Nelson Hardiman Attorneys Zachary Rothenberg and Jonathan Radke win injunction for California hospital to remove patient refusing to be discharged

Nelson Hardiman attorneys Zachary Rothenberg and Jonathan Radke successfully obtained an injunction on behalf of a local hospital, requiring a patient who had been "squatting" in the hospital for months after her condition had improved, to finally cooperate in being discharged to a more appropriate, sub-acute facility. The patient, while elderly, was not seriously ill and no longer required acute hospital care; however, she and her adult daughter refused to cooperate in having her discharged. Compounding the problem, because the patient's Medicare hospital benefits had long-since exhausted, and because there was no medical necessity for acute care, the hospital was not being reimbursed for the services it was providing.

"This is a significant problem for California hospitals," said Rothenberg. "We are currently handling a number of these cases for multiple hospitals, and have also recently been asked to develop a 'toolbox' for identifying these kinds of problems early on, and resolving them as quickly and as efficiently as possible."

In obtaining the injunction, Rothenberg and Radke faced a particular challenge in that there is no clear California precedent on how to handle recalcitrant patients who refuse to be discharged even when they are clinically stable and ready to leave. "We had to dig pretty deep and find case law in other parts of the country that dealt with this scenario," Rothenberg said. "Fortunately, we found a handful of cases in other states that recognized that hospitals have finite resources, and a responsibility to the community to use those resources as effectively as possible. When someone is in the hospital who doesn't really need to be, the hospital's precious resources are being wasted, which hurts the hospital and also the community at large." Ultimately, Rothenberg and Radke persuaded the Court that in refusing to cooperate in being discharged, the patient was trespassing on private property, that the adult daughter was aiding and abetting that trespass, and that an injunction against both individuals was necessary to force the discharge.

As Rothenberg and Radke have discovered, this difficult scenario can arise for a myriad of reasons. According to Radke, "in many instances, particularly where the patient is elderly, it is the patient's family that is driving the decision to refuse discharge. Sometimes this is because the family doesn't want to spend down the patient's assets that they would otherwise stand to inherit. Other times, the family just doesn't want to deal with having to find an alternative living arrangement, particularly where that might mean having mom or dad come live with them. And in other instances, the family just won't accept the medical professional's decision that hospital care is unnecessary."

Equally challenging are the situations where the patient has no family, particularly where the patient is homeless and/or potentially lacks decision-making capacity. "In these circumstances, it is critical to work closely with the hospital's discharge planning team and social workers, and with state and local officials, to exhaust every possible option, while ensuring that the interests of the patient are also respected," says Rothenberg. "There are a lot of different resources out there, but they can be hard to find if you don't know where to look."

For questions or business inquiries contact:
Zachary Rothenberg
310.203.2800
zrothenberg@nelsonhardiman.com

Jonathan Radke
310.203.2800
jradke@nelsonhardiman.com