



Nursing Homes and Assisted Living Centers

Selection and Abuse Prevention

THE
CORSON & JOHNSON
LAW FIRM

The Law and You
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Ensuring Responsible Care



Nursing Homes, whether called Skilled Nursing Homes, Residential Care Homes, or Assisted Living Centers, now rival restaurant chains as a growing presence on the American landscape. The increase in the number of facilities reflects the number of Americans needing some kind of long-term care. Approximately 1.6 million Americans live in nursing homes today, and nearly half of all Americans will eventually become residents of a facility.

Federal and state laws require that a nursing home have an adequate number of qualified staff and that each resident's specific needs are met. Under the Federal Nursing Home Reform Act, it is a nursing home's obligation to provide services and activities to attain or maintain the highest practical physical, mental and psychosocial well-being of each resident.

Choosing the Right Facility

There are three levels of care facilities in Oregon, each governed by a different set of regulations: skilled nursing facilities, residential care facilities, and assisted living facilities. You should determine what level of care is needed for the intended resident.

Here are five actions you can take to help you make an informed decision:

1. Visit your local Seniors and People with Disabilities office. The office should have a file of annual surveys of each facility, with its written evaluation of the facility. The office should also have a file of all complaints filed against the facility.
2. Review the nursing home's compliance with state and federal regulations on the Medicare website: www.medicare.gov/NHCompare/home.asp.

3. Seek the advice of knowledgeable physicians, nurses, physical therapists, and friends.
4. Consider the preferences and personality of the person to reside in the facility.
5. Take a formal tour of the facility, plus unannounced visits during all three shifts. Observe staff and their interactions with residents. Speak to the staff and ask them about their work and how well they like the facility. Check out the sights and smells. (Eat in the cafeteria, look for liquid in the halls, observe the grooming of the residents, and check for foul odors.)

Abuse and Neglect in Nursing Homes

Unfortunately, neglect and abuse of nursing home residents is all too common. In 2001, a Congressional committee found that one in three U.S. nursing homes had been cited for abuse over a two-year period. In Oregon, there is a backlog of over a thousand complaints against nursing homes. Many of these complaints, once investigated by the State, are likely to reveal neglect, failure to follow safety procedures, medication errors, failure to protect residents from other violent or sexually predatory residents, and abuse.



If You Suspect Abuse or Neglect

Physical abuse sometimes involves situations where a nursing home resident is intentionally harmed by an employee or staff member or by another resident. Physical abuse can also include neglect, such as pressure sore formation, failing to prevent falls, medication errors, failing to monitor dangerous residents, malnutrition, dehydration, and infections. Without sufficient staffing, residents may wander away from the facility and suffer injury or death.

Keep Records

It is important to record all events of suspected abuse or neglect of a loved one in a nursing home. That record should include:

- the date,
- name of the person involved and names and addresses of all witnesses,
- description of harm done, and
- nursing home response.

Also, the resident's general care physician should be alerted. If immediate care is needed, the resident should be taken to the closest emergency room. The nursing home should prepare an incident report regarding any injury or incident and include statements from witnesses, an evaluation of the cause of the injury or incident and, if appropriate, a plan to avoid such an injury or incident in the future.



Report Suspected Cases

You should also report any suspected abuse or neglect to the local branch office of the State of Oregon's Seniors and People with Disabilities Department. An investigator should be assigned to the case and should interview all relevant witnesses to determine whether any wrongdoing occurred.

Types of Cases

Prosecuting nursing home abuse and neglect cases is important work. We respect that we are representing an extremely vulnerable person who needs help. Such claims also help to improve nursing home care.

The Elder Abuse Act, Oregon Revised Statute 124.100, permits an elderly person or that person's representative to bring a civil action against the person directly

responsible for the physical or fiduciary abuse of the elderly person and any person who permitted the abuse to occur. If successful, the elderly person is awarded fees for both their attorney and guardian in addition to the verdict.

Nursing home cases in Oregon can be brought against nursing homes or their employees on several grounds:

Financial Abuse of the Elderly

This includes misuse of durable powers of attorney, bank accounts, and financial holdings. Abuses can also include:

- failure to provide reasonable consideration for real estate dealings,
- failure to provide, or excessive charges for, goods or services for which one paid, and
- fraud or undue influence to gain control of or obtain money or property.

Injuries and Death Caused by Abuse

A negligence claim may be brought against a nursing home when an injury relates to the nursing home's failure to meet its obligation of care to the resident, or to the nursing home's violation of state or federal law. These laws require the nursing home to:

- provide at least a minimum number of competent care givers for each shift,
- develop an individualized care plan for each resident and follow that plan, and
- prevent abuse to its residents.

Also, if the resident dies as a result of negligent or abusive care, or if a wrongfully injured resident later dies for reasons unrelated to the care, a personal representative of the deceased resident may bring a court case against the nursing home. If successful, they may collect attorney fees in addition to the damages assessed.

Breach of Contract For Lack of Quality Care

A breach of contract claim is sometimes warranted. Money was paid to the facility to provide a certain quality of care. The admission agreement may contain promises about the type and quality of services the nursing home agreed to provide in exchange for a fee. If such service was not provided, the resident or his or her representative may be entitled to a full or partial refund of such monies. Other breach of contract cases, and sometimes fraud cases, arise from mismanagement of a resident's assets or billing for services that were not provided.

State Agencies Governing Nursing Home Care in Oregon

Seniors and People with Disabilities, Department of Human Resources
500 Summer Street, NE
Salem, OR 97301
800-282-8096

This agency is charged with licensing all nursing home facilities, the investigation of all complaints regarding nursing homes, and the development of all regulations governing nursing homes.

Board of Examiners for Nursing Home Administrators
800 NE Oregon, Suite 407
Portland, OR 97232
503-731-4046

This agency protects the public by developing and enforcing standards for individuals to receive and retain a license as an Oregon nursing home administrator.

Office of the Long-term Care Ombudsman
3855 Wolverine Ste., NE, Suite 6
Salem, OR 97305
503-378-6533

This agency's mission is to improve the level of care of each resident living in a long-term care facility. Trained volunteers visit the nursing homes to carry out this mission. However, there may be no ombudsman assigned to a particular facility.

Making sure the law works for everyone.

The Corson & Johnson Law Firm specializes in representing people who have suffered severe injuries or death caused by defective products or wrongful conduct.

One of the important services we provide our clients in the difficult time following an accident or injury is our expertise and guidance through the complex judicial process. The more insight we can provide into the workings of the system, the better prepared our clients are for the challenges of the legal process. The attorneys of The Corson & Johnson Law Firm are dedicated both to making sure that their clients receive fair compensation, and also to working for changes—sometimes through new laws and regulations—that will prevent further injuries and deaths.

Both Lara Johnson and Don Corson are members of the American Association for Justice (AAJ) and the Oregon Trial Lawyers Association (OTLA), and are admitted to the Oregon state and federal courts.

Lara is on the OTLA Board of Directors and is also a member of Oregon Women Lawyers. She has written and lectured on nursing home neglect and abuse, and is also published on claims against government entities.

Don is recognized by Best Lawyers in America in personal injury, medical negligence, and product liability law. He is a Fellow of the American College of Trial Lawyers, a member of the American Board of Trial Advocates, and a past President of OTLA. Don is rated “AV” by LexisNexis Martindale-Hubbell’s rating system.

Submit questions to The Law and You

The Law & You is a community service in Oregon, provided by The Corson & Johnson Law Firm. To hear the latest questions or to ask a question about how the law works or a specific case, visit www.CorsonJohnsonLaw.com.



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