

CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

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PRESS RELEASE

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California Advocates for Nursing Home Reform Brings Lawsuit to Close Corporate Loopholes

California Advocates for Nursing Home Reform (“CANHR”) has filed a lawsuit against the California Department of Public Health (“DPH” or “the Department”) over its failure to enforce state law requiring the Department to examine and approve or disapprove of proposed acquisitions of skilled nursing facilities and intermediate care facilities. CANHR brought the lawsuit to close the loopholes for multi-level corporations who do business in the State of California.

The California legislature has enacted numerous laws to ensure the care and safety of elderly and disabled individuals residing in skilled nursing facilities and intermediate care facilities. One of these, Health & Safety Code § 1267.5, was designed to give the Department the ability to deny or revoke a license to operate these facilities if the Department discovers information about ownership and control which indicates health and safety risks to its current or future residents. This law requires that the Department request and review information and give prior written approval to the acquisition of a beneficial interest of 5 percent or more in any entity licensed to operate a skilled nursing facility or intermediate care facility. Cal. Health & Safety Code § 1267.5(b).

DPH has refused to fully enforce the law and has instead taken the position that it must only investigate and approve changes in the ownership structure at the nursing home facility level or one ownership level above, thereby creating an enormous loophole for all multi-layer nursing home organizations. In other words, if a corporation has many levels, the state of California will only scrutinize the lowest levels of the organization and not the top levels, where the decisions are being made and profits are being collected.

Owners and investors in the nursing home industry have purposely and increasingly created more complexity and layers in their corporate and ownership structure so that they can avoid scrutiny and responsibility. The Department’s position permits and even encourages large skilled nursing chains to create multiple levels of

ownership and control, allowing them to buy or sell an entire enterprise without reporting the change of beneficial interest.

“The Department’s position has rendered section 1267.5(b) meaningless for the majority of skilled nursing facilities and intermediate care facilities in the state. In most instances, the critical decisions about staffing, budgets, and patient care are not made at the facility level, but at the top of the pyramid. The individuals making these decisions may be removed from the licensee by many layers, but they actually call the shots and take the profits,” stated Patricia McGinnis, executive director of CANHR.

“Disclosure and scrutiny is critical to ensuring that the corporations and individuals running and controlling these facilities—to which we have entrusted the care of elderly and disabled individuals—receive the scrutiny due someone who seeks to care for vulnerable populations. The law ensures that those seeking to control or profit from nursing homes or intermediate care facilities do not have criminal, ethical or regulatory violations in their past or present,” stated Kathryn A. Stebner, who represents CANHR in the suit.

Plaintiffs seek declaratory and injunctive relief and a writ of mandate to compel the Department and other defendants to enforce the provisions of Health and Safety Code section 1267.5(b).

This is not CANHR’s first lawsuit against the Department regarding its enforcement of Health & Safety Code § 1267.5. In 2004, CANHR brought a petition for writ of mandate against the Department, alleging that it was violating H&S Code § 1267.5(a). That portion of the law requires that the Department collect accurate and up-to-date information about the ownership and management of all skilled nursing and intermediate care facilities and make it publicly available. CANHR sued the Department because it had failed to do so. In April 2006, the Department and CANHR entered into a Stipulated Settlement Agreement and Order under which the Department agreed that it would contact all facility licensees to obtain current and accurate licensee and ownership information. Additionally, this information was to be made available to the public via an electronic database managed by CDPH.