



CUTTING OUT THE MIDDLE MAN

by: Kippy L. Wroten

According to the 2012 Long Term Care Actuarial Analysis published by AON, litigation costs every facility on average more than \$225,000 every year. You know litigation is but a knock on your door away. You can feel its breath on your neck. So, for this moment let's presume you won't beat the odds and that a lawsuit will inevitably darken your doorstep. Is there a proactive way to lessen this financial loan? As a trial attorney I am up for any fight in the courtroom you may chose to take on, but what about other options? Here's one approach that I believe should be considered.

SAVE BY ELIMINATING UNNECESSARY ATTORNEYS FEES

No, I am not talking about hiring cut-rate defense attorneys or handcuffing defense attorneys with rules that prevent them from effectively establishing your defense. These are old school strategies that experience has taught us can cause bigger problems down the road. So how do you cut attorneys fees without cutting the quality of your defense? By cutting the plaintiff attorney out of the picture. You see, in long term care litigation the defendant facility ultimately pays the expense of both sets of attorneys, those representing the facility and their opposition. Avoid the involvement of a plaintiff attorney and you avoid the inflated expense that naturally follows. Consider this.

ESTABLISHING AN ETHICAL AND RESPONSIBLE PLAN FOR PATIENT DISCLOSURE

Many plaintiffs say they only initiated litigation because they felt the had to. So, stopping litigation after an adverse event has occurred requires that your team secures patient and family confidence that you will do the right thing. I'm no talking about a façade or a well-intentioned but ill planned and poorly executed effort. I'm talking about a proactive plan designed as a preemptive strike against litigation.

- **Point 1:** Remember that you aren't a trained negotiator and that having an attorney advising you is important. But not every attorney is trained for this specialized task. Consider first the responsiveness of your attorney. You run a 24/7 operation therefore you don't have the luxury of utilizing an attorney who works bankers hours or is just too busy to quickly return your phone call. When emergencies arise, you need help now. Next, you want an attorney that can efficiently investigate possible liability and build on your positive relationship with your resident's family. The ability to build the family's mutual confidence in the process is essential. This requires heightened sensitivity, knowledge, and ethics.
- **Point 2:** "Transparency" is more then just a word. We can either fight it or embrace it. To embrace it means that responsible parties are best informed about known facts surrounding an adverse event as soon as reasonably possible. The appropriate disclosure of information however is a learned skill. You cannot wing it.

- **Point 3:** Disclosure means appropriately informing responsible parties about known facts. It does not mean speculating as to cause or prematurely accepting responsibility for unexpected outcomes. Disclosure is a process, not an event. It includes:
- Initial and timely report of known facts to responsible parties;
 - Schedule a reasonable time to meet with the responsible party in follow-up;
 - Conduct an appropriate and thorough investigation;
 - When an investigation results in a determination that harm was caused by negligent caregiver acts, assess monetary value and determine a reasonable financial compromise;
 - Meet with the responsible party to report on the factual findings of your investigation. Consider apologizing if an apology is called for. Be prepared to discuss corrective actions being undertaken to prevent future events. If warranted, be prepared to offer financial compensation to stop litigation before it starts.

While a good attorney joke as much as the next guy the fact is, attorneys have specialized education and skills that when used ethically can actually accomplish a fair and rational result for all. The problem with plaintiff attorneys is that they always want a percent of any monetary resolution, regardless of how much work they do or don't do. To the contrary, defense attorneys charge for the time they actually spend working for you. Therefore, a plaintiff attorney will take the same \$90,000+ in a case that settles for \$225,000 regardless of whether it resolved early or on the steps of trial. Only the defense attorney can step in early at a limited and reasonable cost to navigate a fair result. What will it cost to bring in a defense attorney for early assistance? Generally less than the cost associated with the initial legal work requires to respond to a lawsuit, a small fraction of the cost that will be added if a plaintiff attorney enters the scene. Now add the savings from wear and tear caused by additional year or two of litigation and this investment could be the bargain of a lifetime.

About the Author:

Founder and Shareholder of Wroten & Associates, Kippy Wroten's experience covers a broad spectrum of complex litigation encompassing all areas of healthcare liability including high exposure and class action claims of elder abuse, fraud, and corporate unfair business practices. Ms. Wroten's experience includes the successful defense of individual healthcare providers, independent long term care facilities, ancillary service providers, as well as related corporate enterprises and their executives.

Ms. Wroten started her legal career as a Deputy District Attorney for Orange County where she prosecuted gang, child and spousal abuse cases. Thereafter, she spent 15 years as a litigator for a prestigious healthcare defense firm where she was a shareholder and lead her long term care practice area. Ms. Wroten founded Wroten & Associates in 2006 to better meet the growing challenges of the long term care industry. Wroten & Associates is designed to provide personal service at rational rates.

Ms. Wroten is a sought after speaker who is dedicated to the education of the healthcare industry and legal community. She has been an invited lecturer for the Defense Research Institute, Irvine Medical Center, Chapman University College of Law, and the Association of Southern California Defense Counsel.

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