



ELDER ABUSE, ELECTRONIC MEDICAL RECORDS BILLS ADVANCE OUT OF KEY COMMITTEES

SACRAMENTO (June 21, 2011) – A pair of bills sponsored by the Consumer Attorneys of California took another step toward becoming law after winning approval in legislative committees today.

A bill that would give California elders who are abused and neglected in nursing homes a better chance to win justice in court is headed to the Assembly floor after passing out of the Assembly Judiciary Committee with unanimous Democratic support. CAOC is a co-sponsor of [SB 558](#) (Simitian), along with California Advocates for Nursing Home Reform, California Alliance for Retired Americans and the Congress of California Seniors.

And a bill that would require any changes in patient electronic health records to be noted passed out of the Assembly Health Committee with bi-partisan support. [SB 850](#) (Leno) would ensure that information vital to a patient's safety could not be inadvertently deleted and health care providers could not intentionally cover up mistakes by deleting part of a patient's record. The bill now goes to the Assembly Judiciary Committee.

SB 558 would help prevent physical abuse of elderly and dependent adults by allowing stricter enforcement of California's Elder & Dependent Adult Civil Protection Act. The bill would allow elder abuse cases to be decided on a preponderance of the evidence standard, the same standard used in financial abuse cases and virtually every other civil cause of action.

Under current law, plaintiffs in elder abuse cases must show "clear and convincing" evidence, a standard that is very difficult to reach. Contributing to the difficulty is the fact that in many facilities few witnesses to abuse exist, and the fact that both victims and witnesses are typically old, sick and disabled, thus making it difficult for them to communicate about or even remember the events. The standard for elder financial abuse was changed to a preponderance of the evidence in 2004 with overwhelming bi-partisan support.

It is somewhat alarming to know that, under current law, it's more difficult to protect a vulnerable elder from physical harm that can lead to serious injury or death as opposed to financial harm. Other types of serious injury suits, including wrongful death and medical malpractice, also use the preponderance of evidence standard.

"Given the ongoing serious state budget cutbacks, it is more important than ever that our most vulnerable population is protected through the civil justice system," said CAOC Legislative Director Nancy Peverini. "We must use every available resource, including private civil actions,

to make sure physical abuse of elders does not occur and that those responsible are held accountable when it does.”

SB 850 adds a crucial element of patient safety to the transition from paper to electronic medical records. The bill would require any change or deletion in electronically-stored information to be recorded and included in medical information given to the patient. At times records are deleted or changed accidentally, making it impossible for later healthcare providers to accurately evaluate and adequately treat the patient.

But at times records are modified or deleted intentionally, perhaps in an effort to cover up medical errors. One such case took place at Stanford Hospital, when relatives of a 72-year-old woman learned that several of the woman’s records had been destroyed after she died, possibly as the result of medical negligence. (One of the woman’s sons [wrote about the case](#) in Capitol Weekly earlier this year.)

Traditional paper medical records have included a clear record of any changes made, but to date electronic records systems have not all used the same protocol. “Preserving the integrity and accuracy of electronic health records is crucial to reducing the occurrence of medical errors,” said CAOC Associate Legislative Counsel Paloma Pérez. “Having complete and accurate records have genuine implications for a patient’s safety and quality of life.”

Consumer Attorneys of California is a professional organization for nearly 3,000 plaintiffs’ attorneys representing consumers who utilize the civil justice system to seek accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

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