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# PROUT LEVANGIE

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2021 N Street  
Sacramento, California 95811  
Telephone: (916) 443-4849 Fax: (916) 443-4855  
[www.proutlaw.com](http://www.proutlaw.com)

Nevada Office  
612 South Tenth Street  
Las Vegas, NV 89101  
t. (702) 562-4044  
f. (702) 554-3272

Michael J. LeVangie  
[Michael.levangie@proutlaw.com](mailto:Michael.levangie@proutlaw.com)

May 22, 2014

## WHITE PAPER ALERT – LONG TERM CARE

### *Allegations Of Understaffing And Insufficient Training May Not Support A Cause Of Action For Dependent/Elder Abuse*

Worsham v. O'Connor Hospital, 2014 WL 2085555

The Appellate Courts in California appear to be taking notice of the overreaching by many in the plaintiffs' bar when it comes to actions pleaded under the California Elder Abuse Act. We consistently challenge causes of action under California's Elder and Dependent Adult Civil Protection Act by Demurrer and Motion for Summary Adjudication. In *Worsham v. O'Connor Hospital*, 2014 WL 2085555, we have new support.

In *Worsham* the plaintiff fell while in the O'Connor Hospital Transitional Care Unit, breaking her arm and hip. The complaint contained a cause of action for Elder Abuse based upon allegations the unit was understaffed and a lack of staff training causing Ms. Worsham's fall. O'Connor demurred to the Elder Abuse cause of action multiple times and the trial court ultimately sustained the demurrer, without leave to amend, on the basis that plaintiff failed to plead sufficient facts regarding O'Connor's understaffing and alleged lack of training.

The Sixth District Court of Appeals upheld the ruling holding that bare allegations of understaffing and insufficient training are do not meet the specific pleading requirement for an Elder/Dependent Adult Abuse cause of action. The court noted that neglect, under EADACPA, refers to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.

The court noted that Ms. Worsham alleged the negligent undertaking of medical services, rather than a failure of those responsible for attending to Ms. Worsham's basic needs and comforts to carry out their custodial or caregiving obligations. According to the facts alleged within the complaint, O'Connor was required to maintain specific staff-to-patient ratios to address the

needs of patients and to ensure compliance with state and federal law. The complaint further alleged O'Connor was chronically understaffed, and did not adequately train the staff it did have. The appellate court held the allegations in the complaint, if taken as true, were not sufficient to prove anything more than professional negligence. The allegations, if true, demonstrated negligence in the undertaking of medical services, not a fundamental failure to provide medical care. Absent specific facts indicating at least recklessness, any failure to provide adequate staffing or training may constitute professional negligence, but not Elder/Dependent Adult Abuse.

The current version of the standard Elder Abuse complaint circulating throughout California is riddled with allegations of understaffing and insufficient training as the basis for the claim. This ruling, assuming it is not de-published, should result in our courts requiring plaintiffs identify specific facts indicating at least recklessness in decisions to understaff facilities or not adequately train employees. This is a favorable ruling for the defense bar and should be used to challenge Elder Abuse causes of action at the demurrer stage and in support of Motions for Summary Adjudication of claims pleaded sufficiently to avoid attack at the Demurrer level.

Please contact us with any questions.

Michael J. LeVangie

**Prout • LeVangie**

2021 N Street  
Sacramento, California 95811  
t. 916.443.4849  
f. 916.443.4855  
e. [michael.levangie@proutlaw.com](mailto:michael.levangie@proutlaw.com)  
Las Vegas • Sacramento • Truckee

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