

## **They Never Stop: Civil Liability Update & Best Practices**

CAHF Summer Conference  
San Diego, CA  
July 14-17, 2019

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### **Program Overview**

- State of Civil Liability
- High Risk Cases
- Risk Mitigation Practices

### **State of Civil Liability**

- Increased Frequency
- Increased Severity
- Staffing Challenges
  - Workforce Shortage Waivers
  - Patient Acuity Waivers
- Detailed, extensive and burdensome discovery

### State of Civil Liability

- Class Action Cases
  - "Staffing to meet the needs" – Title 42
  - Wage & hour
- Transfer/discharge issues
- Antipsychotic/psychotropic medications issues

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### High Risk Cases

- Falls
- Pressure Wounds
- Declining Patient
- Refusing Patient
- Sexual Allegations Claims

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### Best Practices to Mitigate Risk

- Arbitration Agreements
- Strong leadership utilizing a robust Interdisciplinary Team approach
- Have a system to ensure there is sufficient staff
  - "Sufficient to meet the needs" – Title 42
  - 3.5/2.4 – Title 22
- Consistent & accurate charting

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### Best Practices to Mitigate Risk

- Train staff to provide/document care to establish "unavoidability"
  - Skin – F314 now F686
  - Falls – F323 now F689
  - Decline – F309 now F684

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### Best Practices to Mitigate Risk

- Prevent evidence of "Corporate Ratification" and a "Top Down" theme of the case
- How do plaintiffs prove it?
  - Inadequate staffing
  - RN vs. LVN
  - Inadequately trained staff
  - Poor regulatory history
  - Failure to follow your Plan of Correction
  - Resident Council Minutes/Satisfaction Surveys
  - Failure to intercede when staff member commits error
  - Communications from "Management Company" to Administrator

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