

LANDMARK CIVIL RIGHTS VICTORY FOR ELDERLY NURSING HOME RESIDENTS ILLEGALLY “DUMPED” BY FACILITIES – STATE CAN BE HELD LIABLE FOR IGNORING FEDERAL LAW

San Francisco, CA – In a [landmark ruling](#) yesterday, the Ninth Circuit Court of Appeals ruled that California must proactively enforce federal law protecting the poorest and neediest nursing home residents in the State. The decision affects millions of nursing home residents who are at risk of being illegally “dumped” from their homes.

The Complaint by non-profit **California Advocates for Nursing Home Reform (CANHR)** and three nursing-home residents is the first of its kind requesting that the State be held liable for failing to adhere to federal law.

Plaintiffs allege that the State has willfully violated federal statutes by allowing nursing homes to illegally dump Medi-Cal residents, even after a hearing officer has determined that the resident must be readmitted. According to the suit, defendants’ actions not only causes extensive suffering and even death, but costs the Medi-Cal system tens of millions of dollars in unnecessary hospital fees and other costs.

According to [Patricia McGinnis](#), Executive Director of Plaintiff CANHR, “The ruling is a major victory for poor, elderly residents of nursing homes – some of the most vulnerable people in the state. Patient dumping has become an epidemic in California. Nursing homes have every financial incentive to churn through residents and dump them as soon as someone who can pay more comes along. The law says they can’t do that, and today, the court rebuked the state for refusing to take responsibility for enforcing the law.”

Over the past decade, California nursing homes increasingly have dumped Medi-Cal residents on hospitals and refused to allow them to return. Doing so increases the facilities’ revenues and makes space for more lucrative Medicare and private-pay residents. Federal law forbids this practice and requires states to offer a readmission hearing and “prompt” readmission. In California, the Department of Health Care Services holds readmission hearings but the State refuses to enforce its own hearing decisions.

Each of the three plaintiffs won his hearing, but was unable to return home. As a result, residents are forced to remain in expensive hospital beds when they are not ill, which devastates residents and their families. Plaintiffs contend that the State’s relevant agencies are held captive to the nursing home industry and are unwilling to protect residents.

The appeals court overturned the lower court’s dismissal of the case. In doing so, Court ruled that the State cannot satisfy federal law by holding “meaningless show trials.” Instead, a successful appeal must have “some actual effect on the challenged action, here a transfer or discharge.” Residents have the right not only to appeal a discharge or transfer, but also to “an enforceable order overturning an invalid discharge or transfer.”

Plaintiffs’ counsel [Matt Borden](#) of [BraunHagey & Borden LLP](#) noted that the Court’s decision will help prevent continued suffering of California nursing home residents: “We hope that the change in administration will end this problem and that Governor Newsome and Attorney General Becerra will start enforcing the law. We don’t understand why we faced such fierce

opposition from the prior administration.” stated Mr. Borden. “This practice is clearly illegal,” he continued. “Nine years ago, the federal government told California that it was violating federal law. We hope that this ruling will finally convince California to wake up, stop this abusive practice, and protect the state’s elderly citizens,” Mr. Borden added.

For more information, contact:

Pat McGinnis, Executive Director, CANHR
(415) 974-5171 patm@canhr.org

Matthew Borden, Esq., BraunHagey & Borden LLP
(415) 599-0212 borden@braunhagey.com

CANHR is a statewide nonprofit organization that has been dedicated to improving the care and quality of life for California’s skilled nursing facility residents for more than 30 years. CANHR sponsors legislation, lobbies at the State and federal level and brings litigation to protect the rights of California residents.

BraunHagey & Borden LLP is San Francisco and New York litigation boutique that represents businesses, investors and entrepreneurs in high-stakes legal disputes. The firm also actively pursues pro bono and impact litigation in cases that make a significant positive impact in the world.