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Nursing Home Abuse Litigation

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Nursing Home Abuse Litigation

June 15, 2021

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ICLEF Electronic Publications

Feature Release 4.1

August 2020

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NURSING HOME ABUSE LITIGATION

June 15, 2021

www.ICLEF.ORG

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DISCLAIMER

The information and procedures set forth in this practice manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only and were designed for use in a particular situation involving parties which had certain needs which these documents met. All information, procedures and forms contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.

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NURSING HOME ABUSE LITIGATION



Agenda

- 8:30 A.M. Registration & Coffee
- 8:55 A.M. Welcome and Introduction
- 9:00 A.M. Case Intake and Evaluation
Ashley: Overview/What does NH abuse look like
- 9:15 A.M. Common Nursing Home Defenses
Kent
- 10:00 A.M. Practical Tips For Handling Nursing Home Cases
Dave: case evaluation/volume/resources for efficiency
- 10:30 A.M. Coffee Break
- 10:45 A.M. Discovery Tips
Ashley: what do you really need and how to find/get it
- 11:15 A.M. Jurisdictional/Procedural Issues
Convo BTW Ashley & Dave
- 11:30 A.M. Damages
Dave: Framing damages/why cases for old/sick people have significant value
- 12:00 P.M. COVID-19
Ashley: Legislation/no visitation orders/data/concerns
- 12:15 P.M. Adjourn

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June 15, 2021

WWW.ICLEF.ORG

Ashley N. Hadler

Garau Germano, P.C., Indianapolis



Ashley Hadler focuses her law practice representing survivors and families affected by sexual abuse, nursing home abuse and medical malpractice. She handles cases throughout Indiana and Illinois. Ashley began her law practice in Chicago representing survivors of nursing home and hospital abuse against some of the largest hospitals and nursing home chains in the Midwest.

She returned to Indiana in 2017 to continue helping people who were injured by abuse, neglect, and malpractice. Ashley is trained and experienced handling cases for clients who have suffered trauma, have complex medical issues, or are elderly. She understands issues faced by children and adults who are injured where they live, go to school, are coached, or receive medical treatment.

Ashley often speaks to groups of attorneys, victim advocates, and survivors of abuse to discuss the legal options available to survivors and their families. She knows how to investigate people and businesses that may be held accountable for abuse. She works to safeguard our clients' right to a jury trial by combatting forced arbitration clauses in contracts and advocating against immunity legislation.

Ashley is the Vice-chair of the Young Lawyer's Council of the National Crime Victim's Bar Association. She is an active board member of the Indiana Trial Lawyers Association, a member of the Illinois Trial Lawyers Association, and the American Association for Justice Sexual Assault and Nursing Home Litigation Groups. She is a volunteer guardian for the Indianapolis Center for At Risk Elders (CARE) and an active member of the Prevent Child Abuse Indiana Advisory Board.

David L. Farnbauch

Sweeney Law Firm, Fort Wayne



David Farnbauch is an AV-rated plaintiff's trial lawyer that handles personal injury, medical malpractice, and nursing home cases throughout the State. David has a particular interest in the use of computers and demonstrative evidence as a means of visual persuasion at trial. In addition to trying injury cases on a regular basis, David is a frequent author and speaker on trial strategy and tort litigation as well as the use of computer technology in handling plaintiff's cases.

David graduated from Valpo Law School in 1986 and has handled plaintiff's cases ever since. He started his career with Saul Ruman's firm in Lake County and joined the Sweeney Firm in Fort Wayne in 1996. In 1999, David was elected to serve on the Board of Directors of ITLA and has remained on ITLA's Board ever since. David is very active in the "Inns of Court" and has served as the President of the Fort Wayne chapter of the Inns and is also proud of his involvement in the Northeast Indiana Volunteer Lawyers program.

Mr. Farnbauch has been recognized every year since 2009 for his work in the field of medical malpractice by The Best Lawyers in America and has been board-certified by the National Board of Trial Advocacy since 2002.

W. Kent Winingham

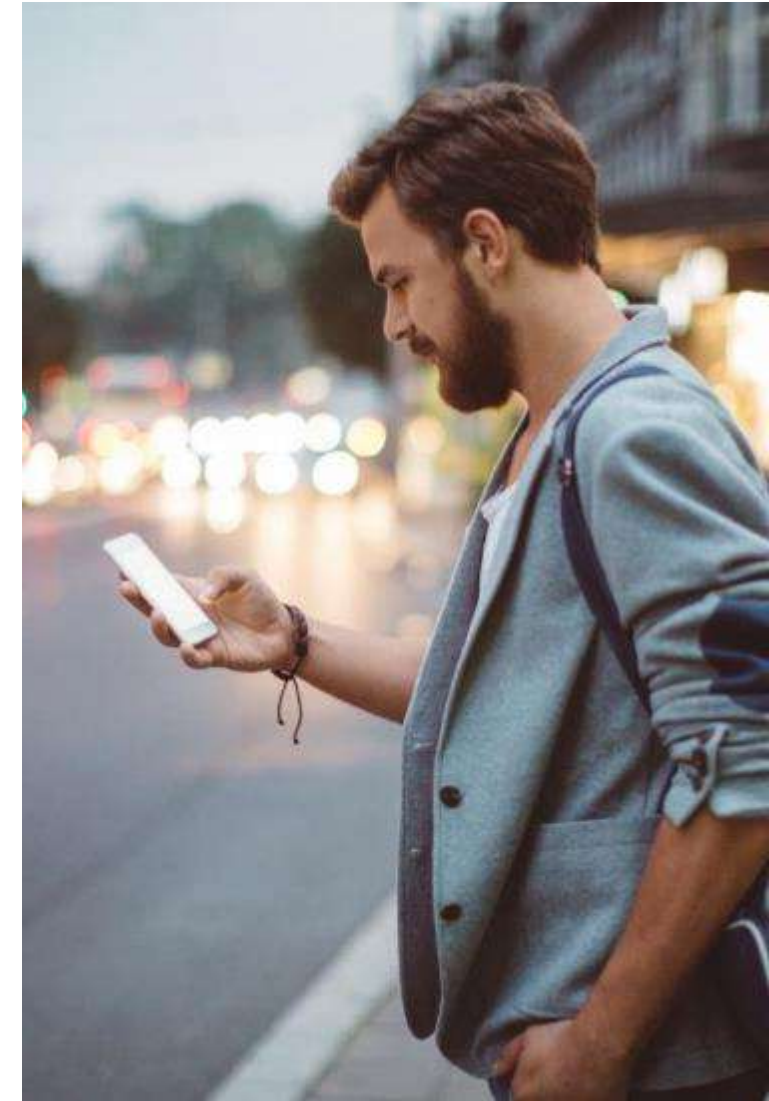
Wilson Kehoe Winingham LLC, Indianapolis



Kent Winingham earned his J.D. from Loyola University Chicago School of Law in 2015. Following law school, Kent practiced in Chicago, Illinois in the area of nursing home neglect and abuse before returning to Indianapolis in April of 2017. Kent focuses his practice here in Indiana in the area of personal injury, medical malpractice, and nursing home neglect and abuse. Kent was named the Indiana Trial Lawyers Association Young Lawyer of the Year in 2020, a Super Lawyers Rising Star for 2019 and 2020, as well as one of 15 Up and Coming Lawyers in Indiana Lawyer's 2019 Leadership in Law class.

Agenda

9:00-9:15:	CASE INTAKE and EVALUATION
9:15-10:00	COMMON NURSING HOME DEFENSES
10:00-10:30	PRACTICAL TIPS FOR HANDLING NURSING HOME CASES
10:30-10:45	BREAK
10:45-11:15	DISCOVERY TIPS
11:15-11:30	JURISDICTIONAL/PROCEDURAL ISSUES
11:30-12:00	FRAMING DAMAGES
12:00-12:15	EFFECTS OF COVID-19



NURSING HOME CASE INTAKE & EVALUATION

Ashley N. Hadler
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@SurvivorsLawyer

After Anonymous Tip, 17 Bodies Found at Nursing Home Hit by Virus

There have been 68 recent deaths of residents and nurses from the facility in a small New Jersey town.





Elderly Neglect And Abuse occurs because of *bad actors*

- The corporate misconduct answers WHY the injury occurred.
- WHY the caregivers weren't providing the appropriate care always goes back to significant understaffing.
- Understaffing is always due to budgetary decisions.



Common types of Nursing Home and Assisted Living Cases



Falls leading to fractures or head injuries



Pressure sores or "bed sores"



Malnutrition and/or Dehydration



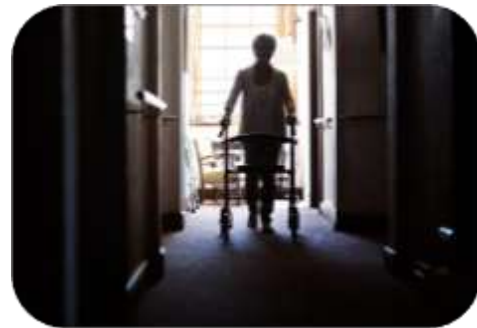
Physical and Sexual Abuse



Medication Errors



Choking



Wandering and Elopement



Infections and sepsis



Infringement on dignity: unanswered call lights, soiled linens

What leads to systemic negligence?



Staffing issues

- Understaffing
- Poor attendance
- Poor supervision
- High turnover—disrupts continuity of care
- Poor pay
 - Ikea



Underqualified

- Background checks not completed
- References not checked
- Poor training



Budgeting issues

- Funneling profits
- No supplies



Administrative issues

- Accepting or failing to discharge residents they cannot care for
- No clear delegation of duties
- Policies not appropriately developed, implemented, followed
- Failure to discipline

What Does
System
Negligence
Look Like?



Family's Perspective

What did they see?

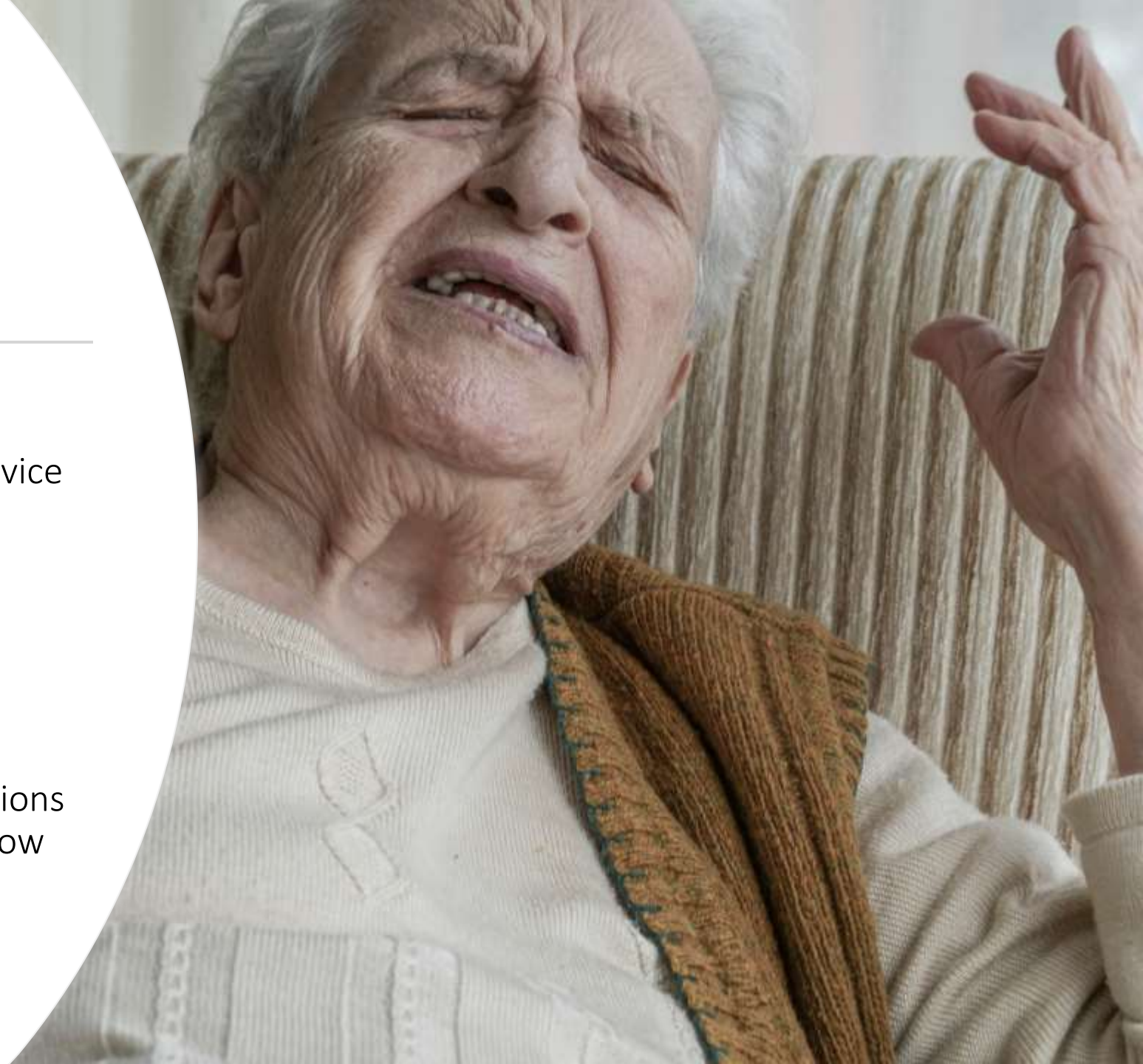
- Disheveled residents
- Sparse staff
 - Were nurses frequently at nurses' station
 - Did family recognize staff? Same time of day? Same shifts?
- Food trays lingering long after meals
- Empty water pitchers
- Disposition of staff—are they hurried; patient; friendly; apologetic?



Family's Perspective

What did they hear?

- Did family know staff by name and vice versa?
- Were call lights functional or did residents have to call out for assistance?
- Is resident complaining of any unexplained pain?
- Is resident making claims or allegations (no matter their mental status or how far-fetched the claim may be)



Family's Perspective

What did they smell?

- Are residents being kept clean and dry?
- Are soiled linens changed and contained?
- Any unusual smells that could indicate open wounds or infection?



Family's Perspective

What did they feel?

- Turning and repositioning
- Missed treatments
- Missed medications



Lawyer's Perspective

From the medical records

- False charting
- Missed treatments
- Not documented=not done





Lawyer's Perspective

Tools And Resources

- Medicare Consumer reports
 - Look for patterns
- ISDH
 - Use the report in depositions
 - Compare it to business affairs
 - Corporate name change
 - Transfer of ownership
 - New Administrator or Director of Nursing
- Medicaid Cost reports
 - Who are the related entities?
 - Who is profiting from those entities?
 - Same owner or family?
 - Hire an expert to investigate and analyze.
- Centers for Medicare and Medicaid Services—Nursing Home Compare Website

@SurvivorsLawyer

Questions?

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GARAU | GERMANO PC
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COMMON NURSING HOME NEGLIGENCE DEFENSES

Kent Winingham
WKW



WHO IS YOUR RESIDENT?



WHO IS YOUR RESIDENT?



DEFENSE: Noncompliant resident

Response:

- Was it care-planned for? If so, when?
- Was family informed/brought in?
- Was physician notified?
- Was social worker notified?

DEFENSE: Developed unavoidable pressure ulcers

Response:

- Any PUs on admission?
- Comorbidities are risk factors, don't cause PUs
- Comorbidities must be care-planned for
- What was Braden assessment?
- What was treatment provided?

DEFENSE: Falls happen, nothing you can do to prevent them

Response:

- Assessed as fall risk?
- Prior falls?
- Care plan?
- Interventions? In place?
- Where were staff?
- What time did fall occur?

DEFENSE (sort of): It's a medmal, I've got to go through the panel process...

Response:

- Many facilities are NOT QHPs, so no cap and no panel process!
- Is conduct medical in nature...?



DEFENSE (choking): “Just an accident”

Response:

- What was diet? Soft, mechanical diet?
- What food did resident choke on?
- Care plan address choking risk?
- Any prior choking incidents?

QUESTIONS? CONCERNS? SNIDE
REMARKS? CALL OR EMAIL ME:

KWININGHAM@WKW.COM

317-920-6409



Practical Tips for Handling Nursing Home Cases

**David L. Farnbauch
Sweeney Law Firm
Fort Wayne, IN**



Morning break
10:30-10:45a.m.

NURSING HOME LITIGATION DISCOVERY TIPS

Ashley N. Hadler
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@SurvivorsLawyer

Public v. Private Justice

Judicial System

**Alternative Dispute
Resolution**

Secret Discovery

Secret Settlements

Secret Proceedings

Secret Discovery

“Routine” Protective Orders
&
Baseless Privilege Claims

- Presumptively Public
- Beware of burden-shifting
- Truth-seeking function of discovery
- Avoid wasteful duplication of efforts

Sources of Support

- Indiana Rules on Access to Court Records
- Freedom of Information Act (FOIA)
- Access to Public Records Act (APRA)
- Indiana Trial Rule 26(B) and (C)
- Federal and State statutes, administrative codes, and regulations
- Caselaw interpreting assertions of privilege and protective order requests



**NOT 1) privileged 2) confidential
3) proprietary or 4) secret**



Incident Report Form

Use this form to report accidents, injuries, medical situations, or student behavior problems. Incidents involving a crime or traffic incident should be reported directly to the Campus Public Safety office. If possible, the report should be completed within 24 hours of the event. Submit completed forms to the President's Office.

INFORMATION ABOUT PERSON INVOLVED IN THE INCIDENT

Full Name _____
Home Address _____
Designation _____
Phone Numbers Home _____ Cell _____ Work _____

INFORMATION ABOUT THE INCIDENT

Date of Incident _____ Time _____ Police Notified Yes No
Location of Incident _____

Description of Incident (what happened, how it happened, factors leading to the event, etc.) Be as specific as possible (attached additional sheets if necessary)

Were there any witnesses to the incident? Yes No
If yes, attach separate sheet with names, addresses, and phone numbers.



RESTRICTED (when complete)

WITNESS STATEMENT

(CJ Act 1967, s.9, MC Act 1980, ss.5A(3)(a) and 5B; MC Rules 1981, r.70)

URN _____

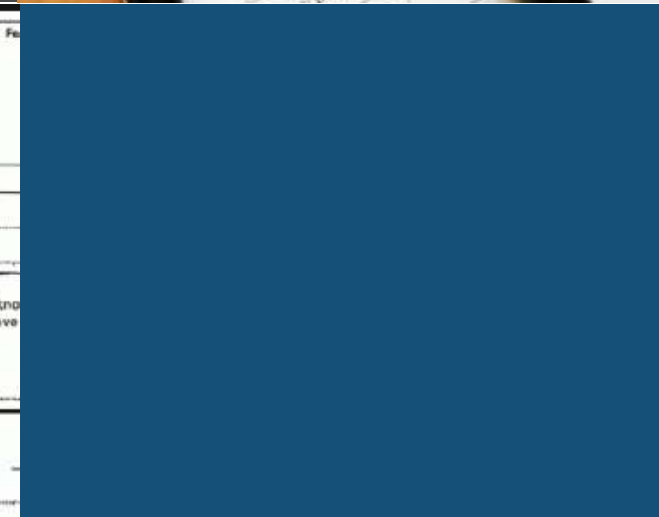
Statement of Jeremy Wickins
under 18 over 18 over 18 insert 'over 18' Occupation TV Producer

Statement (consisting of 8 page(s) each signed by me) is true to the best of my knowledge and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have made anything which I know to be false or do not believe to be true.

Signature TJ Date 7/5/07

Witness evidence is visually recorded (supply witness details on rear)

on the above named person and an address known to Police



Protective Orders

Ind. Tr. R. 26(C)(7) Confidential Information

“A party seeking a protective order must demonstrate that a trade secret is implicated by the discovery request.”

Bridgestone Ams. Holding, Inc. v. Mayberry, 878 N.E.2d 189, 194 (Ind. 2007)



Burden on the Party Seeking the Protective Order



Are they otherwise required to create, maintain, or transmit the information?



Is it information, a formula, a pattern, compilation, program, device, method, technique or process with economic value?



Is it the subject of efforts to maintain its secrecy?

Privilege Assertions

Absent an articulation of specific reasons why the documents . . . sought are privileged, the information is discoverable; otherwise, **the whole discovery process is frustrated and vital information may be 'swept under the rug.'**

Brown v. Katz, 868 N.E.2d 1159, 1167 (Ind. Ct. App. 2007) (citation omitted).

CREATED IN
ANTICIPATION OF
LITIGATION

WORK PRODUCT

ATTORNEY-CLIENT

QUALITY ASSURANCE

Confidential Settlement Agreements

Who benefits from it?

- Corporate bad actor?
- Your client?

Who does it effect?

- The public?
- Future litigants?
- Regulatory bodies?
- The media?

CARELESS

**16 falls. An amputated leg. An
infected tailbone. Dire
conditions in Indiana nursing
homes.**

Tony Cook, Tim Evans, and Emily Hopkins, Indianapolis Star
Updated 9:28 a.m. EDT Mar. 12, 2020



**Secret
Proceedings**

DTCI: Where have all the jury trials gone, revisited

December 25, 2019 | From DTCI

KEYWORDS [BAR ASSOCIATIONS/FOUNDATIONS](#) / [DEFENSE TRIAL COUNSEL OF INDIANA](#)

COMMENTS PRINT      47

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[IndyBar: To the Working Mom: Wear the Pants](#)
April 15, 2020

By **Louis W. Voelker**

Recently, Robert Dignam, a Lake County trial attorney and mediator, awakened me during his CLE presentation (just kidding, Bob!) by referencing my December 2015 article on the declining number of civil jury trials in Indiana. And so was born the idea to revisit those statistics and their implications. Let me first briefly recap the original article.

Historically, the right to trial by jury of civil claims was sufficiently important to the Founders that it is enshrined in the Seventh Amendment to the United States Constitution. Likewise, the drafters of our state Constitution provided unequivocally in Article I, Section 20 of the Indiana Constitution: "In all civil cases, the right of trial by jury shall remain inviolate." Although a large percentage of attorneys would likely cite the right to trial by jury as a critical element of the judicial systems of our state and our nation, the implementation of that right is beginning to appear more conceptual than tangible.

In 2015, I reviewed statistics on civil cases from the Indiana Supreme Court 2014 Indiana Judicial Service Report, Vol I: Judicial Year in Review, comparing data from 2005 with that of 2014. In 2014, there were 11,417 new civil tort cases filed, a 16% decrease compared to 2005's 13,588 filings. By comparison, only 209 tort cases were concluded by jury trial in 2014, down more than 50% from the 486 claims tried to jury in 2005.

So, where are the numbers now? The most recent statistics available can be found in [the 2017 report](#). That report shows that new tort filings in 2017 numbered 11,879 — up about 4% from 2014. Yet despite essentially flat numbers for new filings, the number of civil tort cases disposed of by jury trial has continued to fall. In 2017 there were only 165 trials, a decrease of 20% in merely three years.



Defense Trial Counsel of Indiana

Louis Voelker

...to binding,
secret,
Arbitration!

“Forced arbitration, a deeply flawed practice in the best of times, threatens to seriously undermine legal safeguards designed to protect people in the midst of the current crisis.”

-Daniel Wilf Townsend, Boston Review

Forced Arbitration

- Binding
- Pre-dispute
- Buried in adhesion or “click-through” contracts
- Limit discovery
- Limit or waive damages
- Include strict confidentiality
- Waive right to judicial review
- Not revocable



The Result?

Limits information sharing.

Inability to recover complete damages.

Deprives public of information about known risks, continuing hazards, and **systemic problems**.

Blind negotiations for the “one-shot” plaintiff.

Empowers **repeat offender** with knowledge of prior proceedings.

Conceals arbitrators record.

No public record of dispute.



42 C.F.R. § 483.70(n)

1. Must not require any resident to sign an arbitration agreement]as a condition of admission to the facility
2. Must explicitly inform the resident or her representative of her right not to sign the agreement as a condition of admission to the facility
3. Must ensure that the agreement is explained to the resident and her representative in a form or manner she understands;
4. Must explicitly grant the resident or her representative the right to rescind the agreement within 30 calendar days of signing it, and
5. A copy of the signed agreement for binding arbitration and the arbitrator's final decision must be retained by the facility for 5 years after resolving the dispute and be available for inspection upon request by CMS or its designees.



Takeaways: when in doubt,
remember the young lawyers!

- How does this benefit my client?
- Who else may this impact?
- Is there a valid legal basis for the request?
- Is it narrowly-tailored?
- Is it conscionable?
- Is it a procedural hassle?
- Does it deter or reinforce bad behaviors?
- Is there an opportunity for greater good?

@SurvivorsLawyer

Thank you

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JURISDICTIONAL AND PROCEDURAL ISSUES

Ashley N. Hadler & David L. Farnbauch

Who are the proper Defendants?

Does the Indiana Medical Malpractice Act Apply?

say
what!



Plaintiff's Motion to Compel Arbitration

- QHPs can relinquish the right to avail themselves of the Indiana Medical Malpractice Act
 - Waive administrative review by a medical review panel
 - Damage limitations will depend on language of the arbitration agreement at issue

Estate of King v. Aperion Care
155 N.E.3d 1193 (Ind.Ct.App. 2020)

Doe v. Carmel Operator, LLC

160 N.E.3d 518 (Ind. 2021)

**When should I retain
experts?**

What is the claim “worth”?

Framing damages in nursing home neglect cases (in conservative venues)

**David L. Farnbauch
Sweeney Law Firm
Fort Wayne, IN**





Randi McGinn



Ted Koskoff

The Four Factors of a Case

Liability	Did the defendant do something wrong?
Causation	Did the wrong cause the injuries claimed?
Damages	How much will make the person whole?
The "X" Factor	Does this person deserve the money?

If you lose on any one of these issues, you lose the case. The defendant has to prove absolutely nothing. To make the life of a trial lawyer even tougher, if you win all these elements at trial, you may still lose the case through an appeal, which can last an average of two to five years after the verdict. I never said the greatest job in the world didn't come with a few challenges. All the more reason to try and increase your potential client's chances of success by evaluating the case carefully, balancing the four issues you have to prove, and selecting or rejecting the case.

FIND A STORY WORTH TELLING

Connecticut lawyer Mike Koskoff passed on to me the advice of his father, the legendary trial lawyer Ted Koskoff: "You make more money from the cases you turn down than the cases that you take."

So how do you follow that sage counsel and recognize the cases you should take and the cases you should turn down? How do you find out if the person who phones or walks in your front door has a story worth telling?

There are a few basic elements to every story worth telling:

- A violation of safety rules involving a danger to the community.
- A villain or villains.
- A hero or heroine.
- A solution from the jury that makes us all safer.

Ask the Tough Questions

ELIZABETH BEALL

Case intake with potential clients can become an exercise in rote statements—reciting the time frame, cost, and litigation process. Most lawyers know to ask open-ended questions beginning with who, what, when, where, and why. But many lawyers stop there, trusting the client to report important facts. Unfortunately, this approach may miss essential details. Later in the case, you may find a land mine that destroys any hope for a positive outcome—wasting your time and effort.

It is more productive to treat the intake as an interview. Go into it with a skeptical eye, and imagine you are the defense lawyer hearing about the case for the first time. Tell the client that you need to ask some difficult questions, and then do just that. You need to know the answers long before the defense does and asking the tough questions during intake can help you avoid frustration later. You should:

“Tell the client that you need to ask some difficult questions, and then do just that. You need to know the answers long before the defense does and asking the tough questions during intake can help you avoid frustration later. You should:

- Ask, “Why didn't you?” instead of just, “What did you do next?”
- Ask potential clients what they want out of the case. You will learn more about your clients by asking what motivates them.
- Ask them to tell you three things that they would not want the defense lawyer to know about the case.

If you approach the intake as a frank and candid interview, you'll make better informed decisions about cases.

Elizabeth Beall is the owner of Beall Law Offices in Morgantown, N.C. She can be reached at elizabeth@bealllawoffices.com.



Make an honest dollar
Spend Wisely
Don't spend more than you make

We the People



Individual Rights & Property Rights
Freedom from Government intrusion
Smaller Government and less taxes



Life is sacred
Moral Right and Wrong
Responsibility

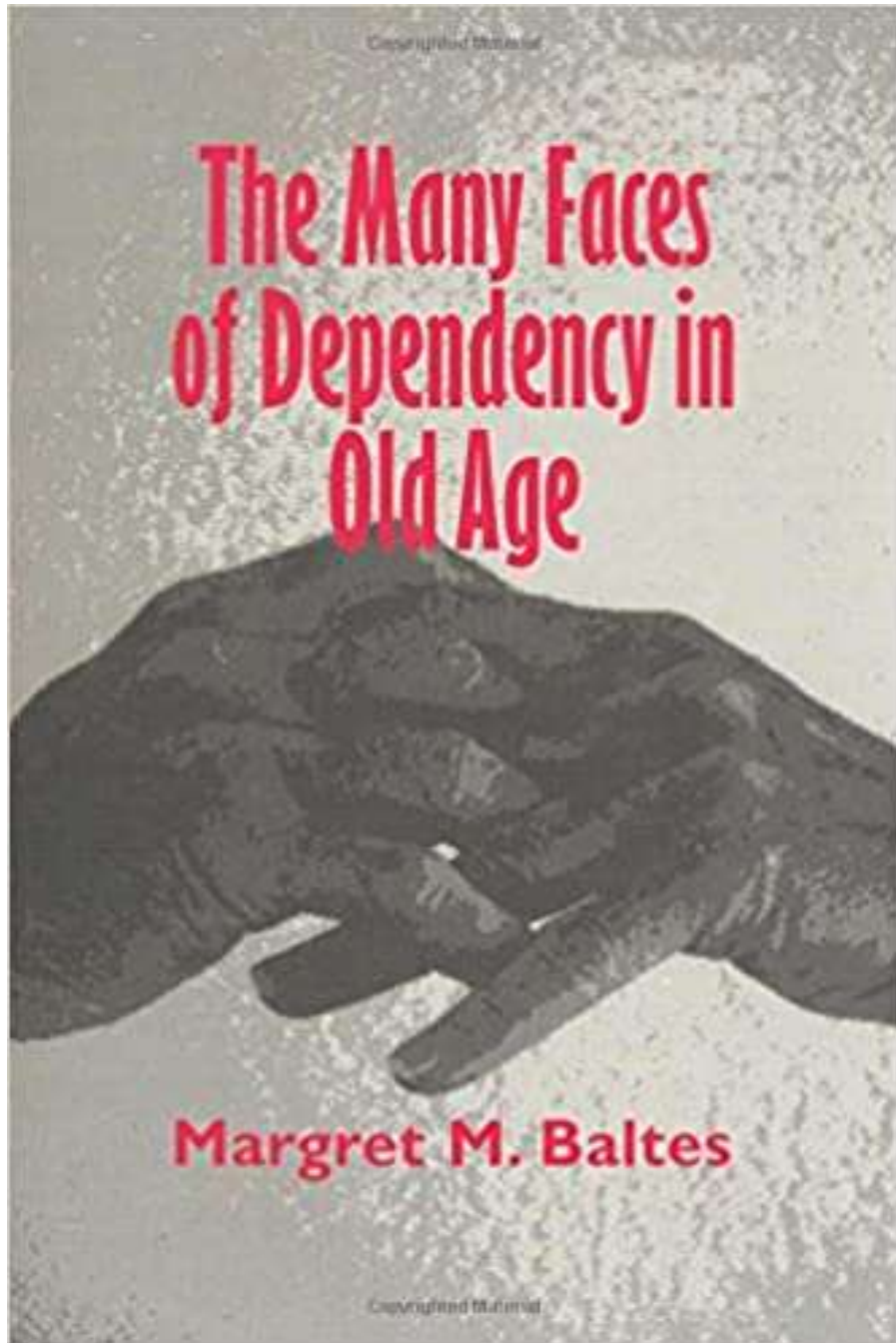
When you talk to conservative jurors, there are seven conservative values you need to know.



Paul Byrd

1. **Accountability** is the key to promoting responsible behavior. If wrongdoers are not held accountable for the consequences of their actions, they will continue to act irresponsibly.
2. Society has a right to set reasonable **standards of behavior** for individuals. Violators of those standards should suffer the consequences.
3. People should pay what they owe. It's not right to Welch on a debt. People should be paid what they are owed.
4. There is no place for a privileged class in America.
5. Human life is precious and all human beings should be treated with dignity. Therefore, human life and human dignity should be respected and protected under the law.
6. Money is a motivator. Incentives impact behavior. Therefore, if you subsidize something you get more of it. If you penalize something, you get less of it.
7. The government closest to the people serves the people best. (*Thomas Jefferson*)





Q: Have you ever been totally dependent on someone else to care for you?
For an extended period of time?
Utterly at someone else's mercy for every need?

Q: Have you ever been dependent on others to:
Bathe
Dress
Feed
Toilet
Medications

Q: Have you ever taken care of adults who needed help with the most basic activities of daily living?

Eating
Drinking
Dressing
Bathroom



Those that have been totally dependent on others will clearly be able to identify with your client. Those that have cared for someone need to be questioned further about their experience. It could be they will identify with the nursing home staff more. However, if they did it at home and had no problems, they may not understand how they could do it with no problems and the nursing home could not.

ACCOUNTABILITY VS RESPONSIBILITY

(a subtle but very powerful difference)

Accountability is addressed in voir dire with the following line of questions.

Q: What does “accountability” mean to you?

To be answerable for your conduct

Subject to giving an account

Q: Do you stress individual accountability in your life?

How so?

Q: Is there a connection between accountability and responsibility? Do they go hand-in-hand?

Q: Should wrongdoers be held accountable for their misconduct?

Q: What happens if wrongdoers aren't required to account for their wrongdoing?

Q: How many of you have strong feelings that people should be more willing to accept the bad things that come their way (regardless of the reason)?

Voir Dire Topics

Shit happens

- Older people have strokes
- Medication does not always work

Damages not seen as legitimate

- Older Plaintiff
- Adult Children

Bias over elements of damages

- Pain and suffering, loss of a normal life, grief and sorrow

Bias over damage amounts

- Tort reformers
- Millions of dollars is too much

This money will not go to Dolores Trendel

MS. BLACK: So based on what you've heard today is there any one here who thinks that they may not be able to do this job as well as it needs to be done based on some of the issues or topics that have come up?

If so, please raise your hand. It's okay if you do, but we just need to know now.

You'll learn throughout this case that the damages if we meet our burden of proof and show – demonstrate that there's an injury will not go to Dolores Trendel because she's not with us. They will go to her family.

Who here just doesn't think that's right? It's okay if you feel that way. We just need to know now.

**What we say in our verdicts says a lot
about US, what we value in our community**

In our verdict, this is important.

What we say in our verdict says a lot more about who we are and what we value.

Do we value responsibility? Do we care about when people get injured by the neglect and sloppiness of others? Or are these things just words without strength; empty words that people say because when it comes time to be responsible they'll use the legal system to get off the hook; some legal loophole.

COVID-19 and NURSING HOMES

SUBTITLE GOES HERE

After Anonymous Tip, 17 Bodies Found at Nursing Home Hit by Virus

There have been 68 recent deaths of residents and nurses from the facility in a small New Jersey town.



Loosened Regulations related to COVID

The Perfect Storm

- No family in facility
- No surveyors
- Waivers of reporting duties
- Waivers of staff certifications and training

CMS FUNDING TO PROVIDE

Ipads and tablets, headphones, & covers

- For virtual health and social visits
- One device for 7-10 residents; \$3,000 facility max

PPE

- Masks, gloves, gowns, eye protection
- 14 day supply

\$100 million from CMS

\$81 million to state survey offices

- Infection control surveys before July
- “Immediate jeopardy” complaints
- Reopening surveys

PPE for surveyors

- Protection to allow for surveyors safety

Quality Care for Nursing Home Residents and Workers During COVID-19 Act of 2020 HR 6698

- Require full-time infection preventionist
- Fines for failure to comply
- Ensure right to return
- Prohibit transfer w/out notification & permission

- Weekly testing for residents; daily testing for staff
- Develop expert strike teams
- Require PPE for workers

Protection at a Distance

Make your presence known



Make use of technology



Send necessary supplies through Amazon



Ask local authorities about use of federal and state funds



Do a window visit



Keep notes

Create a Record

- Report concern to state board of health
- “IMMEDIATE JEOPARDY”
- Talk to your Ombudsman
- Communicate with other families
- Connect with staff members
- Share information
- Ask questions
- Save information distributed by facility
- Take photos or videos



Indiana COVID immunity legislation

Senate Bill 1

House Bill 1002

SECTION 5. IC 25-1-20 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2020 (RETROACTIVE)]:

Chapter 20. Effect of a State Disaster Emergency on Professional Disciplinary Action

Sec. 1. This chapter applies during a period of a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19, if the state of disaster emergency was declared:

- (1) after February 29, 2020; and
- (2) before April 1, 2022.

Sec. 2. The following definitions apply throughout this chapter:

- (1) "Arising (or arises) from a (or the) state disaster emergency" means an injury or harm:
 - (A) caused by or resulting from an act or omission performed in response to a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19; and
 - (B) arising from COVID-19 (as defined by IC 34-6-2-10.4(b)).

Sec. 3. Except as provided in section 4 of this chapter, a health care provider is not subject to professional discipline under IC 25-1-7 or IC 25-1-9 for any of the following:

- (1) Health care services provided in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.
- (2) An act or omission of the health care provider committed with respect to the provision, withholding, delay, or withdrawal of health care services in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.
- (3) Compliance with an executive order or local health order issued in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.
- (4) An injury, a death, or a loss to a person or property alleged to have occurred because the health care provider was unable to treat, diagnose, or test the person for any illness, disease, or condition, including an inability to perform any elective procedure in compliance with an executive order or local health order issued in response to or arising from a state disaster emergency declared under IC 10-14-3-12 to respond to COVID-19.

(b) "Arising from COVID-19", for purposes of section 10.5 of this chapter, IC 34-12-5, and IC 34-13-3-3, means an injury or harm caused by or resulting from:

(1) the actual, alleged, or possible exposure to or contraction of COVID-19; or

(2) services, treatment, or other actions performed for COVID-19.

(c) The definition under subsection (b) includes:

(1) the implementation of policies and procedures to:

(A) prevent or minimize the spread of COVID-19; and

(B) reallocate or procure staff or resources for COVID-19.

(2) testing in response to COVID-19;

(3) monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;

(4) using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, including personal protective equipment, for COVID-19;

(5) closing or partially closing to prevent or minimize the spread of COVID-19;

(6) delaying or modifying the scheduling or performance of a nonemergency medical procedure or appointment due to COVID-19;

(7) reasonable nonperformance of medical services due to COVID-19; and

(8) providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public from COVID-19.

@SurvivorsLawyer

Thank you

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GARAU GERMANO PC
TRIAL ATTORNEYS

