injury