

**JOEL R. BRYANT**  
**GREEN BRYANT & FRENCH, LLP**

---

1230 Columbia Street, Suite 700, San Diego, CA 92101  
Toll Free Tel: (800) 219-0885  
Tel: (619) 239-7900, ext. 113 Fax: (619) 239-7800

**HERE IS THE FREE REPORT YOU REQUESTED!**

***7 SECRETS THE NURSING HOMES  
DON'T WANT YOU TO KNOW***

Dear Friend:

If you, a family member or friend has recently suffered injuries in a nursing home or as a result of neglect by a home healthcare provider, chances are you are worrying about what you should do next. You may also be feeling angry or frustrated and wondering if anyone really cares about what happened to you, a family member or friend.

You may be asking: “Can I trust the nursing home to tell me what really happened?”; “Could the injuries have been avoided with proper care?”; “Can I prevent this horrible situation from happening to someone else’s mother, father, family member or friend?”; “Should I get a lawyer?”; “Will the government agency responsible for regulating nursing homes adequately punish the nursing home for its neglect?”

If any of these questions have occurred to you, then keep reading.

My name is Joel R. Bryant. I am an elder abuse litigation attorney and today, more than ever, I am frustrated about the lack of dignity and respect being afforded to our elders and how they are being mistreated in nursing homes across the nation.

If you, a family member or friend has been injured in a nursing home or as a result of neglect by a home healthcare provider, there are several things you absolutely must know; which is why I created this report! Things are so complicated and such a hassle these days, that many people just give up! This free report details some of the critical things you must be aware of in order to ensure that you get what you are entitled to under the law and that the nursing home or home healthcare provider is adequately punished for its misconduct.

I have prepared this report by asking myself this question:

**“If my best friend’s mother or father was injured in a nursing home or while under the care of a home healthcare provider, and I couldn’t be there to help, what are the MOST IMPORTANT things I would want him/her to know?”**

First of all, if you, a family member or friend has been hurt, let me express my heartfelt sympathy and best wishes for a complete recovery.

Nursing home injuries can be one of the most tragic and stressful events that can happen to any person. I know, because I deal with these situations every day. I help dozens of people through this difficult time and it never gets any easier. Particularly if someone has been seriously hurt, disabled or even killed.

With recent changes in the law and with how nursing homes and their insurance companies are handling these claims, I am concerned that you will not get the help you really need! The last thing you want is to be taken advantage of during this difficult time.

What most people really want to know is:

### **What should I do first?**

Before I answer that question – let me suggest **what you should NOT do**. Don’t let **anyone** push you, force you, or threaten you to sign any document or try to intimidate you into making a hasty decision. This is very common with nursing homes and their insurance companies, and you may really regret your decision later. Here’s why.

In a 1994 study, the Insurance Research Council found that injured people using lawyers received **over TWICE as much money** as those without lawyers. And this is **AFTER** paying the lawyer’s fees!

Do you think the nursing homes and their insurance companies want you to hire a lawyer when they know they will end up having to pay you twice as much, as well as paying for their own attorney? Definitely not!

Each year, thousands of people **never take any action** to claim the compensation they are rightfully entitled to. Most folks don’t get legal advice because they get bad advice from nursing homes and their insurance companies, or are afraid, intimidated or confused. Don’t let that happen to you. In this day and age, we have found that **doing nothing is one of the worst things you can do**.

To help you figure out what to do first, here are SEVEN SECRETS I've discovered that I'd like to share with you. These valuable secrets are the things the nursing homes and the home healthcare providers hope you don't know!

## **SECRET #1: You must take immediate legal action to ensure your rights are preserved!**

**After a nursing home injury or death, it is important to seek immediate legal consultation.** In the event of injury, the elder may obtain compensation for his/her injuries. In the event of death, the family may obtain compensation on behalf of themselves for the loss of their loved one and on behalf of the estate of their loved one. Many people procrastinate and wait until it is too late to do anything about the nursing home or home healthcare provider's neglect. If the nursing home is not held accountable for its neglect, the nursing home will do the same thing to someone else's mother or father, or brother or sister.

The way the system works is that after an injury or death a virtual time bomb is ticking! There are important steps that must be taken immediately! Witnesses must be contacted. Evidence must be collected. Doctors and nurses must be consulted. The longer a person waits, the less likely this evidence is going to be around when it is needed. If this evidence is lost, the case may be worth far less or nothing at all because you can no longer prove the things that caused you, your family member or friend to be injured.

This is especially true because there is a statute of limitations that limits the amount of time you have to make a claim. You don't want to finally decide to talk to someone about your injury, and then find out some **devastating news**, you cannot pursue your claim against the nursing home or home healthcare provider because you did not act in time. The statute of limitations in California is extremely short! ACT NOW!

If you do nothing at all, you'll end up having fewer options. You can bet that doing nothing is exactly what the nursing home and its insurers want you to do! And this is the exact opposite of what you **should** do!

## **SECRET #2: You should recognize that nursing homes and their insurance companies want to make money, not spend money!**

Some nursing homes are more interested in making money than in providing quality care.

Not every nursing home is necessarily the bad guy, but it is very important for you to understand that the nursing home and their administrators want to make money in order to keep their shareholders happy. You must understand that **the less money they spend for patient care, the more money they make and the happier their shareholders are.** This is a fact.

Here are some common practices:

1. Hiring unskilled, untrained nurses and certified nursing assistants. Many from other countries who have trouble communicating with the patients because of the language barrier. Why are they hired? Because they are cheaper. These staff claim to have degrees from other countries, with little if any way to verify it. They take their word. Why? Because they are cheaper.
2. Often they have an insufficient number of staff to take care of the patients. Why? Because less staff = less costs = more profits. Trying to get more out of less is an ongoing effort to MAXIMIZE PROFITS. The results – existing staff are bound to make mistakes attempting to watch over too many people. Staff are bound to grow weary, intolerant, irritable and make many more mistakes because of long shifts and numerous people to watch over. Unfortunately, the patients pay for these mistakes. Many pay with their life.

### **SECRET #3: You can find a competent, qualified attorney to represent you and/or your loved one against the nursing home on a “no-recovery, no-fee” basis.**

Many people do not contact an attorney because they fear they cannot afford one. With elder abuse cases, however, you can afford an attorney.

#### **What is a “no-recovery, no-fee” basis?**

A “no-recovery, no-fee” basis means just what it says. It means that you are not required to pay any attorney’s fees unless your attorney recovers money from the nursing home, home healthcare provider or their insurance company. The attorney simply receives as his/her fee a portion of the amount recovered for you and your family. Under such arrangement, the attorney rather than the client takes the vast majority of the risk.

I always initially meet with my clients for free so they can get to know a little about me and my experience, as well as they have a chance to describe their situation. After describing the elder’s injuries and reviewing the pertinent medical records, a good lawyer will be able to give you a rough idea as to how they can help you, and what type of settlement you can expect for the injuries. The attorney should also have a good idea of whether your case will go to court or not, and what kind of time will be involved in resolving the case.

1. In 1991, the California Legislature enacted laws which made it more economical to prosecute the nursing homes and home healthcare providers who caused serious injuries to their patient by neglecting them and/or intentionally injuring them. Prior to then, it was very difficult for an attorney to successfully handle an elder abuse claim. Many attorneys are unaware of this change in the law and do not

know a good elder abuse case from a bad one. Therefore, if an attorney tells you that you have no case, always get a second opinion from a competent attorney who regularly handles elder abuse cases.

2. With the aging of the population, many attorneys are jumping into elder abuse cases with little or no experience in doing so. A successful elder abuse attorney must not only have vast legal knowledge, but he must also understand the medical issues involved and have access to qualified medical professionals to act as experts in the case. Be sure the attorney you choose is qualified to handle elder abuse cases.
3. Many attorneys are unwilling to handle an elder abuse case on a “no-recovery, no fee” basis because all of the risk is on the attorney. On the other hand, nearly all attorneys are willing to handle an elder abuse case on an hourly basis because all of the risk is on you, the client. In other words, with respect to an hourly fee agreement, the attorney gets paid in full even if the case turns out to be unsuccessful. You should insist that the attorney put his/her money where his/her mouth is. If any attorney is truly confident about your elder abuse case, he/she should agree to handle it on a “no-recovery, no fee” basis. If the attorney is unwilling to do so, I recommend you find another attorney.

### **Should I hire a lawyer?**

While it seems that most people should know it is important to seek advice when they are injured, statistics show that many people don't. Here are four main reasons why people don't seek a lawyer:

1. They don't know if they need a lawyer, so they are afraid to talk to one.
2. They don't know a lawyer personally, so they don't look for one.
3. They aren't sure if they can trust a lawyer, so they don't use one.
4. The nursing homes tell you that you will end up with less money if you hire an attorney and people believe this is true. (By the way, it's absolutely NOT true.)

None of these reasons are very good ones. In spite of all the lawyer jokes you may have heard, there are many honest, hard working and ethical lawyers who can help you deal with nursing home claims. While it is true that lawyers will usually get a portion of the money you collect from the nursing home, it is also true that a good lawyer dramatically increases your chances of getting a much larger settlement or verdict. Remember, a lawyer will usually **DOUBLE** the amount of money in your pocket!

But that doesn't mean that hiring an attorney is easy, and that it is the answer to all of your problems. The key is finding the **RIGHT** one. You see, there is as much difference between individual lawyers as there is between different doctors, auto mechanics or other professionals. Choose carefully!

Some lawyers are personal injury "factories." They specialize in getting as many cases as possible, and then settle all their cases for much less in order to clear the case and make room for the next ones.

Let me suggest that you should stay clear of a situation like this. You need a lawyer who will pay personal attention to you and who is available, and who *will* return your phone calls promptly. There is a difference.

I think it is a good idea for a lawyer to make a personal commitment to ALL of his or her clients. I commit to every client I have, that they will be treated fairly and according to strict professional and ethical guidelines. I treat each client with the same respect, the same attention to their case and with the same dignity that I would expect to be given. I can't stress to you how important this is!

## **SECRET #4: You should know that government agencies do not adequately police nursing homes.**

Many people do not attempt to pursue their legal claims against nursing homes because they are told (often by the nursing homes and their insurance companies) that government regulatory agencies ensure that the poor care which caused their loved one's injuries does not happen. **That is simply not true.**

1. There are numerous state and federal regulations which govern how nursing homes are required to take care of their patients. However, the government agencies charged with enforcing these regulations do not have the resources or manpower to carry out their mission. Although the inspectors are generally dedicated, the system under which they work appears designed to ensure that their eyes are closed to all but the most clearly grievous misconduct.
2. Unfortunately, often times the nursing home owners and workers are good friends with the government investigators. The investigators give advance warning of the "surprise" visits and often look the other way when abuse is discovered.
3. The government agency penalties are worthless. Even when citations for regulatory violations are issued, the nursing homes often are not required to pay the penalties. This is why elder abuse continues. Until we make it more profitable to provide quality care as opposed to shoddy care, abuse will continue. Currently, it is cheaper to provide poor care because the nursing homes rarely get

caught and sued when their neglect ends up severely injuring or killing a patient. The only way to **hold them accountable** is via a civil lawsuit. That is the only way to make them pay for what they have done to you or your loved one and to **ensure that it does not happen to someone else's mother, father or loved one.**

## **SECRET #5: You should understand that the incidences of elder abuse are rapidly increasing in California.**

In July 1998, the U.S. General Accounting Office (GAO) issued a blistering report that cited nearly one-third of California's nursing homes for serious or potentially life-threatening problems.

Of the 1,370 nursing homes the GAO evaluated, only 2 percent had minimal or no deficiencies, whereas more than 60 percent had deficiencies that either caused death or serious harm or that resulted in less serious harm which had a direct relationship to the health, safety or security of a resident.

As the baby boomer generation ages and medical advances prolong people's lives longer than during any point in our history, the prospects of people ending up in nursing homes increases. Due to this increase in the older population and the disabilities associated with age, nursing homes, hospices, adult day cares and assisted living centers have become big business.

Too many of our elderly population are being forced to reside in facilities that are understaffed or have a poor quality of staff. With the growth of this elderly population, the problem of elder abuse and neglect will only increase.

Abuse may include physical and sexual assault and battery, rape, unreasonable physical or chemical restraint not consistent with treatment authorized by the attending physician.

Neglect may include failure to assist in personal hygiene or in provision of food and clothing, failure to provide medical care, failure to protect from health and safety hazards, and failure to prevent malnutrition and dehydration.

Indicators of nursing home abuse include, but are not limited to:

### **Physical Abuse**

- Open wounds, cuts, bruises, welts or discoloration.
- Caretaker cannot adequately explain condition.
- Elder's sudden change in behavior.
- Loss of weight.
- Burns caused by cigarettes, caustics or acids.
- Physical or chemical restraints.

## **Emotional Abuse**

- Emotionally upset or agitated.
- Extremely withdrawn or non-communicative.
- Unusual behavior (sucking, biting, rocking).

## **Neglect**

- Dehydration, malnutrition or pressure sores.
- Poor personal hygiene.
- Begs for food.
- Unsanitary and unclean conditions.
- Dirt, soiled bed, fecal or urine odor.

## **SECRET #6: You must understand that pressure ulcers (bed sores) are avoidable.**

One of the leading causes of serious injury and even death in nursing homes is pressure ulcers, also known as bed sores, pressure sores or decubitus ulcers. Pressure ulcers may form on bony prominences such as the sacrum, the coccyx (tailbone area), the ankles and the back of the head. The severity of a pressure ulcer is measured according to a staging scale. Stage 1 pressure ulcers are the least serious and stage 4 are the most serious. Stage 3 and 4 pressure ulcers can be very painful and are life-threatening. Pressure ulcers may become infected and cause the patient to develop sepsis, a life-threatening condition caused when the infection spreads into the bloodstream.

The typical nursing home excuse is that pressure ulcers are unavoidable. **HOWEVER, THAT IS NOT TRUE, PRESSURE ULCERS ARE AVOIDABLE.**

The primary cause of pressure ulcers is neglect. If you or your loved ones have developed a pressure ulcer, the nursing home is probably to blame. With respect to pressure ulcers, an ounce of prevention is worth a pound of cure. However, the increasing frequency of pressure ulcers in nursing home patients is understandable for one simple reason. Prevention and treatment take time and money, neither of which many nursing homes are willing to spend on their patients.

Pressure ulcers can be prevented by relieving pressure on the skin through turning schedules and pressure-reducing devices. Maintaining clear, dry skin, adequate hydration, and adequate nutrition is also critical to preventing and treating pressure ulcers.

If you, a family member or friend develops a pressure ulcer, be sure to have photographs taken of it immediately and continue to photograph it frequently as it progresses. Remember, a

picture is worth a thousand words. Documenting the injuries can be the difference between a good case and a bad case.

## **SECRET #7: You should realize that nursing home employees may falsify medical records to cover up neglect.**

The persons with the most knowledge about the care, or lack thereof, of your loved ones in nursing homes are the nurses and nursing assistants employed by the nursing home. They are required to document all of the care they render to the patient. Unfortunately, there are some nurses who have lost sight of the number one reason they show up for work every day – the patient. Instead, due in part to the fact nursing homes are understaffed and their nurses and nursing assistants are overburdened with work, some nurses will document care that was not actually given. For example, they will document that they turned or repositioned the patient in bed every 2 hours, even though they never turned the patient at all. They will document that they walked the patient, even though the patient never got out of bed.

In fact, in one case I was involved with, a nurse continued to document that the patient was eating 80% of his meals and that she repositioned that patient every 2 hours, even though the patient had passed away 3 days earlier.

Fortunately, false entries in medical records can be discovered when they are inconsistent with entries made by other nurses. In fact, in one case I had a nurse documented that she repositioned the patient in bed every hour from 2 to 4 p.m., while the therapist's notes indicated that the patient was not in his bed, and in fact, he had taken the patient to physical and speech therapy from 1 to 4 p.m.

### **In conclusion . . .**

This free report has only hit some of the highlights of what you need to know about nursing homes. As you can see, it is an information game. The more of it you can collect, the more of it you can use to your advantage.

### **What else can I do to help you?**

In my practice I've found that many people are **frustrated, scared, intimidated and unsure of what to do**. Sometimes people find it hard to ask for help. Others may have even already been intimidated by the nursing homes and their insurance companies or others they've been dealing with. Some may even believe that it is wrong to bring a claim for nursing home injuries.

I've found that once I talk with people about their claim and the legal process, they feel much better and more at ease with the process. After talking with me, they understand what's fair, and they feel good about doing the right thing.

I think my clients also appreciate the opportunity to talk with me confidentially, at **no charge** and with **no pressure**.

**One of the reasons I wrote this letter is to see if I can help you.** I would like to tell you about your legal rights and to answer your questions without any pressure and **free of charge!**

### **I'd like to offer you:**

**A FREE CONFIDENTIAL ONE-HOUR CONSULTATION.** We'll talk about the case and the injuries, and discuss your legal rights or whatever you would like to talk about.

**Remember, you are under no obligation and no one will pressure you.** I am here to help. That's my personal guarantee to you.

My goal is to simply create a situation where you feel comfortable discussing your legal options and where I can answer any questions you may have. I understand that this can be a difficult time. Stress and tension can make things that much worse.

If this makes sense to you in any way, you've probably got a few questions. Feel free to call while those questions are still fresh in your mind. Waiting any longer may just cause more stress and put you at a greater risk. I would be happy to get you the information that may ease your mind. Remember, the law is filled with tricky time limitations and notice deadlines.

Why am I willing to do all this? I want you to see for yourself that there are lawyers out there who are honest, competent and are willing to work for your best interests.

You may be wondering how I earn my money and whether you will ever have to pay an hourly fee. Well, you should understand that I only get paid when I collect money for my clients. I only get paid if you get paid. Therefore, I have an incentive to devote myself to your case and fight for your rights to receive the kind of compensation you rightfully deserve. To schedule a time to meet, call me **toll-free** at 1-800-219-0885.

Sincerely yours,

Joel R. Bryant