
FLORIDA JUSTICE ASSOCIATION

Nursing Home Games

Avoiding Accountability and Betraying the Promise Made to our Senior Citizens

Don't Deny Nursing Home Residents their Dignity and Legal Rights to be Protected from Abuse and Neglect

Past legislation has put the profits of nursing home corporate owners and operators above the dignity and rights of residents with whom they are entrusted to care for. Previous bills insulated corporate owners and operators from liability for decisions that lead to abuse and neglect such as chronic understaffing of facilities, hiring previous abusers to care for residents, and withholding care and treatment to save costs. These bills should NOT be supported for the following reasons:

- It is important for residents to be able to pursue punitive damages in extreme cases of neglect to deter nursing homes from adopting dangerous practices that lead to unsafe nursing homes for Florida seniors.
- The legislation radically changes the current punitive damage laws in nursing home cases, setting new standards that are nearly impossible to prove before trial which has the cumulative effect of preventing punitive damages from ever being sought.
- The new standard for punitive damages against a defendant found in 400.0237(2) requires the plaintiff to prove a specific person or corporate defendant **actively and knowingly** participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant. It will be nearly impossible to prove active participation by corporate owners and operators in the abuse or neglect of residents.
- The legislation also hinders holding a corporate nursing home responsible for punitive damages by requiring the plaintiff to prove a specific person or corporate defendant actively and knowingly participated as stated above and an officer, director or manager of the ACTUAL employer, corporation or legal entity condoned, ratified, or consented to the specific conduct. The ACTUAL employer may be a temp agency or a shell corporation and the nursing home owner will never be held accountable.
- The new evidentiary hearing requirement for punitive damages is unprecedented in Florida law. The legislation, coupled with the new limited discovery in the bill, will make it impossible to punish corporate nursing homes from dangerous practices that lead to egregious conditions in nursing homes.
- The legislation prevents abused and neglected nursing home residents from using crucial nursing home survey results as evidence which demonstrate that the nursing home owner knew or should have known about dangerous conditions in the home.
- Under these bills, it would be better for nursing home operators to “see no evil.” After all, what they don't see, they can't be held accountable for.

Nursing home owners and operators should not be allowed to escape accountability by turning a blind eye to neglect and abuse.