

Press Release

FOR IMMEDIATE RELEASE
October 22, 2013

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Lawsuit Seeks to Protect Unrepresented Nursing Home Residents from Physician and Staff Abuses

San Francisco -- A lawsuit filed Tuesday, October 22, 2013 in Alameda Superior Court against the California Department of Public Health (DPH) on behalf of California Advocates for Nursing Home Reform (CANHR) and several nursing home residents seeks to find unconstitutional a California law that permits nursing homes residents to be found incompetent and administered mind-altering drugs, placed in physical restraints, have life sustaining treatment ended and denied due process if they seem not to have a "surrogate" or anyone to assist them in opposing such treatment decisions.

In one of many incidents included in the complaint, a nursing home resident was asked, "Do you want to live or die?" and, when he didn't answer, had his feeding tube withdrawn, was placed in hospice and died. Another "unrepresented" resident was informed that the nursing home would call the police and have her friends charged with "kidnapping" if she left the facility to go on a picnic with them.

The lawsuit challenges the constitutionality of Health and Safety Code §1418.8, a 1992 law that allows physicians for nursing home residents to determine whether a resident lacks capacity to refuse or permit medical treatment and staff then to administer treatment. DPH has interpreted this law to include permitting facilities to tie residents to their beds, force them to take anti-psychotic drugs and other intrusive treatments.

Some facilities have used the statute to end residents' lives through "do no resuscitate" orders or comfort care orders, whereby residents do not receive treatment, but die.

CANHR is represented by Professor Mort Cohen, of Golden Gate University School of Law, who has successfully litigated for the rights of prisoners and the mentally ill, and whose 1986 lawsuit against the Department of Health Services resulted in regulations requiring informed consent prior to the use of anti-psychotic drugs in nursing homes.

According to Professor Cohen, "This statute singles out nursing home residents for intrusive treatment without notice or a chance to oppose. In California, we give these residents fewer protections than we do prisoners or persons with mental illness."

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About CANHR: California Advocates for Nursing Home Reform (CANHR), is a statewide nonprofit advocacy organization dedicated to improving the choices, care and quality of life for California's long term care consumers. Through direct advocacy, community education, legislation and litigation it has been CANHR's goal to educate and support long term care consumers and advocates regarding the rights and remedies under the law, and to create a united voice for long term care reform and humane alternatives to institutionalization.

California Advocates for Nursing Home Reform (CANHR)

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