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Ventura Nursing Facility Residents Successful in Challenging Illegal Drugging

VENTURA, CA – On Friday, January 31, the Superior Court in Ventura County granted preliminary approval of an agreement resolving a first of its kind class action lawsuit. The litigation was brought by current or former nursing home residents of Ventura Convalescent Hospital who received powerful drugs without informed consent. The centerpiece of this settlement agreement is a court order that requires the facility to comply with informed consent regulations, and ensures that residents will not be drugged without their consent through stricter standards and independent monitoring.

The members of the Settlement Class are residents of Ventura Convalescent Hospital who were patients of Dr. Gary Proffett and received at least one psychotherapeutic medication from November 14, 2008 to November 14, 2011. Based on Facility records, the Settlement Class consists of approximately 305 current or former residents.

The named plaintiff is the legal representative of former resident Patricia Thomas who was admitted to Ventura Convalescent Hospital for rehabilitation after suffering a painful hip fracture. During her weeks at the Ventura facility, she was prescribed and given antipsychotic drugs, an antidepressant, an anti-anxiety drug, a hypnotic/sedative drug, and a powerful narcotic for pain. All of these medications were administered without her informed consent as required by law.

When Ms. Thomas' daughter learned of her mother's over medication, she reported the facility to the Department of Public Health. Following Ms. Thomas' discharge from the facility, her personal physician tried to wean her off the medications with little success. Ms. Thomas died several weeks after leaving Ventura Convalescent Hospital.

When asked how she feels about the settlement, Ms. Levine said: "While I am still heartbroken over the drugging and death of my mother, I take some comfort that Ventura Convalescent Hospital will be required to follow the law and that future residents will not suffer in the way my mother did. I hope this lawsuit will truly protect nursing home residents from these dangerous drugs." And, as far as her plans for spending the money she may receive for bringing this lawsuit on behalf of nursing home residents, Ms. Levine says: "The goal of the lawsuit was to change the way nursing homes do business. The case was never about the money. The money I will receive for being my mother's voice in this lawsuit and standing up for the rights of

all residents who were illegally drugged will be donated to the Search Dog Foundation to name and sponsor a search dog in memory of my mother, Patricia.”

Inappropriate and overmedication of nursing facility residents is a national problem. On March 29, 2012, the Centers for Medicare Services launched a national initiative to reduce the use of antipsychotic medications in nursing homes. Further, the U.S. Food and Drug Administration has issued its most dire warning – known as a black box warning – that antipsychotic drugs cause elders with dementia to die.

“This is basic liberty” says Co-counsel for the Class Gregory Johnson. “Every person has the right to make decisions about what medical care they want to receive, and if they are unable, to have a person of their choosing make these decisions for them. ” “The choice whether to consent to a a drug with a black box warning,” Mr. Johnson explained, “requires a meaningful disclosure, and not just a check mark on some form.”

Co-counsel for the Class, Jody Moore, says: “We have good laws on the books about a patient’s right to know about the potential benefits and side effects of any proposed medication or treatment. The problem is nursing homes charged with verifying informed consent are filling out paperwork without actually determining whether an informed choice has been made.”

“This Agreement will help raise awareness about the unnecessary use of chemical restraints in nursing facilities and the need to hold nursing homes accountable to standards laid out in the California Patient Bill of Rights,” says Class Co-counsel Kelly Bagby of AARP Foundation Litigation.

According to court papers, the lawsuit has resulted in a quantifiable decline of psychotherapeutic use in nursing home residents county-wide. While the national use declined 4.6% from 2010 to 2012, and the state’s use declined by 6.3%, Ventura County’s use of these medications is down 20%. This reduction has no doubt resulted in substantial savings to taxpayers, by reducing the amount spent on these expensive medications by Medicare and Medi-Cal. And the benefit in terms of improved quality of life and dignity, while not readily quantifiable, is no doubt immense.

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