Right or Wrong – Help Your Attorney-Clients Create the Best Defense for Nurses
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RIGHT OR WRONG – HELP YOUR ATTORNEY-CLIENTS CREATE THE BEST DEFENSE FOR NURSES

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RIGHT OR WRONG – HELP YOUR ATTORNEY-CLIENTS CREATE THE BEST DEFENSE FOR NURSES

I. INTRODUCTION

A. Nurse Practice Act

B. Nursing Standards of Practice

C. Civil Action

D. Criminal Action

II. COMMON CAUSES OF ACTION IN NURSING LIABILITY CASES

A. Malpractice

1. A wrongful act by a physician, nurse or other healthcare provider in the administration or, the omission of medical treatment, to a patient. The four key elements include:
   a. Duty: the nurse has a duty of care toward others.
   c. Causation: the injury was caused as a direct result of the nurse’s breach of duty.
   d. Damage: an injury occurred.

2. Allen v. Care Meridian et al. (Exhibit A)

B. Unprofessional Conduct

1. A registered nurse in California can be disciplined when he or she engages in unprofessional conduct that could adversely impact the nurse’s ability to safely function as a nurse.
   a. Incompetence or gross negligence.
   b. Using drugs illegally or in a way that threatens the public.
   c. Being convicted of certain crimes.
   d. Engaging in fraud.
   e. Being disciplined by a nursing board in another state.
   f. Being careless with blood-borne disease.
C. Negligence and Professional Negligence

1. Noriega v. Fillmore Convalescent Center. (Exhibit B)

D. Involuntary Manslaughter

1. The two types of involuntary manslaughter statutes are criminally negligent manslaughter and unlawful act manslaughter.
   a. Criminally negligent manslaughter is an omission to act or a failure to perform a duty. The existence of the duty is essential. The law does not recognize that an ordinary person has a duty to aid or rescue another in distress so a death resulting from an ordinary person’s failure to act is not manslaughter. However, an omission by someone who has a duty, such as a lifeguard failing to attempt to save a drowning person, might constitute involuntary manslaughter.
   b. Unlawful act manslaughter occurs when someone causes a death while committing or attempting to commit an unlawful act, usually a misdemeanor. Some states distinguish between the conduct.
      (1) Malum in se (bad in itself) and conduct that is
      (2) Malum prohibitum (bad because it is prohibited by law).

2. People of California v. Medlin; People of California v. Monterroso. (Exhibit A)

III. COMMON PLAINTIFF ALLEGATIONS FOR NURSING LIABILITY CASES

A. Failure to Assess and Monitor a Patient

B. Failure to Provide Medication

C. Failure to Provide Treatment and Care

D. Failure to Maintain Patient Advocacy

E. Failure to Timely Report Change of Condition

F. Patient Abuse and Neglect (Exhibit C)
IV. COMMON DEFENSES FOR NURSING LIABILITY CASES

A. The Physician Was Informed of Patient’s Condition

B. Care Provided Was Consistent with Standard of Care
   1. Community v. professional standards.

C. Care Was Within Scope of Nursing Practice

D. Right to Self-Determination

E. Death Was Related to the Patient’s Pre-Existing Conditions and Comorbidities

V. THE ROLE OF THE CERTIFIED LEGAL NURSE CONSULTANT®
   IN NURSING LIABILITY CASES

A. Educate the Attorney on Nursing Scope of Practice

B. Provide a Standard of Care Analysis

C. Conduct Research
   1. The specific care provided.
   2. Past public disciplinary actions.
   3. Employment history.
      a. Performance evaluations.
      b. Competencies.
      c. Honors and recognitions.
      d. Disciplinary actions.

D. Prepare a Chronological Timeline of Care Provided

E. Provide a Comparative Analysis of Care Issues to the Allegations in the Operative Complaint
F. Identify and Locate Expert Witnesses

G. Deposition Preparation
   1. Plaintiffs.
   2. Defendant nurse.
   3. Treating physicians and practitioners (as applicable).
   4. Plaintiff experts.
   5. Defense experts.

H. Review and Analyze Medical Bills

I. Evaluate Plaintiff Responses to Interrogatories and Requests for Production

J. Assist Defendant Nurse with Responses to Interrogatories and Requests for Production

K. Review and Analyze Plaintiff Settlement Demand Letter or Correspondence

L. Trial
   2. Testifying expert.

VI. INTERROGATORIES AND REQUESTS FOR PRODUCTION (CIVIL ACTIONS ONLY)

A. Interrogatories Directed to the Defendant Nurse
   1. Please identify by name (and last known address and telephone number) each and every employer from (Date) _________ to (Date) __________.
2. Please list the dates of employment by each employer identified in the response to the interrogatory 1. from (Date) __________ to (Date) __________.

3. Please list each date and time (Defendant nurse) __________ rendered care, medication and treatment to (Plaintiff) __________ at (Defendant facility) __________ from (Date) __________ to (Date) __________.

4. Please list each date (Defendant nurse) __________ has rendered care, medication and treatment to patients with similar medical conditions as (Plaintiff) __________ from (Date) __________ to (Date) __________.

5. Please identify any and all documents generated in the course of any training or in-services attended at (Facility) __________ related to medication administration from (Date) __________ to (Date) __________.

6. Please identify any and all documents generated in the course of any continuing education programs at (Facility) __________ attended by (Defendant nurse) __________ related to the administration of any treatments from (Date) __________ to (Date) __________.

7. Please identify any and all documents received by (Defendant nurse) __________ during any continuing education programs related to the administration of treatments at (Facility) __________ from (Date) __________ to (Date) __________.

8. Please identify any and all documents generated in the course of any training or in-services attended by (Defendant nurse) __________ at (Facility) __________ related to the nursing standard of care for the (type of care rendered) __________ from (Date) __________ to (Date) __________.

9. Please list any and all documents pertaining to nursing licenses and certifications for (Defendant nurse) __________ held and/or obtained from (Date) __________ to (Date) __________.

10. Please describe any training pertaining to:
    a. Nursing assessment and documentation.
    b. Change of condition.
    c. Physician notification.

    received by (Defendant nurse) __________ in the course of employment with (Defendant facility) from (Date) __________ to (Date) __________.
11. Please describe any protocol, policy, procedure or best practice guideline in effect at (Defendant facility) __________ from (Date) __________ to (Date) __________ pertaining to:
   a. Nursing assessment.
   b. Change of condition.
   c. Physician notification.

12. Please identify any documents which establish any protocol, policy, procedure or best practice guideline described in the response to interrogatory 11.

B. Interrogatories Directed to the Plaintiff

1. During plaintiff’s residency from (Date) __________ to (Date) __________ at (Defendant facility) __________ located at (Address) __________ describe any notes in the medical record communicating to other facility personnel regarding care and treatment of (Plaintiff) __________.

2. Please indicate if (Plaintiff) __________ contends that he/she was injured by (Defendant nurse) __________.

3. If (Plaintiff) __________ contends that an injury was incurred during residency at the defendant facility from (Date) __________ to (Date) __________, please list or describe all facts that support this contention.

4. Please describe in detail any physical injuries (Plaintiff) __________ suffered during the period care was rendered by (Defendant nurse) __________ at (Facility) __________ from (Date) __________ to (Date) __________.

5. Please describe in detail any emotional injuries (Plaintiff) __________ suffered from (Date) __________ to (Date) __________ caused by (Defendant nurse) __________.

6. Please identify name, address and telephone number of each healthcare provider who has knowledge of (Plaintiff) __________’s alleged injuries at (Facility) __________ caused by (Defendant nurse) __________ from (Date) __________ to (Date) __________.

7. Please describe in detail any loss of wages from (Date) __________ to (Date) __________ pertaining to the alleged injuries.
8. Please describe in detail how (Plaintiff) __________'s medical history in no way contributed to the injuries allegedly caused by (Defendant nurse) __________ from (Date) __________ to (Date) __________

9. Please describe in detail how (Defendant nurse) __________ was negligent while rendering care to (Plaintiff) __________ at (Facility) __________ from (Date) __________ to (Date) __________

C. Requests for Production Directed to the Defendant Nurse

1. Please provide any and all documents generated in the course of any examination, in-service, training or continuing education provided to (Defendant nurse) __________ by any agency from (Date) __________ to (Date) __________.

2. Please provide any and all documents generated in the course of any examination, in-service, training or continuing education provided to (Defendant nurse) __________ by any agency pertaining to nursing assessment, change of condition and physician notification from (Date) __________ to (Date) __________.

3. Please provide any and all documents or education materials issued by a state board, government or private agency to the (Defendant nurse) __________ from (Date) __________ to (Date) __________, such as, but not limited to:
   a. Professional licenses.
   b. Certifications.
   c. Advanced education.

4. Please provide copies of all payroll stubs from each employer of (Defendant nurse) __________ from (Date) __________ to (Date) __________.

5. Please provide copies of (Defendant nurse) __________'s state and federal tax returns filed from (Date) __________ to (Date) __________.

D. Requests for Production Directed to the Plaintiff

1. Please provide all photographs depicting any place, object or individual concerning the allegations against (Defendant nurse) __________ from (Date) __________ to (Date) __________.
2. Please provide all videos (electronic or digital media) depicting any place, object or individual concerning the allegations against the (Defendant nurse) __________ from (Date) __________ to (Date) __________.

3. Please provide all diaries, calendars, notes, emails or telephone logs (handwritten or electronic) that reflect any entries made by plaintiff or plaintiff’s representative concerning care and treatment rendered by (Defendant nurse) __________ from (Date) __________ to (Date) __________.

4. Please provide all (Plaintiff) __________’s medical bills from (Date) __________ to (Date) __________, either paid or unpaid, that plaintiff claims have arisen out of the injuries that are the subject of this action.

5. Please provide all bills for (Plaintiff) __________’s medications from (Date) __________ to (Date) __________, either paid or unpaid, that plaintiff claims to have arisen out of the injuries which are the subject of this action.

6. Please provide copies of any and all complaints for personal injury suits filed by plaintiff or plaintiff’s representative from (Date) __________ to (Date) __________.

7. Please provide any documents regarding a lien for medical bills related to expenses that plaintiff is claiming against (Defendant nurse) __________ from (Date) __________ to (Date) __________.

8. Please provide any and all documents, records, charts, papers or memoranda obtained by plaintiff in support of any claim that (Defendant nurse) __________ was insufficiently trained as to the plaintiff’s alleged injuries from (Date) __________ to (Date) __________.

9. Please provide any and all correspondence generated by plaintiff or plaintiff’s representative to the defendant nurse or received from the defendant nurse concerning the care and treatment rendered at (Facility) __________ from (Date) __________ to (Date) __________.

10. Please provide any and all correspondence generated by plaintiff or plaintiff’s representative to or from the state board of nursing concerning the care and treatment rendered by (Defendant nurse) __________ from (Date) __________ to (Date) __________.
11. Please provide any and all correspondence generated by plaintiff or plaintiff’s representative to or from the Department of Justice concerning the care and treatment rendered by (Defendant nurse) __________ from (Date) __________ to (Date) __________.

VII. RECOMMENDED QUALIFICATIONS FOR CLNC® SUBCONTRACTORS IN NURSING LIABILITY CASES

A. Credentials in the Specific Area of Nursing Practice at Issue

B. Nursing Experience

C. Curriculum Vitae or Resume

D. Sample Work Product

VIII. FORMS

A. Cast of Characters (Exhibit D)

B. RN Risk Control Checklist (Exhibit E)

IX. RESOURCES

A. Websites

1. California Department of Consumer Affairs Board of Registered Nursing. 
   [rn.ca.gov](rn.ca.gov)


   [leginfo.ca.gov/cgi-bin/calawquery?codesection=wic](leginfo.ca.gov/cgi-bin/calawquery?codesection=wic)

4. Nurses Service Organization. 
   [NSO.com](NSO.com)
   nso.com/pdfs/db/RN-2010-CNA-Claims-Study.pdf?fileName=RN-2010-CNA-Claims-Study.pdf&folder=pdfs/db&isLiveStr=Y

   justice.gov/ag
Exhibit A
Allen v. Care Meridian et al. (Civil Action)
People of California v. Medlin (Criminal Action)
People of California v. Monterroso (Criminal Action)

Jeremiah Allen, a 19-year-old young adult on October 20, 2003 experienced a near drowning event while surfing in Hawaii. Upon arrival Hilo Medical Center ED, he was in a deep coma, mentally obtunded with fixed pupils. He was not breathing, and was subsequently intubated and placed on a ventilator. On November 6, 2003, a Microvasive 20 French feeding tube was placed. On November 26, 2003 he was admitted to Hilo Medical Center Extended Care. His medical diagnoses included hypoxic encephalopathy, seizure disorder, dysphagia, MRSA colonization and a childhood history of leukemia.

On January 20, 2004 he was transferred to Care Meridian in Oxnard, California. The patient transfer form identified his physical care needs including medications and gastrostomy tube (GT) feedings. The form further described, the PEG (percutaneous endoscopic gastrostomy) tube was initially inserted on November 6, 2003 and he tolerated gravity tube feedings with the head of the bed elevated 60° to 90° degrees. He had mental and speech impairments and a tracheostomy, rendering verbal communication an impossibility. He was completely dependent upon others in all aspects of his care and was unable to respond to verbal commands. Further, he required Phenobarbital and Neurontin for seizure control and Valium for muscle rigidity and spasticity. The nurse documented that Jeremiah “bites lip during episodes of spasticity.”

Care Meridian admitting physician’s orders signed by the attending physician included “Routine GT care QD & prn (as needed); change GT Q month & prn pulled out or occluded. 14 Fr/ 5cc, Fibersource HN 320 ml q6hr with 75cc water flush before and after feedings; Hold tube feeding for residual >100 ml.” Physician orders to change the GT every month and prn pulled out or occluded were renewed and signed by the attending physician monthly. Review of the Hilo Medical Center records confirmed a size 20 Fr GT had always been in place and the type of tube was changed to a MIC-KEY Low Profile Gastrostomy Tube.

At Care Meridian, the GT had been successfully changed monthly without incident. Jeremiah experienced frequent episodes of “sweating and grunting” that the nursing staff associated with constipation. These episodes would subside, once he had a bowel movement. Jeremiah was able to open and close his eyes, but did not consistently track.

On May 13, 2004 at 8:10am, nursing documentation reflected, “Changed G-tube today, slight irritation (size 20 Fr.) noted around stoma...Will monitor pt. Doing well...” The corresponding nursing weekly summary reflected “Tolerates feeding schedule. G tube change by DON 5/13/04 w/o problems, extra feedings & wt gain w/o problems...."
On May 24, 2004 his physician examined Jeremiah. On May 25, 2004 his physician was notified the GT feedings were running slowly and residuals were noted to be brownish in color and a GI (gastrointestinal) physician consult was ordered. On May 26, 2004 his physician once again examined Jeremiah and no abnormality was identified.

On May 28, 2004, Jeremiah was transported to Community Memorial Hospital for an esophagogastroduodenoscopy (EGD). In his operative report, Ahmen Rashed, MD documented, “Displaced feeding tube into the duodenal bulb with duodenal irritation; otherwise no active bleeding. The feeding tube was repositioned.” Transfer orders written for Care Meridian stated, “Resume feedings.”

On June 2, 2004 at approximately 3:00am, Defendant nurse Monterroso replaced the 20Fr G-tube, after Jeremiah pulled the G-tube out. She documented placement was checked and the scheduled feeding was tolerated.

Later that same day, at 1345 defendant nurse Medlin assessed Jeremiah to be diaphoretic, with oxygen saturation or room air 84%, lung fields were clear and gastrostomy tube placement was checked. His eyes were open and temperature was 101.2° and cooling measures had been implemented by staff. Supplemental oxygen and ambu bag support was provided and his oxygen saturation improved (92%). Mr. Medlin, RN remained with the patient and assisted his staff. At 1430 he spoke with Jeremiah’s physician and transfer to CMH ED was ordered. The charge nurse called Gold Coast Ambulance to arrange transfer. According to the nurse’s note, the paramedics arrived at 1445, yet the paramedic’s prehospital care record annotated “Dispatch 15:21:00” but trip details annotated, “Call started 15:13:39.” The first responders also documented “clear signs of rigor mortis & dependent lividity.” Both the medical record and the first responders records documented at 1530 Jeremiah was “pronounced.”

An autopsy was performed. Internal examination of gastrointestinal system revealed “…The serosal surfaces of the abdominal organs, the omentum and the peritoneal lining of the abdominal cavity exhibit marked inflammation with some focal necrosis. The abdominal cavity contains approximately 2500 cc of opaque yellow fluid, with fat globules floating in it, along with a small amount of bilious fluid. The gastrostomy feeding tube passes through the stoma and perforates the fibrous tract as it enters the stomach, perforating the serosal surface of the stomach, adjacent to the fibrous tract. The balloon of the tube is inflated and the tube ostium feeds liquid directly into the peritoneal cavity. There is no inflammation on the mucosal surface of the stomach, but there is some necrosis and inflammation in the area of the serosal penetration of the feeding tube. The gastric stoma can be probed from the interior of the stomach and is in continuity with the cutaneous stomal opening. There is no inflammation of the cutaneous stoma itself. There does not appear to be direct communication between the gastric lumen and the peritoneal cavity…” The cause of death was “peritonitis, due to infusion of feeding into peritoneal cavity, due to malposition of gastrostomy feeding tube, due to anoxic encephalopathy, with prolonged coma.”

Contents
The California Dept. of Public Health Licensing and Certification Division investigated Jeremiah’s death and issued a class “AA” citation. A class “AA citation” means the facility’s violation of the regulation was a “direct proximate cause of death of a patient or resident.” (Health and Safety Code Section 1424(c)). They also reported nurses Monterroso and Medlin to the Dept. of Justice (DOJ) and the respective nursing boards.

The People of California charged Ms. Monterroso, LVN with willfully placing Jeremiah in a situation where his person or health was endangered under circumstances likely to produce great bodily harm or death. (§ 368, subd. (b)(1).) Mr. Medlin, RN was charged with willfully causing or permitting Jeremiah to suffer unjustifiable pain or suffering under circumstances or conditions likely to produce great bodily harm or death and having a legal duty to supervise and control persons who caused or inflicted unjustifiable pain or mental suffering on Jeremiah, and failing to supervise or control that conduct. (§ 368, subd. (b)(1); People v. Heitzman (1994) 9 Cal.4th 189, 212.) Additional charges included involuntary manslaughter.

A nurse evaluator for the DOJ reached the conclusion that Ms. Monterroso, LVN "violated the practice of vocational nursing" in California by failing to follow the physician’s orders or facility procedures for G-tube replacement. The evaluator was of the opinion that reinsertion of the G-tube required her to "obtain/verify the physician order," to "aspirate for stomach contents to check patency," once the tube was in place and to "document procedure results; resident's tolerance; and any other pertinent information . . . ." Ms. Monterroso’s LVN license was suspended.

At the time of the criminal trial, the people’s medical expert testified that Ms. Monterroso LVN should not have reinserted the G-tube because she did not know how long the tube had been out. The people’s medical expert testified that Mr. Medlin, RN failed to timely transfer Jeremiah out of the facility when he first became aware of his change of condition. The people did not retain a nurse expert.

The defendant’s nurse expert testified that Ms. Monterroso, LVN had received training and education for G-tube reinsertion and that in an extended care environment it was within the standard of care to perform such a procedure and a physician order was in place. She further testified that it was not uncommon to be unable to aspirate gastric contents while assessing patency of the tube, that this was only one of three steps to check for patency and placement and that although Ms. Monterroso, LVN failed to document the specifics of the procedure, her interview with CDPH and her deposition testimony provided evidence she correctly performed the procedure. The nurse expert also provided demonstrative testimony, allowing the jury to see an actual MIC-Key Low Profile tube and placement technique. The defendant’s medical expert testified the autopsy revealed problems with the stoma tract and that to a reasonable degree of medical probability the tube migrated on its own. Both medical experts agreed that the size of the G-tube did not contribute to the tube’s migration. Following a brief deliberation, the jury acquitted both nurses of all charges.

The civil action, settled one day prior to trial for an undisclosed amount.
Exhibit B
Noriega v. Fillmore Convalescent Center

In another high-stakes trial involving claims of elder neglect and wrongful death against a skilled nursing facility, plaintiffs also personally named one of the licensed nurses who provided care to the decedent. Throughout the course of this six-week trial, plaintiffs introduced evidence of alleged fraudulent documentation, failure to report changes in the resident’s condition and failure to emergently transfer the resident.

Prior to closing arguments, defense counsel representing the licensed nurse was able to successfully argue a nonsuit motion on behalf of her client. The court entered a judgment in favor of the nurse and awarded costs. Defense counsel representing the skilled nursing facility was equally successful in arguing a nonsuit motion on behalf of his client. The court agreed with the skilled nursing facility’s position and dismissed the elder abuse claim.

The case then went to the jury on the wrongful death claim only. Although the jury found the defendant skilled nursing facility 40% responsible for the resident’s death, defense counsel then filed a motion for judgment notwithstanding the verdict, asking the court to set aside the jury’s findings and award judgment in favor of the defendant skilled nursing facility. The court agreed with defendant’s position, and on April 28, 2009, entered a final judgment in favor of the skilled nursing facility on all causes of action. Defendants were awarded costs in excess of $50,000.
§ 15610.05. "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

§ 15610.06. "Abduction" means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court.

§ 15610.07. "Abuse of an elder or a dependent adult" means either of the following:
   a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
   b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

§ 15610.10. "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

§ 15610.13. "Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

§ 15610.15. "Bureau" means the Bureau of Medi-Cal Fraud within the office of the Attorney General.

§ 15610.17. "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:
a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.
b) Clinics.
c) Home health agencies.
d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.
e) Adult day health care centers and adult day care.
f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.
g) Independent living centers.
h) Camps.
i) Alzheimer's Disease day care resource centers.
j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.
k) Respite care facilities.
l) Foster homes.
m) Vocational rehabilitation facilities and work activity centers.
n) Designated area agencies on aging.
o) Regional centers for persons with developmental disabilities.
p) State Department of Social Services and State Department of Health Services licensing divisions.
q) County welfare departments.
r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.
s) The office of the long-term care ombudsman.
t) Offices of public conservators, public guardians, and court investigators.
u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:
   1) The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.
   2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illness.
v) Humane societies and animal control agencies.
w) Fire departments.
x) Offices of environmental health and building code enforcement.
y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.
§ 15610.19. "Clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or recognized religious denomination or organization. "Clergy member" does not include unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a church, synagogue, temple, mosque, or recognized religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque, or recognized religious denomination or organization.

§ 15610.20. "Clients' rights advocate" means the individual or individuals assigned by a regional center or state hospital developmental center to be responsible for clients' rights assurance for persons with developmental disabilities.

§ 15610.23. (a) "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.
(b) "Dependent adult" includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

§ 15610.25. "Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

§ 15610.27. "Elder" means any person residing in this state, 65 years of age or older.

§ 15610.30. (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 1575 of the Civil Code.
(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer,
or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:
   1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
   2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

§ 15610.35. "Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:
   a) The provision of medical care for physical and mental health needs.
   b) Assistance in personal hygiene.
   c) Adequate clothing.
   d) Adequately heated and ventilated shelter.
   e) Protection from health and safety hazards.
   f) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.
   g) Transportation and assistance necessary to secure any of the needs set forth in subdivisions (a) to (f), inclusive.

§ 15610.37. "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, registered nurse, dental hygienist, licensed clinical social worker or associate clinical social worker, marriage and family therapist, licensed professional clinical counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage and family therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, an unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code, a clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code, a clinical counselor intern registered under Section 4999.42 of the Business and Professions Code, a state or county public health or social service employee who treats an elder or a dependent adult for any condition, or a coroner.

§ 15610.39. "Imminent danger" means a substantial probability that an elder or dependent adult is in imminent or immediate risk of death or serious physical harm, through either his or her own action or inaction, or as a result of the action or inaction of another person.

§ 15610.40. "Investigation" means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

Contents
§ 15610.43. (a) "Isolation" means any of the following:
1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
3) False imprisonment, as defined in Section 236 of the Penal Code.
4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.
(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

§ 15610.45. "Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

§ 15610.47. "Long-term care facility" means any of the following:
   a) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.
   b) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.
   c) Any swing bed in an acute care facility, or any extended care facility.
   d) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.
   e) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

§ 15610.50. "Long-term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 11 (commencing with Section 9700) of Division 8.5.
§ 15610.53. "Mental suffering" means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.

§ 15610.55. (a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, management, or treatment of abuse of elderly or dependent adults and who are qualified to provide a broad range of services related to abuse of elderly or dependent adults.

(b) A multidisciplinary personnel team may include, but need not be limited to, any of the following:
   1) Psychiatrists, psychologists, or other trained counseling personnel.
   2) Police officers or other law enforcement agents.
   3) Medical personnel with sufficient training to provide health services.
   4) Social workers with experience or training in prevention of abuse of elderly or dependent adults.
   5) Public guardians.
   6) The local long-term care ombudsman.

§ 15610.57. (a) "Neglect" means either of the following:
   1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
   2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:
   1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
   2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
   3) Failure to protect from health and safety hazards.
   4) Failure to prevent malnutrition or dehydration.
   5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

§ 15610.60. "Patients' rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who is responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

§ 15610.63. "Physical abuse" means any of the following:
   a) Assault, as defined in Section 240 of the Penal Code.
   b) Battery, as defined in Section 242 of the Penal Code.
c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

e) Sexual assault, that means any of the following:
   1) Sexual battery, as defined in Section 243.4 of the Penal Code.
   2) Rape, as defined in Section 261 of the Penal Code.
   3) Rape in concert, as described in Section 264.1 of the Penal Code.
   4) Spousal rape, as defined in Section 262 of the Penal Code.
   5) Incest, as defined in Section 285 of the Penal Code.
   6) Sodomy, as defined in Section 286 of the Penal Code.
   7) Oral copulation, as defined in Section 288a of the Penal Code.
   8) Sexual penetration, as defined in Section 289 of the Penal Code.
   9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code.

f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
   1) For punishment.
   2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
   3) For any purpose not authorized by the physician and surgeon.

§ 15610.65. "Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

**Article 8 Prosecution of Elder and Dependent Adult Cases**

§ 15656. (a) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or
permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950), and by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both that imprisonment and fine, when the money, labor, or real or personal property taken is of a value not exceeding nine hundred fifty dollars ($950).

(d) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

**Article 8.5 Civil Actions of Abuse of Elderly or Dependent Adults**

§15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

b) The limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

§ 15657.01. Notwithstanding Section 483.010 of the Code of Civil Procedure, an attachment may be issued in any action for damages pursuant to Section 15657.5 for financial abuse of an elder or dependent adult, as defined in Section 15610.30. The other provisions of the Code of Civil Procedure not inconsistent with this article shall govern the issuance of an attachment pursuant to this section. In an application for a writ of attachment, the claimant shall refer to this section. An attachment may be issued pursuant to this section whether or not other forms of relief are demanded.
§ 15657.03. (a)
1) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.
2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek such relief.

(b) For the purposes of this section:
1) "Conservator" means the legally appointed conservator of the person or estate of the petitioner, or both.
2) "Petitioner" means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.
3) "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:
   A. An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.
   B. An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.
   C. An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).
4) "Respondent" means the person against whom the protective orders are sought and, if the petition is granted, the restrained person.

§ 15657.1. The award of attorney's fees pursuant to subdivision (a) of Section 15657 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:
   a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.
   b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.
   c) The reasonableness and timeliness of any written offer in compromise made by a party to the action.

§ 15657.2. Notwithstanding this article, any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure,
based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action.

§ 15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

(d) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

(e) Any money judgment in an action under this section shall include a statement that the damages are awarded based on a claim for financial abuse of an elder or dependent adult, as defined in Section 15610.30. If only part of the judgment is based on that claim, the judgment shall specify what amount was awarded on that basis.

§ 15657.6. A person or entity that takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity pursuant to Section 812 of the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to Section 39 of the Civil Code, shall, upon demand by the elder or dependent adult or a representative of the elder or dependent adult, as defined in subdivision (d) of Section 15610.30, return the property and if that person or entity fails to return the property, the elder or dependent adult shall be entitled to the remedies provided by Section 15657.5, including attorney's fees and costs. This section shall not apply to any agreement entered into by an elder or dependent adult when the elder or dependent adult had capacity.

§ 15657.7. An action for damages pursuant to Sections 15657.5 and 15657.6 for financial abuse of an elder or dependent adult, as defined in Section 15610.30, shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.
## DEFENDANT NURSE and FACILITY

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jane Doe</td>
<td>Phone Address</td>
<td>Defendant RN</td>
<td>Former employee. Worked PM shift 8/1/05, 8/2/05</td>
</tr>
<tr>
<td>XYZ Hospital</td>
<td>Phone Address</td>
<td>Employer</td>
<td></td>
</tr>
<tr>
<td>Sam Jones</td>
<td>Phone Address</td>
<td>Direct Supervisor</td>
<td>On duty the night plaintiff experienced COC</td>
</tr>
</tbody>
</table>

## CALIFORNIA BOARD OF NURSING

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betty Joe</td>
<td>Phone Address</td>
<td>Examiner</td>
<td>Conducted investigation on 10/03/05 w/ re complaints alleging that client was overmedicated by defendant nurse</td>
</tr>
<tr>
<td>Barbara Jane</td>
<td>Phone Address</td>
<td>Supervisor</td>
<td>Listed as supervisor on the 10/03/05 investigation</td>
</tr>
</tbody>
</table>

## PHYSICIANS

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>________, MD</td>
<td>Phone Address</td>
<td></td>
<td>Assessed plaintiff following COC</td>
</tr>
</tbody>
</table>

## PLAINTIFF and FAMILY MEMBERS

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marie</td>
<td></td>
<td>Plaintiff</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td>Daughter</td>
<td>Deposited on 7/19/07</td>
</tr>
<tr>
<td>Hubert</td>
<td></td>
<td>Son</td>
<td></td>
</tr>
<tr>
<td>Pat</td>
<td></td>
<td>Son</td>
<td>Deposited on 7/19/07</td>
</tr>
</tbody>
</table>

## ABC MEDICAL GROUP EMPLOYEES

<table>
<thead>
<tr>
<th>NAME</th>
<th>LOCATION</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beth</td>
<td></td>
<td>MA</td>
<td>Deposition scheduled for 12/13/07 5-9-05-Scanned advised Carrie hip X ray normal after fall, need to see if not showing improvement</td>
</tr>
<tr>
<td>Edith Jones</td>
<td></td>
<td>RN</td>
<td>Deposition scheduled for 12/13/07</td>
</tr>
<tr>
<td>Sally Smith</td>
<td></td>
<td>MA</td>
<td>Deposition scheduled</td>
</tr>
</tbody>
</table>
**REGIONAL MEDICAL CENTER EMPLOYEES**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owen ___, MD</td>
<td></td>
<td>Neurologist</td>
<td>H&amp;P 8-6-06-Impression: Subacute development of lethargy &amp; weakness, consistent w/ dehydration, possible medication effect (Cogentin)…</td>
</tr>
<tr>
<td>Dan ___, RN</td>
<td></td>
<td>ICU Nurse</td>
<td>Deposited</td>
</tr>
<tr>
<td>Leslie ___, LVN</td>
<td></td>
<td>Telemetry Nurse</td>
<td>8-5-05- Documented-Mental status changes seem minimal…</td>
</tr>
</tbody>
</table>

**HOME HEALTHCARE**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
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</table>

**DEFENSE EXPERTS**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Be ___, MD</td>
<td></td>
<td>Causation Physician/Geriatrician</td>
<td>Will testify that the death was the natural progression of Alzheimer's Dementia</td>
</tr>
<tr>
<td>Jon ___, RN</td>
<td></td>
<td>Registered Nurse</td>
<td>Will testify as to nursing standard of care</td>
</tr>
</tbody>
</table>

**PLAINTIFF EXPERTS**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laura ___, RN</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brett _____. M.D.</td>
<td></td>
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**DEFENSE TRIAL TEAM**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CONTACT INFO</th>
<th>ROLE</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge</td>
<td></td>
<td>Judge</td>
<td>Superior Court of Los Angeles</td>
</tr>
<tr>
<td>Judge</td>
<td></td>
<td>Judge</td>
<td>Criminal Court of Los Angeles</td>
</tr>
<tr>
<td>Mr. Attorney</td>
<td>Cell</td>
<td>Partner (Civil)</td>
<td></td>
</tr>
<tr>
<td>Ms. Attorney</td>
<td>Cell</td>
<td>Partner (Criminal)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cell</td>
<td>Senior Paralegal</td>
</tr>
<tr>
<td>CLNC® Consultant</td>
<td>Cell</td>
<td>Nurse Consultant</td>
<td></td>
</tr>
<tr>
<td>NAME</td>
<td>CONTACT INFO</td>
<td>ROLE</td>
<td>COMMENTS</td>
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</tr>
<tr>
<td>Judge</td>
<td></td>
<td>Judge</td>
<td>Superior Court of Los Angeles</td>
</tr>
<tr>
<td>Judge</td>
<td></td>
<td>Judge</td>
<td>Criminal Court of Los Angeles</td>
</tr>
<tr>
<td>Mr. Attorney</td>
<td>Cell</td>
<td>Partner (Civil)</td>
<td></td>
</tr>
<tr>
<td>Ms. Attorney</td>
<td>Cell</td>
<td>Prosecutor</td>
<td>People of California</td>
</tr>
<tr>
<td></td>
<td>Cell</td>
<td>Senior Paralegal</td>
<td></td>
</tr>
<tr>
<td>CLNC Consultant</td>
<td>Cell</td>
<td>Nurse Consultant</td>
<td></td>
</tr>
<tr>
<td>Self-assessment Criteria</td>
<td>Yes</td>
<td>No</td>
<td>Action(s) I need to Implement to Reduce Risks</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------</td>
<td>-----</td>
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<td>---------------------------------------------</td>
</tr>
<tr>
<td><strong>Self-assessment Related to My Specialty</strong></td>
<td></td>
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<tr>
<td>I work in an area that is consistent with my training and experience.</td>
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<tr>
<td>My competencies (including experience, training, education and skills) are consistent</td>
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<tr>
<td>with the needs of my assigned patients and/or patient care unit.</td>
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<tr>
<td>I understand the risk of caring for patients within my clinical specialty.</td>
<td></td>
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<tr>
<td>When I am floated or asked to cross-cover, I ensure that my competencies and experience</td>
<td></td>
<td></td>
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<tr>
<td>are appropriate for the assignment.</td>
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<tr>
<td>I am provided with or request orientation whenever I am assigned to a different</td>
<td></td>
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<tr>
<td>clinical care unit or different level of care.</td>
<td></td>
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<tr>
<td>I obtain education and training on an ongoing basis to maintain my competencies in my</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>clinical specialty.</td>
<td></td>
<td></td>
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<tr>
<td>I decline an assignment if my competencies are not consistent with patient needs.</td>
<td></td>
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</tr>
<tr>
<td><strong>Self-assessment Related to Scope of Practice</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I know my Nurse Practice Act and read it at least annually to ensure I understand</td>
<td></td>
<td></td>
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<tr>
<td>the legal scope of practice in my state.</td>
<td></td>
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<tr>
<td>I decline to perform a requested service that is outside my legal scope of practice</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and immediately notify my supervisor or the director of nursing.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I contact the risk management department or the legal department regarding patient</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>or practice issues, if necessary.</td>
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<tr>
<td>I contact the Board of Nursing and request an opinion or position statement on nursing</td>
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<tr>
<td>practice issues, if necessary.</td>
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<tr>
<td><strong>Self-assessment Related to Patient Assessment</strong></td>
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<tr>
<td>I assess and document the following upon admission, with a change in treatment, or</td>
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<td>with a change in a patient's condition or response to treatment:</td>
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<tr>
<td>- Presenting problem(s)</td>
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<tr>
<td>- Fall Risk</td>
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<td>- Co-morbidities affecting the patient's status</td>
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<td>- Patient's understanding of his/her condition and plan of treatment/care</td>
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<td>- Mobility status, including the use of mobility aids</td>
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<td>- Medications</td>
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<td>- Elopement/Abduction risk</td>
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<td>- Skin/wound status including any wounds or lesions</td>
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<tr>
<td>- Pain Management</td>
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<tr>
<td>- Restraint issues</td>
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<tr>
<td>- Behaviors</td>
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<tr>
<td>- Cognition</td>
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<tr>
<td>- Nutrition/hydration</td>
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<tr>
<td>- Vital signs</td>
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<td>- Lab Values</td>
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<tr>
<td>I notify all appropriate parties of assessment results.</td>
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</tbody>
</table>
## Self-assessment Criteria

<table>
<thead>
<tr>
<th>Action(s) I need to Implement to Reduce Risks</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

### Self-assessment Related to Patient Monitoring

I perform and document the results of specific patient-monitoring activities according to practitioner orders and as indicated by the patient's condition, including:

- Vital signs, blood pressure, oxygen saturation
- Blood sugar
- INR/clotting times/bruising
- Blood and diagnostic test results (notifying the practitioner of abnormal results)
- Clinical signs of bleeding or hemorrhage
- Effectiveness of pain management
- Signs of infection and/or inflammation
- Restraint protocol compliance
- Nutritional intake
- Oral and intravenous fluid intake and output
- Output - urine, stool, wound drainage
- Wound status - measurement, treatment and response to treatment
- Behaviors
- Cognition
- Patient concerns/complaints
- Change in condition
- Response to medication/treatment, including change in behavior, cognition and potential increased risk for falls
- Patient safety - current environment

I notify all appropriate parties of findings from monitoring activities

### Self-assessment Related to Treatment and Care

I provide and document patient treatment and care, including:

- Timely implementation of approved/standardized protocols
- Timely contacting the practitioner to obtain orders
- Timely implementation of practitioner orders
- Medication administration, as ordered (i.e., ensuring correct medication, patient, dose, route, and time; checking the reason for administering medication; and noting if the problem was lessened or alleviated, etc.)
- Patient/family education related to treatment and verification of their understanding
- Practitioner notification of change in condition/symptoms/patient concerns and practitioner's response and/or orders
- Practitioner notification of complications and adverse response to medication or treatment and practitioner's response and/or orders
- Supervision of non-professional caregivers
- Provision of nutrition and hydration (assisting patient as needed)
- Oversight/scheduling of referrals/tests/diagnostic procedures
- Tracking of test results/consultation reports
- Practitioner notification of test/consultation results and practitioner's response and/or orders
- Participation in accurate and complete hand-offs between assigned caregivers, units and shifts
- Practitioner notification of delays and issues encountered in carrying out orders
### Self-assessment Criteria

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Action(s) I need to Implement to Reduce Risks</th>
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- Follow-up on delays and issues in obtaining test or test results
- Invoking of nursing and medical chains of command if there is a delay in response from practitioner or significant concern with practitioner action taken
- Practitioner notification of patient refusal of recommended healthcare (e.g., assessments, diagnosis and/or treatment interventions including medications)
- Reporting of any patient incident, injury or adverse outcome and subsequent treatment/response

### Self-assessment Related to Patient Care Equipment and Supplies

I ensure that emergency and required patient care equipment is readily available and in good working order.

I check all equipment before each use to ensure that it functions properly.

I report broken/malfunctioning equipment, remove it from patient care use and obtain an appropriate replacement.

I sequester broken/malfunctioning equipment that was involved in a patient incident to preserve its condition at the time of the event.

I provide oral and written reports of broken/malfunctioning equipment to all appropriate parties.

I perform all required monitoring, assessment and reporting activities

### Self-assessment Related to Professional Conduct

I speak to patients, families and staff in a respectful and dignified manner.

I refrain from personal relationships with patients/families.

I explain procedures and treatments to patients, including what touching they can anticipate during assessment, monitoring and treatment.

I include a chaperone when indicated if intimate touching is required for the patient's treatment.

I honor the patient's rights throughout the episode of care.

I refrain from harsh physical touching or movement with patients at all times.

I monitor the patient care environment to ensure patient safety.

I remain aware of the need for ensuing a safe patient care environment, including unobstructed hallways, properly secured entrances and exits, and restricted access to hazardous substances.

### Self-assessment Related to Documentation Practices

I document contemporaneously and never make a late entry unless it is appropriately labeled and is necessary for safe continued patient care.

I never remove any portion of the patient's health information record.

I never alter a record in any way.

I refrain from subjective comments, including comments about colleagues and other members of the patient care team.

I do not remove patient health records (paper or electronic) from the patient care unit, nor do I make entries from home or other inappropriate locations.

If provided with a laptop, electronic pad or electronic PDA. I do not permit any other person access to that equipment and never share my passwords/access codes.

If I have documentation concerns, I contact the risk manager or legal counsel for assistance prior to making an entry about which I am unsure.
CLAIM TIPS

Below are some proactive concepts and behaviors to include in your nursing custom and practice, as well as steps to take if you believe you may be involved in a legal matter related to your practice of nursing:

- Practice within the requirements of your state Nurse Practice Act, in compliance with organizational policies and procedures, and within the national standard of care.
- Document your patient care assessments, observations, communications and actions in an objective, timely, accurate, complete, appropriate and legible manner. Never alter a record for any reason or add anything to a record after the fact unless it is necessary for the patient's care. If it is essential to add information into the record, properly label the delayed entry as a late entry, but never add any documentation to a record for any reason after a claim has been made. If additional information related to the patient's care emerges after you become aware that legal action is pending, discuss the need for additional documentation with your manager, the organization's risk manager and legal counsel to determine appropriate actions.
- Immediately contact your personal insurance carrier if
  - you become aware of a filed or potential professional liability claim against you
  - you receive a subpoena to testify in a deposition or trial
  - you have any reason to believe that there may be a potential threat to your license to practice nursing
- If you carry your own professional liability insurance, report such matters to your insurance carrier, even if your employer advises you that it will provide you with an attorney and/or that it will cover you for a professional liability settlement or verdict amount.
- Refrain from discussing the matter with anyone other than your defense attorney or the claim professionals who are managing your claim.
- Promptly return calls from your defense attorney and the claim professionals assigned by your insurance carrier. Contact your attorney or claim professional before responding to calls, e-mail messages or requests for documents from any other party.
- Provide your insurance carrier with as much information as you can when reporting such matters, but at a minimum, include contact information for your organization’s risk manager and the attorney assigned to the litigation by your employer.
- Never testify in a deposition without first consulting your insurance carrier or, if you do not carry individual liability insurance, without first consulting the organization's risk manager or legal counsel.
- Copy and retain the Summons & Complaint, subpoena and attorney letter(s) for your records.
- Maintain signed and dated copies of any employer contracts.

CNA

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In addition to this publication, CNA HealthPro has produced numerous studies and articles that provide useful risk control information on topics relevant to nurses. These publications are available by contacting CNA HealthPro at 1.888.600.4776 or at www.cna.com. Nurses Service Organization (NSO) also maintains a variety of online materials for nurses, including nurse survey results, articles, and useful clinical and risk control resources, as well as information relating to nurse professional liability insurance at www.nso.com.

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