



# FATE

Newsletter of Foundation Aiding The Elderly

## President's Message

# FATE CELEBRATES 25TH YEAR OF ADVOCACY...

by Carole Herman

It just doesn't seem possible that it has been 25 years since I founded FATE to serve our most vulnerable citizens. I never would have imagined that I would still be doing this work after all these years. I was naïve in those days, thinking that after I filed a complaint with the state agency that regulates nursing homes against the facility where my aunt Matilda died as the result of infected bedsores that the neglect and poor care would stop. Reality set in real quick after I discovered the district administrator of the California li-

censing agency had destroyed my complaint against the nursing home operator and stonewalled me for over a year.

Over these past 25 years, I am proud to say that FATE has served over 2,300 families all across the United States. Although most of our work is in California where we are physically located, with the internet and word of mouth, we are contacted by families all over the country (and some in foreign countries) to help with a loved one who is in a long-term care facility, a residential care home, an assisted liv-

ing facility, an acute hospital or just living at home. The majority of these calls are from people frustrated because they can not get any help from the system.

The horror stories I hear from these families are never ending. Some are very rich paying privately and some are our most poor who are subsidized by the government. Doesn't matter who you are.... rich or poor, black, yellow or white... we all are at risk. That is why after all these years there is still a horrendous need for grass-roots



CAROLE HERMAN

advocacy. It's not only because the population is living longer and more of us are ending up in long-term care facilities, but it is also because the government and those in power to help us, aren't doing what they are mandated to do...protect us when we are most vulnerable. It never ceases to amaze me how these government agencies or programs that are funded with our tax dollars, don't provide the help we need.

I have heard so many stories that I couldn't possibly begin to write about them. Not only do I hear the hor-

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#### FATES MISSION IS:

*"Assuring our elders are treated with care dignity and the utmost respect during their final years when they can no longer take care of themselves."*

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- Patient & Family Rights Advice
- Elderly Service Referrals
- Long Term Care Facility Evaluation

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## Judicial Council Approves New Protections for Conservatees in California Courts

Two years ago, FATE gave testimony concerning numerous conservatorship cases that FATE had documented over the past twenty years showing conservatees having their rights violated and in some cases their assets stolen by unscrupulous conservators. The California Senate hearings were the result of the Los Angeles Times extensive investigative report on conservatorships. The Times article, coupled with the Senate hearings, resulted in the California Senate enacting legislation to protect conservatees and Chief Justice Ronald George appointing a Task Force to look into conservatorships and the courts. On October 26, 2007, the Judicial Council of California approved a report with a sweeping set of recommendations that will offer new protections for conservatees in California trial courts and improve court oversight of these important cases. After an 18-month study that involved public hearings, research and interviews, the Task Force developed 85 separate recommendations, including the following: Counsel in all cases; advocacy program; detecting fraud; background checks; web-based filings and accounts; minimum visitation; education requirements and caseload standards.

The Task force's report is available on the California Courts web site at : [www.courtinfo.ca.gov/jc/documents/reports/102607itemD.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/102607itemD.pdf).

On 12/4/07, the Wall Street Journal published a story entitled "**Prescription Abuse Seen in U.S. Nursing Homes. Powerful Antipsychotics (such as Risperdal, Seroquel, Haldol, Zyprexa) used to subdue elderly; huge Medicaid expense.** Read this article on **FATE's web site at [www.4fate.org](http://www.4fate.org).**

# FATE CELEBRATES 25TH YEAR...

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ror stories of poor care and abuse, but when we file complaints with the state regulators, it becomes a battle to get them to hold the facilities accountable for violating the laws that were put in place to protect us from poor care and abuse. Although many of **FATE's** complaints to State Regulators are substantiated and result in deficiencies and/or citations, as listed in this issue, there are far too many that are not. Such as the woman whose mother was so neglected in a facility that she had to have both of her legs amputated because of infected bedsores and the regulatory agency unsubstantiated her complaint stating there were no violations of regulations; the World War II veteran who fought to keep our country free who died from a broken hip from a fall because there was insufficient staff to care for him and again the regulatory agency found the complaint to be unsubstantiated; a beloved uncle and family patriarch who suffered from bed sores, amputation of both legs, dehydration and stolen property yet the regulators only cited the facility for having no inventory of his personal belongings and totally ignored the mistreatment that caused his death; the healthy woman who took a fall at home and broke her leg and was placed in a nursing home for rehab but instead of rehab she was given antipsychotic medications and

left the nursing home in a coma and remained that way until she died, again the facility was not held accountable; the 85 year old grandmother who was placed in a facility by her granddaughter, was then conserved by the public guardian and died as a result of numerous bed sores, yet the regulators found the facility not responsible for her death. When the general public files a complaint they usually do not know the process and if they are lucky enough to get an answer from the state regulators and the complaint is unsubstantiated, they do not know their rights to appeal the decision.

Since **FATE** is headquartered in the capital of California, I also became active politically. I became a member of the Little Hoover Commission task force on nursing homes giving testimony at several hearings resulting in my case studies being included in reports to the Governor; provided testimony at Senate hearings, including the lack of oversight of conservatorship programs, the failure of the state licensing agency to properly administer its programs; filed numer-

ous public interest law suits against nursing home operators for not staffing their facilities; gave testimony at a utility district which resulted in the Board passing a tariff prohibiting buildings that house the elderly from participation in energy saving programs; conducted a nation-wide program to alert all public utility commissions to not allow facilities for the elderly to be under any type of energy saving program; filed a federal Qui Tam action against a northern California nursing home operator for fraudulent MediCare billings. All of these actions were results of the public calling **FATE** for assistance and **FATE** taking action to bring about awareness of elder abuse and work to resolve the problems.

The majority of our time is spent with direct advocacy for all those who call for assistance. The majority of the calls **FATE** receives are about poor care and abuse in long-term skilled nursing facilities. However, over the past several years, with the increase in the number of assisted living and residential care facilities, we are experiencing more complaints about poor care in these facilities as well. And, acute hospital problems are

on the rise and we get those calls as well. Again, the regulatory agencies mandated to oversee health care facilities and housing for the elderly are failing to protect us. I have heard the government make the same excuses for 25 years as to why they can't do their job... budget cuts and not enough personnel. I didn't believe that excuse 25 years ago and I don't believe it today. What I do believe is that the health care industry is politically very powerful...they employ numerous people to run their associations and their PAC's contribute huge amounts of monies to politicians and elected officials. What is so disheartening is that the majority of these campaign contributions are with our tax dollars so, we are actually paying for elder abuse in this country.

Over the next year, along with all the direct advocacy, I am very committed to raising the funds necessary to expand **FATE's** operation in order to better serve the public. It is very clear that in order to bring about change, the public must raise its voice loud and clear that we will not tolerate poor care and abuse of our loved ones. But most importantly, the general public needs to be educated about their rights and to know that there are organizations, such as **FATE**, that will help them stand up for those rights in order to bring about better care and dignity for all

**If you want happiness for a year, inherit a fortune. If you want happiness for a lifetime, help someone.**

- Chinese Proverb

# At Many Homes, More Profit and Less Nursing

In September of 2007, the New York Times published a story about more profits and less nursing at more than 1,200 nursing homes and 14,000 other homes, purchased by large private investment groups. It was discovered that after struggling homes were purchased by investment groups, facility managers quickly cut costs and within months, the number of clinical registered nurses was half what it had been a year earlier, as indicated by the Centers for Medicare and Medicaid Services. The investors and operators were soon earning millions of dollars a year with residents faring less than well. The Times analysis showed that managers at many nursing homes acquired by large private investors have cut expenses and staff, sometimes below minimum legal requirements.

In the past, family members often responded to such declines in care by suing the facility. But private investment companies are now making it very difficult for plaintiffs to succeed in court by creating complex corporate structures that obscure who controls the nursing homes. Some families of residents say those structures unjustly protect investors who profit while care declines. By contrast, publicly owned nursing home chains are essentially required to disclose who controls their facilities in securities filings and other regulatory documents. However, publicly held chains are not being held accountable by the Securities Exchange Commission for violating federal nursing

home regulations, such as insufficient staffing, dehydration, bed sores, all of which violate the law put in place to ensure proper care. The graying of American has presented financial opportunities for all kinds of businesses. Nursing homes, which received more than \$75 billion in 2006 from taxpayer programs, like Medicare and Medicaid, offer some of the biggest rewards for the operators. Ronald Silva, the president and chief executive of Fillmore Capital Partners, which paid \$1.8 billion last year to buy one of the nation's largest nursing home chains, was quoted by the Times as saying "I've never seen a surer bet." Private investment groups now own about 9 percent of the nation's total nursing home beds and are expected to acquire many more. Charlene Harrington, a professor at the University of California in San Francisco, who studies nursing homes, stated that the first thing owners do is lay off nurses and other staff that are essential to keeping patients safe. She added that chains have made a lot of money by cutting nurses at the cost of human lives.

Groups lobbying to increase transparency at nursing homes say complicated corporate structures should be outlawed. One idea popular among advocacy organizations is to require the company that owns a home's most valuable assets, its land and building, to manage it. That would put owners at risk if care declines. The industry will undoubtedly put up a lot of resistance to this approach.

## BOOKS OF INTEREST

### ***When the Old Block Chips: A Survival Guide for Adult Children of Difficult & Toxic Aging Parents***

Of interest to children of aging parents, health care professionals who work with them, eldercare Professionals, geriatric care managers and psychologists.

Author: Carol Celeste

Published by Protean Publishing cost \$14.95

To order visit [www.writingtoheal.com/OldBlockChips.html](http://www.writingtoheal.com/OldBlockChips.html).

### ***Elder Rage, or Take My Father...Please***

How to survive caring for aging parents.

Author: Jacqueline Marcell

To order contact:

Impressive Press

25 Via Lucca, suite J-333

Irvine, CA 92612-0673 (949)975-1012

### ***The Baby Boomer's Guide to Nursing Home Care***

Eric Carlson and Katherine Hsiao, Attorneys

National Senior Citizens Law Center

Order by Phone: (202) 289-6976

### ***20 Common Nursing Home Problems and How to Resolve Them***

Eric Carlson and Katherine Hsiao, Attorneys

National Senior Citizens Law Center

Order by Phone: (202) 289-6976

# NEW YORK HOME HEALTH CARE INDUSTRY BOOMS LITTLE OVERSIGHT TO COUNTER FRAUD

One of the fastest growing industries in the state of New York is the home health care industry according to a recent New York Times article. Driven by government policy and nourished by tax dollars, this industry has boomed over the past several years but government regulations coupled with lack of state agencies to police the industry have resulted in state officials not being able to monitor fraud. State officials admit that they do not even know how many home health aides work in the State of New York. Experts claim that until recently state officials had not paid close attention to home health care fraud. New York only recently became the second state, after Texas, to

create a Medicaid inspector-general's office. Home health aides and other personal care workers are a lifeline for many older or disabled people and their link from isolation to the outside world. The growth of this industry has been driven by the large numbers of disabled and low-income people who want to spend their final years at home instead of a hospital or nursing home. Experts also claim that the problem is not limited to New York and that other states are experiencing the same amount of growth in the home health care industry and that oversight is not keeping up with the growth of this billion dollar industry that is being fueled with tax payer's dollars.

## Bad Reactions to RX Drugs Nearly Triple Since 1998

Since 1998, when the Food and Drug Administration initiated a system to make it easier to report significant side effects of prescribed medications, the number of serious adverse events and deaths have nearly tripled. According to a report in the Archives of Internal Medicine, 20 percent of medications accounted for 87.1 percent of adverse effects with the biggest offenders being painkillers and drugs that modify the immune system to treat arthritis.

Thomas J. Moore, a drug safety expert with the Institute of Safe Medication Practices in Huntingdon Valley, PA, states that one-quarter of the increase could be attributed to a boost in prescriptions and another 15 percent to the introduction of new biotechnology drugs, but the rest of the increase could not be explained. Moore, who lead the study, stated that the clear finding is that we are losing ground in terms of drug safety and that is of grave concern.

The FDA and an unnamed trade group representing drug makers agreed that the number of reported adverse events had been increasing, but they attributed much of the rise to an increase in voluntary reporting of the events. Adverse events are those defined as resulting in death, birth defects, disability, hospitalization or requiring intervention to prevent harm. From 1998 to 2005, the number of prescriptions written each year grew by 25 percent. It's very important for those being prescribed medications to discuss the adverse side effects of the medications with the pharmacist who fills the drug order.

## Japan Elderly Being Abused

The Japanese newspaper, Yomiuri, has reported that nearly 500 elderly people were abused in Japan's nursing homes in the space of nine months last year – 10 times the number of cases reported by the government for a whole year. The survey was conducted by experts on elderly care early in 2007 and revealed that 498 cases of nursing facilities employees abused patients. The study included 190 cases of psychological abuse; 130 cases of physical abuse and 110 cases of physical restraints by tying elderly people to their beds. The survey drew responses from some 1,800 nursing homes but Yomiuri reported that abuse cases were probably going unreported.

A government report in September recorded only 53 cases of abuse against elderly people in nursing homes, which is around one-tenth of the figure that Yomiuri's study reported. Rapidly aging Japan, where a tenth of the population is aged 75 or older, is confronting cases of abuse against the elderly, which unfortunately clearly shows that elder abuse is a growing concern world-wide.

# NURSING HOME COMPLAINTS

***One of FATE's services is filing complaints with the state regulatory agencies on behalf of nursing home, assisted living, residential care and acute care hospital patients and residents. Some of these complaints result in the appropriate state department citing these facilities for violations of Federal and State regulations. The following are the results of some of those complaints:***

**Applewood Care Center, Sacramento, CA...Class A Citation...\$20,000 penalty assessment.** Failure to provide nutrition and necessary fluids for hydration; Failure to continually assess and provide fluids to ensure resident's hydration needs were met after patient was identified as high risk for dehydration.

**Applewood Care Center, Sacramento, CA...Deficiency....** failure to provide sufficient staffing to meet the needs of the patients.

**Arbor Convalescent, Lodi, CA....Deficiency....** failure to provide dental and oral care for patient.

**Arden Place, Residential Care Facility, Sacramento, CA...Deficiency...** failure to maintain facility's physical plant in a cleanly manner.

**Arden Rehab and Health Center, Sacramento, CA... Deficiencies...** Failure to have sufficient staffing to meet the needs of the patients; failure to obtain informed consent from responsible party prior to the administration of antipsychotic medications.

**Arden Rehab and Health Center, Sacramento, CA....Deficiencies.** Failure to carry out written physician's medication, treatment and laboratory orders as prescribed.

**Arden Rehab and Health Center, Sacramento, CA..Class B citation, \$1,000 penalty assessment.** Failure to ensure patient was assessed to be a high fall risk Resulting in falls;

failure to ensure patient was adequately monitored and interventions put in place to prevent falling; failure to document falls; failure to implement facility's policies and procedures to ensure safety.

**Arden Rehab and Health Center, Sacramento, CA...Class B citation..\$1,000 penalty assessment.** Failure to develop an initial care plan regarding measures to prevent dehydration; Failure to implement catheter care plan; failure to review and update patient's care plan after being sent to the hospital for dehydration, sepsis and UTI; failure to implement facility's policy and procedure when physician was not notified of insufficient fluids; failure to provide patient with necessary nutrition and fluids to maintain adequate hydration per physician orders.

**Arden Rehab and Health Center, Sacramento, CA...Deficiencies.** Failure to provide patient with podiatry services as ordered by the physician.

**Asbury Park, Sacramento, CA.....Deficiencies...** Failure to weigh patient as ordered by physician; failure to ensure weekly intake and output .Records were evaluated to assess patient's hydration status; failure to maintain patient health records; failure to ensure weekly progress notes were completed that were specific to patient's needs, patient's care plan and patient's response to care and treatments.

**Bruceville Terrace, Sacramento....Deficiencies....** failure to review wound care policies and procedures annually to prevent bed-sores.

**Casa De Las Campanas, San Diego, CA...Deficiencies.** Failure to develop care plan for patient related to increased coughing, difficulty swallowing and potential for oral aspiration; failure to provide sufficient staffing to meet needs of patients mandated by the Department of Public Health.

**Emmanuel Convalescent Hospital, Millbrae, CA...Deficiencies...** failure to access a change of condition causing a delay in necessary care; failure to assess blood sugar level of a diabetic patient resulting in treatment; failure to provide sufficient fluids for proper hydration; failure to provide sufficient staffing to meet needs of patients.

**Eskaton Care Center of Fair Oaks, Fair Oaks, CA...Class B Citation, \$ 1,000.00 penalty assessment.** Failure to identify care needs of patient; failure to develop an individual, written patient care plan, indicating care to be given; failure to document notification to physician; failure to administer medications as prescribed; failure to obtain informed consent prior to administration of antipsychotic medications; failure to develop a care plan in order to prevent the development of bed sores; failure to obtain a physician order for dressings to bed sores;

*Continued on page 7*

# NURSING HOME COMPLAINTS

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failure to notify patients responsible party of changes in skin condition; failure to notify physician of new skin lesions in a timely manner; failure to prevent a certified nurse assistant from working outside his scope of practice which caused patient further skin trauma; failure to follow facility's skin integrity protocol while caring for patient. These failures resulted in the patient developing a pressure ulcer (bed sore) within 11 days of admission to the facility. These violations had a direct relationship or immediate relationship to the health and/or harm of the patient.

**Deficiencies issued....** Failure to establish written patient care policies and procedures and implementation to ensure patient related goals and facility objectives are achieved when antipsychotic medications ordered without trying alternative methods; no informed consent for antipsychotic medications was obtained; failure to document behaviors and side effects on the medication administration record; failure to consistently document patient's behavior.

**Franciscan Convalescent Hospital, Fresno, CA ...Deficiencies...** Failure to implement the interdisciplinary resident care plan when the staff failed to following the facility practice of closely monitoring resident status/location to prevent elopement and placing at risk for injury.

**La Cumbre Senior Living Concepts, Santa Barbara, CA....Class B Citation, \$1,000 penalty assessment.** Failure to ensure the patient received assistance with devices and supervision to prevent falls. **Deficiencies** for failure to ensure that staff identified patient's care plan needs and that the patient's assessment did not reflect a fall which occurred in the facility; failure to ensure the patient care policy and pro-

cedure regarding the use of restraints was consistently implemented. Patient was observed in restraints without a care plan outlining the use of restraints and without consent from the patient, her physician or her representative; failure to ensure patient's rights.

**Manor Care, Citrus Heights, CA...Deficiencies...** failure to ensure that nurses' notes were dated; failure to ensure that catheter care was administered and recorded as prescribed by the physician.

**Pleasant Care Corporation/Petaluma, CA.....Class A Citation... \$18,000 penalty assessment.** Failure to ensure patient was free from any physical restraints imposed for purposes of staff convenience and not required to treat the patient's medical symptoms. Failure to ensure that patient receives adequate supervision and assistance to prevent accidents. (This complaint filed by FATE client.)

**Pleasant Care Corporation/Petaluma, CA..Class AA Citation...\$100,000 penalty assessment.** Failure to develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of patients and misappropriation of patient's property. Failure to assist patient in obtaining routine and 24-hour emergency dental care; failure to assess patient for dental status and failed to provide routine dental services to ensure oral/dental health resulting in patient's death related to septicemia and cardio respiratory arrest causing patient's death. (Note: This complaint was filed by the daughter of the patient in this facility.

**Pleasant Care Corporation/Ukiah, CA...Deficiency.** Failure to provide care which shows evidence of good personal hygiene, including care of the skin, shampooing and grooming of hair, oral hygiene, shaving, cleaning and cutting fingernails and toenails. Failure to have patient free of offensive odors.

**Sierra Vista Psychiatric Hospital, Highland, CA...Deficiencies.** Failure to ensure that the "Resident Protection Investigation Procedure" was followed after a resident complained that he was sexually assaulted during the night by a male staff member.

**Waterleaf at Land Park..., Sacramento, CA...Deficiencies...** Failure to prevent Stage III bedsores; failure to follow doctor's orders regarding pureed foods. (Note: This complaint was filed by the daughter of the patient in this facility and monitored by FATE).

**Yuba City Care Center, Yuba City, CA...Class B Citation, \$800.00 penalty assessment.** Failure to provide sufficient staffing for the care of patients. The violation had a direct relationship to the health, safety and security of patients.

**Yuba City Care Center, Yuba City, CA...Class B Citation, \$800.00 penalty assessment trebled to \$2,400.00** Second citation in twelve months for failure to provide sufficient staffing for the care of patients. The violation had a direct relationship to the health, safety and security of patients. **Class B Citation, \$1,000.00 penalty assessment.** On three separate occasions, the facility failed to ensure that the proper dose of insulin was administered to the patient as prescribed by the physician.

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