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PRESS RELEASE

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CALIFORNIA DEPARTMENT OF PUBLIC HEALTH REDUCES AA CITATION ISSUED TO MARYSVILLE CARE CENTER

Eric S. Emanuels, of Prout • LeVangie in Sacramento, successfully achieved a reduction in a 'AA' Citation issued by the California Department of Public Health during a Superior Court trial in Yuba County. The facility favored agreement was reached after Motions In Limine and the first four witnesses called by the Department. The Skilled Nursing Facility obtained this favorable resolution calling a single witness, as the Department of Public Health witnesses were effectively discredited through cross-examination. For over a year, The California Department of Public Health stridently refused reduction of the "AA" level citation. During the Trial, the Department of Public Health asked to interrupt the presentation of evidence to affect a resolution.

The defense excluded the state's citation report from evidence under California Evid. Code Sec. 1280 and the Civil Penalty Approval Sheet under Evid. Code Sec. 1271. The department's medical expert and the coroner were discredited on cross examination leading to this result. The DPH District Administrator testified she was "guessing as to why" she affirmed the CMP and the "AA" and had no documentation proving she even looked at anything to insure that the HFEN had done her job, before she was asked to sign the Civil Penalty Approval Sheet.

The DPH Physician Medical Consultant admitted to only looking at partial records and that she never looked to see if this was an "unavoidable accident" as defined by the Guidelines to Surveyors. She therefore was forced to admit that she had tunnel vision and made up her mind that this was avoidable. She admitted she did not know if the patient had risk factors for stroke and on cross examination testified to that fact when shown records that the patient had risk factors for stroke. The doctor then testified there was a dilated left pupil and that this is a sign of a stroke. She had no explanation why the coroner did not examine the brain to determine if a stroke was the cause of death.

The Coroner admitted he did not look at the brain even though there was a dilated left pupil and the patient could have died from a stroke and not asphyxiation from a bedrail which was the allegation in this case. The coroner claimed he did not look at the brain as he had already decided the patient died from asphyxiation based on the location of the body and the compressed larynx. He failed to quantify the degree of compression in the larynx and admitted on cross examination that the patient still could be ventilated as he had no proof of total airway occlusion.

The case settled for reduction to an "A" level citation. DPH records and websites must be changed within 7 days, pursuant to the terms of the settlement agreement.

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