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Wroten & Associates Merging with Madory, Zell, Pleiss & McGrath, APC.



Larry T. Pleiss & Kippy L. Wroten

We are proud to announce the merger of Wroten & Associates and Madory, Zell, Pleiss and McGrath. Our new firm will operate under the Wroten & Associates name, contact information and website. This merger is truly a combination of equals – the joining of two extraordinary law firms who enjoy similar cultures and values including a shared passion for the zealous representation of today’s healthcare providers. The firms’ highly complementary practice areas position us to provide a new and broader set of services uniquely designed to address the evolving challenges facing all healthcare professionals.

Wroten & Associates, founded in 2006, takes pride in the outstanding personal service we provide to the entire long term care and healthcare community including healthcare providers, corporate operators, insurers, third party administrators, and all affiliated professionals. Our excep-

tional team includes attorneys who are credentialed nurses, certified litigation specialists and risk managers who maintain added expertise in administrative law, labor and employment, and corporate compliance. We are committed to defending all forms of litigation and offer additional client support through our comprehensive risk management and educational programs.

Madory, Zell, Pleiss and McGrath was founded in 1961 and through the last 50 years has been spotlighted as one of California’s preeminent civil defense law firms with extraordinary practices in professional negligence, medical staff and hospital liability, government and regulatory defense, and general insurance defense. MZP&M has cultivated a well earned and long standing reputation for their outstanding service, bringing to the new firm a team of attorneys who are members of the prestigious American Board of Trial Attorneys (ABOTA) sharing in excess of 100 years in cumulative trial experience in both State and Federal Courts.

We hope you will join in celebrating this major milestone. We look forward to bringing to you a broader range of expertise and unparalleled quality. 

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New Logo - Same Passion for Excellence

COVER STORY *Continued from page 1***LARRY T. PLEISS**

Larry T. Pleiss has been Madory, Zell, Pleiss & McGrath's managing partner since 2006 and became a named partner in 1982. As lead counsel he has personally tried and arbitrated over 130 cases and mediated almost 750 matters. For almost 35 years Mr. Pleiss has defended healthcare professionals and governmental entities and has argued cases before both the United States and California Supreme Courts.

He has achieved the rank of Diplomat, the highest ranking of ABOTA, which he has been a member of since 1987. For the past 25 years Mr. Pleiss has held a preeminent AV® rating in Martindale Hubbell, which ranks him at the highest level of legal ability and ethical standards. 

KIPPY L. WROTEN

Kippy L. Wroten is the founder of Wroten & Associates. Ms. Wroten's legal experience covers a broad spectrum of complex litigation that encompasses all areas of healthcare liability including high exposure and class action claims of elder abuse, fraud, and corporate unfair business practices. Ms. Wroten's legal experience began in 1988 when she served as an Orange County Deputy District Attorney. Since altering course to civil defense her experience includes the successful defense of individual healthcare providers, independent long term care facilities, ancillary service providers, as well as related corporate enterprises and their executives. Ms. Wroten has been awarded the AV® rating in Martindale Hubbell, which ranks her at the highest level of legal ability and ethics. She is Certified in Healthcare Compliance (CHC) and is recognized by The National Board of Legal Specialty Certification (NBLSC) as an expert in trial and pre-trial practices. Through her career Ms. Wroten has tried over 100 cases. 

LEGAL UPDATE**A New Year's Resolution for Assisted Living Facilities:
Implementation of Additional Training Requirements**

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With the end of the final quarter approaching, including all of the staff holiday celebrations, endless amounts of desserts and gift giving, it is time again to begin looking ahead towards next year and what changes

we can and must make. Two important new bills as part of the so-called "RCFE Reform Act of 2014" go into effect on January 1, 2016 after being signed into law last year that impact Residential Care Facilities for the Elderly (RCFEs): AB 1570 and its companion bill, SB 911. These bills, and the resulting new law, significantly increase assisted living staff and administrator training and boost the degree of difficulty for the administrator exam. Both training and testing will be more comprehensive with the hopes that it will result in enhanced care for residents.

AB 1570 and SB 911 have now amended *Health and Safety* Code section 1569.23 and section 1569.625 to require the certification program for a prospective Administrator to consist of 100 hours of course work and a state-administered exam of no less than 100 questions. The current law

requires an Administrator of an RCFE to successfully complete a department-approved certification program prior to employment that requires, among other things, a minimum of 40 hours of classroom instruction on a uniform core of knowledge. Starting on January 1, 2016, the minimum hours of classroom instruction for Administrators jumps to 80 hours, including 60 hours of in-person instruction, and would add additional topics to the uniform core of knowledge, including the adverse effects of psychotropic drugs for use in controlling the behavior of persons with dementia.

Further, beginning on January 1, 2016, RCFE direct care staff (defined as staff members of residential care facilities for the elderly who assist residents with personal activities of daily living as well as CNAs, RNs, and LPNs) must

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LEGAL UPDATE**New Year's Resolution***Continued from page 2*

receive 40 hours of training before working independently with residents, and an additional 12 hours annually for in-servicing. The training must include topics related to physical limitations and the needs of the elderly, techniques for personal care, Residents' rights, policies and procedures regarding medications, psychosocial needs of the elderly, building safety, the use and misuse of antipsychotics, special needs for residents with dementia and Alzheimer's as well as cultural competency and sensitivity. This is a huge increase in training requirements as prior to January 1, 2016, direct care staff are only required to receive 10 hours of training within the first four weeks of employment, meaning on-the-job training. Further, required training topics have not previously included the use and misuse of antipsychotics, special needs for residents with dementia and Alzheimer's as well as cultural competency and sensitivity.

Finally, all RCFE caregivers must receive dementia care training, regardless if the RCFE promotes or advertises a memory care unit or any special programs related to residents with dementia. This training is in addition to the increased requirements laid out in section 1569.625. Starting January 1, section 1569.626 requires 12 hours of dementia care training, six of which must be completed prior to the staff member beginning working independently with residents and the remaining six hours must be completed within the first four weeks of employment. The Code is very clear: beginning on January 1, 2016, all 12 hours must be devoted to the care of persons with dementia. In-servicing relating to dementia care likewise must be performed annual for at least eight hours. In-service training must "be developed in consultation with individuals or organizations with specific expertise in dementia care or by an outside source with expertise in dementia care." As it stands today, only six hours of dementia

training is required and this training is only necessary for RCFEs that advertise or promote special care for residents with dementia. These new amendments result from the recognition that as the need for assisted living grows exponentially, and not all residents or families can afford a memory care unit, caregivers are increasingly working with residents diagnosed with dementia in a regular assisted living environment.

The Department of Social Services announced that official Implementation Plans are expected in December 2015. A new poster regarding how to contact Community Care Licensing Division with a complaint, along with a new phone number, is soon to be released by the Department at that time as well.

These changes come following increasing scrutiny by the Community Care Licensing Division. The 2014-2015 state budget added funding for over 70 new positions at the Community Care Licensing Division and an unprecedented \$7.5 million to fund stronger oversight, including training for inspectors and their managers. Likewise, these changes for 2016 come in the midst of a recent trend in assisted living litigation attacking a community's regulatory compliance, specifically employee training. We continue to see the trend of cunning Plaintiff's attorneys seeking damages for Negligent Supervision and Retention of employees based on the community's failure to provide training per the Code. 

Specific changes to the existing Health and Safety Code which go into affect on January 1, 2016 are broken down as follows:

From Section 4, 1569.625: Staff other than direct care must receive 40 hours of training, 20 hours of which shall include six hours specific to dementia care before working independently with residents. The remaining 20 hours which shall include six hours specific to dementia care shall be completed within the first four weeks of employment.

From Section 5, 1569.626: All residential care facilities for the elderly that advertise or promote special care, special programming, or a special environment for persons with dementia, in addition to complying with the training requirements in 1569.625, shall meet the following training requirements for all direct care staff: Staff must also receive six hours of resident orientation within the first four weeks of employment. All six hours shall be devoted to care of persons with dementia. Eight hours of in-service training per year on the subject of serving residents with dementia is also required.

From Section 6, 1569.626: All Direct Care Staff must receive 12 hours of dementia care training, six of which shall be completed before a staff member begins working independently with residents, and the remaining six hours shall be completed within the first four weeks of employment. All 12 hours shall be devoted to the care of persons with dementia.

EMPLOYMENT LAW

Window of Opportunity for Employers: AB 1506



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A new bill just signed into law by Governor Brown gives California employers a small opportunity to cure technical violations in employee wage statements and avoid costly penalties and attorneys fees from a proliferation of frivolous lawsuits.

The Labor Code Private Attorney General Act or PAGA allows an employee to file a representative action for any violation of the California *Labor Code*. Statutory penalties for violations range from \$100 per employee per pay period to \$200 per employee for each subsequent pay period the violation has occurred plus attorneys fees. Do the math. Penalties can easily soar into the six figures for employers with over one hundred employees and a significant number of employers in California have paid penalties and attorneys fees in the millions.

Labor Code § 226 requires accurate itemized pay statements showing:

1. gross wages earned,
2. total hours worked by the employee,
3. the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece rate basis,
4. all deductions, provided that all deductions made on written orders of the employee, may be aggregated and shown as one item,
5. net wages earned,
6. the inclusive dates of the period for which the employee is paid,
7. the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
8. the name and address of the legal entity that is the employer, and
9. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

and Workforce Development Agency and the employer identifying *Labor Code* violations. The cure provisions require providing compliant wage statements to all employees for the past three years, which may sound onerous, but is certain to be less costly than the penalties and attorneys fees available if the violation is not cured.

Advice for all employers with California employees: Because violations are calculated by pay period, paying every two weeks or twice a month reduces potential penalties **for PAGA claims as well as several other *Labor Code* violations.** Check your employee wage statements. The information listed above must be on the wage statement itself. Information on an attached check doesn't count. Alert management who to notify if a notice to the Labor and Workforce Development Agency is received. And take action immediately. The opportunity to cure at least these particular violations can significantly reduce or eliminate penalties and litigation costs. ^{WV}

QUICK TIP #1

Employers should check their employee wage statements to ensure they comply with *Labor Code* section 226(a).

AB 1506 will provide employers with 30 days to cure select missing information, specifically (6) missing inclusive dates of the period for which the employee is paid and (8) the name and address of the legal entity that is the employer. Before filing a civil action the employee must give written notice of the violation by certified mail to the Labor and Workforce Development Agency and the employer, including facts and theories to support the alleged violation. Employers should pay attention to any correspondence served by certified mail addressed to the Labor

QUICK TIP #2

Employers should immediately respond to any notice to the Labor and Workforce Development Agency by seeking legal advise.

LEADERSHIP INSIGHT

Are You Listening? Can You Hear Me Now?



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Did you know that hearing and listening are not the same? Hearing is the act of perceiving sound by the ear. If you do not have a hearing-impairment, hearing simply happens. Listening on the other hand is something you consciously choose to do. It requires focus and concentration so that your brain can process meanings from words and sentences. Listening is known to be the key to all effective communication. Listening is so important that many top companies provide listening skills training for their employees! It makes sense when you consider that good listening skills can lead to greater productivity with less mistakes, greater customer and employee satisfaction and lead to a more creative work environment. There are many opportunities to use and practice attentive listening in all aspects of life. In short, our conversations can provide feedback, communicate assignments, new knowledge, deadlines, clarify feelings, ideas or opinions. Besides our spoken words, significant information can also be interpreted through tone of voice, and body language.

Most of us think we have excellent listening skills. But a study at Wright State University in which 8,000 people were polled, results showed that not to be the case. So, can we become attentive listeners? The answer is absolutely yes! With lots of practice and training across all

communication styles attentive listening can be learned and mastered.

There are some straightforward strategies that Dr. Travis Bradberry, President of TalentSmart, has identified that will help you to become an attentive listener starting with **staying focused** only on what the other person is saying. Do not focus on what your reply should be or anticipate what the speaker is going to say next. Stay in the moment so the meaning doesn't become lost. **Be totally present.** Put away your phone. It is impossible to listen when you are texting or glancing at your phone. Do not carry on multiple conversations. Conversations are more enjoyable and effective when you immerse yourself in them, one at a time. **Paraphrase** the meaning of what is being said, using your own words to make

important and can make the difference in a conversation. Be aware of your gestures, expressions, eye contact, tone of voice and overall body language. Make sure they are positive! **Keep quiet** unless you are asking probing questions or clarifying information. Don't solve the puzzle prematurely. Jumping in with ideas or solutions to the speakers problem shuts down their communication. If the person is being repetitive you could say something like "Think I understand what you are saying."

In management and leadership roles attentive listening is highly rated and can be measured by the understanding that you gain. Attentive listening is one of the best ways to learn and will help you grasp knowledge and new ideas from your conversations with others. Attentive listen-

"One of the most sincere forms of respect is actually listening to what another has to say."

- Bryant H. McGill

sure you have a clear understanding. This gives the speaker a chance to clarify what he or she is saying. **Asking clarification questions** is a good way to show that not only are you listening but that you care about what the speaker is saying. Make sure that your questions add to your understanding of what is being said. **Open your mind** to the views of others. Even though we all have preconceived ideas and biases, being open minded to the ideas and opinions of others is important. It does not, however, mean you have to agree with them. Put yourself in the position of the other person, and do not pass judgment. **Body language** is extremely

ing leads to more in depth understanding and will likely develop stronger and more meaningful relationships with others both personally and in the workplace. So it is worth the effort to learn and practice! 

Additional information can be found on Marilynn W. Allemann's website and blog:

www.MWAExecCoach.com

www.MWAExecCoach.wordpress.com

Please contact Marilynn W. Allemann directly at mwallemann@hotmail.com with any questions.

ESTATE PLANNING

A Tough Lesson Learned: Why Estate Planning Is So Important



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I have a colleague whose family was recently involved in an interesting predicament that exemplifies why we all need estate planning.¹

My colleague's father is a small business owner who rents retail space. During the course of his occupancy, his landlord regularly discussed selling the retail property to my colleague's father when the landlord no longer wanted the property. Unfortunately, his health rapidly began deteriorating after his wife recently passed away and he was recently put on hospice care. The time between his wife's passing and being put on hospice care was a mere four days.

The landlord and his wife never had children and had no living parents or siblings. The closest living relative to either of them was his wife's niece, with whom the landlord didn't much care for. Upon being admitted to the hospital, and hav-

ing no estate plan in place, the landlord realized that his estate would now go to his wife's niece or the State of California; neither of which he wanted.

Knowing he was near the end of his life, the landlord decided that he wanted his retail property to go to my colleague's father. While in the hospital, he discussed this with my colleague's father, with the hospital social workers, and with the nursing staff. However, California does not allow for oral wills and he had nothing in writing to confirm that this was his wish. In an attempt to make sure the landlord's desires were met, I advised my colleague's father to have his landlord prepare a handwritten will as soon as possible. California allows for a will to be in the individual's handwriting and have the individual's signature; no witnesses are necessary under these circumstances.²

Unfortunately, a mere six hours after I was asked to advise on the situation, the landlord passed away before he executed a handwritten will. With no estate planning document in place, the landlord's desires won't be met and my colleague's father likely has no recourse to obtain the retail property. Further, any attempt to obtain the property through the courts will be extremely costly, with a high probability of being unsuccessful.

This is just one cautionary example as to why everyone needs an estate plan. Most people won't be in this situation, and most estates won't involve retail property. Regardless of the size and scope of your assets, a will or trust provides the certainty of knowing that your desires are met and your property is protected after death. Ultimately, the decisions you make when executing a will or trust can financially protect your family after you are no longer with them, make a huge impact on a charitable organization, and have a lasting impact on your loved ones. This is only possible if an estate plan is actually created; a tough lesson learned for my colleague's father and his landlord. 

¹ I want to note that this article focuses on a "who gets what situation." It is always important to remember that these situations only occur when someone's friend or family member passes away. The personal loss will, in my opinion, always outweigh whatever financial gain occurs from the death.

² Handwritten wills are often challenged in court after the individual passes away because the terms are unclear. This is typically because an experienced attorney is not involved in drafting the document.

OUR PEOPLE MAKE THE DIFFERENCE

CATCH WROTEN & ASSOCIATES

Kippy L. Wroten & Darryl A. Ross to attend the AHLA Long Term Care and the Law
February 22-24, 2016 in Orlando, FL

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