

A GUIDE CARING FOR OUR ELDERS



STOP ABUSE NOW!

IDENTIFICATION ♥ PREVENTION ♥ INTERVENTION

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We all aspire to hold jobs that are meaningful, rewarding, and provide income to meet our needs and raise our children. While the law does not guarantee that our work meet these aspirations, it creates specific rights for employees such as pregnancy and maternity leave, nursing mother accommodations, and pay equity designed to advance societal goals such as supporting families and overcoming long-standing prejudices.

The law also mandates protection against forces that can undermine our sense of self-worth, reduce our wages, block career advancement, and lead to extreme emotional stress. Workplace discrimination, harassment, and wrongful termination are all prohibited.

Through this guide, I wish to raise awareness of rights and protections possessed by all California workers. If your rights have been violated by your employer, the Dolan Law Firm stands ready, willing, and able to assist you in obtaining justice.

CHRISTOPHER B. DOLAN

FOUNDER & CHIEF
LEGAL COUNSEL,
DOLAN LAW FIRM PC.



Is your loved one protected by law?

California law protects elders, dependent adults, and developmentally disabled persons. These legal terms are defined as follows:

An “elder” is anyone who is 65 years of age or older.

A “dependent adult” is any person between the ages of 18 and 64 who resides in California and who has physical or Is your loved one protected by law? mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. A dependent adult may also be any person who is admitted as an

inpatient to a 24-hour health care facility. This may include the elderly, those suffering dementia, the developmentally disabled, the brain injured, psychiatric patients, and, in some instances, people in rehabilitation facilities.

A “developmentally disabled person”

is any person with a disability that originates before an individual reaches age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that person. This may include persons with cerebral palsy, epilepsy, and autism. ♥



What Is Elder Abuse?

Here are the legal definitions, in layperson's terms



- **Abandonment:** Desertion of an elder by his/her caregiver.
- **Abduction:** Removal from and/or restraint outside of California.
- Financial elder abuse: Illegal or unethical exploitation or use of an elder's assets, funds, and/or property.
- **Isolation:** Intentional prevention of an elder from communicating with others.
- **Neglect:** Failure by caretakers to perform duties and obligations relating to an elder's health and welfare.
- **Physical abuse:** Infliction of physical pain or suffering including use of physical restraints and prescription drugs to control and punish.
- **Other treatment** that causes physical harm or pain or mental suffering.
- **Deprivation by a care custodian of goods or services necessary to avoid physical harm or mental suffering:** Care custodians are administrators or employees of any facility providing care or services for elders or dependent adults. ♥

DO you suspect elder abuse?

If the answer is yes, take these important steps immediately

1. If the health of a senior is in danger, call **9-1-1** to obtain medical care and alert the police. Elder abuse is a crime.
2. Document and photograph the senior's physical and living conditions, and then report the abuse. Visit our website at **[DolanLawFirm.com/reportelderabuse](https://www.dolanlawfirm.com/reportelderabuse)** to find the appropriate local regulatory agency to contact. In San Francisco, contact **Adult Protective Services at (415) 355-6700** to report abuse or neglect of an elderly person or a dependent adult.
3. Make formal complaints to facility supervisors. Document the dates you called and who you spoke with. Keep copies of all correspondence.
4. **Contact the Dolan Law Firm at 415-421- 2800 or [dolanlawfirm.com](https://www.dolanlawfirm.com).** An attorney experienced in handling elder abuse cases will review your case for free. ♥





Know These Warning Signs

What does nursing home neglect look like?



A **bus**e in nursing homes and residential care facilities is often linked to efforts by facilities to cut expenses (including staff) and services to improve the bottom line. As a result, the basic needs of residents are not met. Knowing what to look for will ensure that your loved ones are not abused by those entrusted with their care.

➤ **B**edsores, also called pressure sores or pressure ulcers. These are injuries to skin and underlying tissues resulting from prolonged pressure on the skin. Bedsores most often develop on skin that covers bony areas of the body, such as the heels, ankles, hips, and tailbone.

Bruises, scratches, blisters, or pinch marks.

➤ Burns caused by ropes, restraints, or scalding water.

➤ Failure to change sheets, undergarments, or bandages.

➤ Financial exploitation and fraud.

➤ Improper or excessive restraints resulting in injuries.

➤ Lack of supervision that leads to falls or injuries from falling.

➤ Malnourishment or dehydration.

➤ Overmedication: excessive use of anti-psychotics, sedatives, or other prescription drugs to “chemically restrain” or punish.

➤ Poor hygiene, including unwashed, uncombed or matted hair, unkempt appearance, poor skin condition, and untrimmed nails.

➤ Refusal to answer calls for reasonable requests for assistance, such as helping the senior use the bathroom.

➤ Repeated injuries inconsistent with explanations.

➤ Sexual assault.

➤ Stealing property, money, or checks.

➤ Untreated medical conditions.





SENIORS ARE BEING CHEATED OUT OF THEIR LIFE SAVINGS BY SCAM ARTISTS

Focus on Our Elders:

Financial Exploitation

Financial exploitation, or the illegal or improper use of a person's funds, property, or assets, is the most common form of elder abuse and costs seniors billions of dollars each year.

CRIME OF THE CENTURY

Elder financial exploitation has been called the signature "crime of the 21st century" by Richard Cordray, director of the federal Consumer Financial Protection Bureau. With the population of Americans age 65 or older projected to triple by 2040, more seniors every year are being cheated out of their life savings by scam artists and people they hold dear. Studies have found that half of all financial exploitation of seniors is committed by strangers, followed by family, friends, neighbors, and unscrupulous businesses. Elder financial exploitation is also seriously under-reported. Many victims are too embarrassed to pursue criminal action. Others are too emotionally or physically frail.

AS DEFINED BY CALIFORNIA LAW

It's important to know just what is considered elder financial abuse in our state. California's elder abuse statute, found at Section 15600 of the Welfare and Institutions Code, states that "financial abuse" occurs when a person or an institution:

- Takes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- Assists in taking, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- Takes, appropriates, obtains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence.

EXAMPLES OF FINANCIAL ABUSE

The wrongful or fraudulent actions that may constitute elder financial abuse are countless. The following, when unauthorized, are some of the most common transactions:

- Withdrawals from bank accounts,
- Taking or selling art or jewelry, transferring all or part of ownership in real estate,
- Use of credit cards,
- Signing of checks or other documents when the senior cannot write or understand what they are signing, cashing of social security checks, purchases of expensive products which the senior does not need nor use,
- Reverse mortgaging of property, borrowing against life insurance, changing life insurance beneficiaries, causing a change to a will or trust, and/or selling insurance or annuities to a senior who will derive no benefit therefrom. ♥



Q & A with Chris Dolan

Christopher B. Dolan is the owner of the Dolan Law Firm.



Q: Linda in the North Bay asks, "Last fall, my brother and I helped our mother move to a nursing care facility. The home was a nightmare. The food was so poor she became malnourished, and she didn't drink enough water. Mom stayed in bed for most of the day and developed painful skin lesions. We removed her from the facility, but the home refused to take any responsibility for her condition. Instead, they claimed we were being 'overly sensitive.' Can my mom sue the facility for the deficient care?"

A: Linda, I hope your mother has recovered and is now at a nursing home that is providing her with compassionate care. You are right to want to hold the facility accountable.

I appreciate how upsetting it is to learn that the people entrusted with your mother's care put her life at risk.

California law provides several types of claims that a patient – or surviving heirs if the patient has died – may bring. Neglect of an elder can constitute elder abuse under the state's Elder Abuse Act. Failure to prevent malnutrition or dehydration and failure to provide medical care for physical needs are two examples of neglect listed in the statute.

Current or former residents of skilled nursing facilities may also bring a civil action against a facility for violating the state's Nursing Home Residents' Bill of Rights. These rights include ones that were denied to your mother:

➤ A facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

➤ Each patient shall show evidence of good personal hygiene and be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

➤ The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

Linda, this is just a brief overview of the statutory claims your mother, with your assistance, may be able to bring against the facility. Your mother may also have claims against the facility for negligence and fraud.

Please save all documents you have relating to the nursing home, including the contract you or your mother signed when she was admitted as well as any brochures and other marketing material. Keep in mind, the facility may have sought to deprive your mother of her right to bring a civil action by inserting an arbitration clause into the admissions agreement. This contract language requires that any disputes be heard by an arbitrator, not by a judge and jury.

Arbitration is fundamentally unfair to individuals and consumers. With arbitration, the corporate defendant almost always wins because the arbitrator is paid for by the corporate defendant. Under California law, nursing homes cannot require applicants or residents to sign an arbitration agreement as a condition of admission or medical treatment. I recommend no one ever agree to arbitration.

You may also wish to file a complaint with the California Department of Public Health, which oversees nursing homes in the state. The Department operates a website called the Health Facilities Consumer Information System which can be found at hfcis.cdph.ca.gov.

The website provides information on long-term care facilities and hospitals across the state, and has a page for consumers and patients to submit complaints. You can also call the Department's district office in your region for further information.

This is a complex area of the law. If you and your mother wish to pursue legal action, I suggest you contact a qualified trial lawyer to review your case. ♥



Selecting a Nursing Home

Helping a parent or loved one select a nursing home can be a difficult and emotionally taxing process. Here are our recommendations:

UNDERSTAND THEIR NEEDS

First and foremost, you need to assess your loved one's medical needs to ensure that the facility offers the appropriate level of care. You should consult with his or her physician to determine the level of assistance that he or she may need.

WHAT TYPE OF CARE?

Although many people refer to assisted living facilities as nursing homes, California actually has several licensing and certification categories. These include:

- Skilled Nursing Facilities
 - Distinct Part/Skilled
 - Nursing Facility
 - Intermediate Care Facilities
 - Residential Care Facilities for the Elderly
 - Continuing Care Retirement Communities
- Within each of these categories, there may be further subcategories that encompass treatment of specific conditions.

COMPARE NURSING HOMES

Research potential nursing homes online. Two great resources are Nursing Home Compare, offered by Medicare (www.medicare.gov/nursinghomecompare), and CalQualityCare, run by UCSF and California HealthCare Foundation (www.calqualitycare.org).

CalQualityCare scores nursing homes using the grades Superior, Above Average, Average, Below Average, and Poor. Researching major organizations such as Nursing Home Compare and CalQualityCare will assist you in finding a reputable facility that can meet your loved one's needs. Follow up on your online research by touring the nursing homes that seem best suited to your loved one's needs.

KNOW YOUR RIGHTS

In recognition of the vulnerability of elders and dependent adults in California, the Legislature has mandated that all nursing home provide residents a written policy, entitled **"Nursing Home Resident's Bill of Rights."** If this policy is not provided to you or your loved one, you should insist that the care facility provide it. If it does not, you should consider moving your loved one to another facility.

The Nursing Home Resident's Bill of Rights mandates that residents are entitled to privacy, dignity, and respect and that they can choose their own physician, possess personal property, plan medical care, manage their own finances, determine which visitors they may receive, and be discharged or transferred only for medical reasons.

Just because a person requires assistance does not mean he or she should lose their independence. Independence, although affected by medical conditions, is a critical component of each person's self-worth and dignity.

DO NOT SIGN AN ARBITRATION AGREEMENT

Many seniors, or their children, have unwittingly signed away their constitutional

right to resolution of their grievances by agreeing to binding arbitration. Arbitration is a private system of justice where one person, the arbitrator, decides the outcome of the case.

Although arbitration is advertised as a quick and efficient system of resolving disputes, that is true only for the corporate defendant. In the case of nursing home disputes, the arbitrator is chosen by the nursing home operator and knows that a ruling against the nursing home will mean he or she may never again be chosen as an arbitrator. Furthermore, arbitration deprives us of one of our most fundamental constitutional rights: the right to a jury trial.

In California, nursing homes must have arbitration language on a form separate from the admission agreement (California Health and Safety Code §1599.81(b)). An arbitration agreement can be rescinded by written notice within 30 days of signing it. Most important, a nursing home cannot require applicants or residents to sign an arbitration agreement as a condition of admission or medical treatment (Health and Safety Code § 1599.81(a)).

Recently, the Centers for Medicare and Medicaid Services (CMS) issued new rules prohibiting nursing homes, which receive federal funds through Medicare and Medicaid, from requiring patients to agree to arbitrate any legal claims against the nursing home at any time before a dispute arises or as a condition of admission. CMS is a federal agency within the U.S. Department of Health and Human Services.

Despite the new rule, you may still see arbitration clauses in nursing home admission contracts. We recommend you simply do not sign any arbitration agreement. ♥



Awards & Recognition



TOP 100 LAWYERS



What our clients say

"seeking legal aid from Dolan Law Firm was the best decision I ever made. The staff was a very kind and efficiently walked me through my injury."



Jose Sanchez

"Very caring and patient team! Would definitely recommend to hire them if you are in a tough situation."



Taysha Haynes

About Our Firm

One of California's premier plaintiffs' law firms, the Dolan Law Firm PC represents clients throughout the San Francisco Bay Area and across California from its offices in San Francisco, Oakland, and Marin. Possessing a "history of winning multimillion-dollar verdicts," as noted in the San Francisco Business Times, the Dolan Law Firm has recovered hundreds of millions of dollars for its clients in settlements and jury verdicts.

"At the Dolan Law Firm, we say, 'we are the best lawyers we hope you'll never need.' We take great pride in obtaining justice for our clients and holding the powerful accountable," says Christopher B. Dolan, who founded the firm in 1995 and has been recognized by U.S. News, Best Lawyers, Super Lawyers, and the Daily Journal as one of the very best injury and plaintiffs' attorneys in all of California.

The attorneys at the Dolan Law Firm work as a team under Christopher Dolan's supervision, drawing upon their considerable collective knowledge of the law and trial skills, as well as the firm's substantial financial resources and access to experts, to provide each client with superior legal representation.

The Dolan Law Firm represents individuals in personal injury cases and families of loved ones who have died due to the fault of others, including in bicycle and pedestrian accident cases. In addition, the firm represents employees challenging discrimination, harassment, retaliation, and wrongful termination.

The Dolan Law Firm is a long-time sponsor and supporter of the San Francisco Bicycle Coalition, Bike East Bay, and the Marin County Bicycle Coalition. These groups have recognized the Dolan Law Firm as local, bicycle-friendly attorneys. The firm also supports the California Bicycle Coalition, which advocates in Sacramento for the rights of cyclists and helps shape California bicycle laws.

For a free, confidential, and no-obligation case evaluation, please visit the Dolan Law Firm online at dolanlawfirm.com or call us at 415-421-2800.

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