

# ELDER LAW & LONG TERM CARE

Wroten & Associates, Inc.  
*Attorneys at Law*



## JOIN US!

### Wroten & Associates 4th Annual Conference

By Kippy Wroten



**M**y job as an attorney really boils down to two things, (1) being an investigator in search of the truth, and (2) translating the truth into a better story than is woven in the attacks waged by our adversaries. Hence my recent preoccupation with frogs. If you're a regular reader of my quarterly musings you know that in our last newsletter I left you with the parable about the frog and the scorpion.<sup>1</sup> Today I find myself drawing on another frog story known as the sorites paradox, or the paradox of the heap. The sorites paradox considers the concept of "little-by-little arguments" whereby small incremental differences in quantity are never individually large enough to create a change on the perceived whole. For example, take the measurement of a heap. Just exactly how many grains of sand does it take to make a heap? Or the converse, if I remove one grain of sand from the heap, is it still a heap? Thus we come once again to our frog. As the story goes, if you put a frog into a pot of boiling water the frog will immediately recognize the danger prompting it to leap out of the pot to safety. But, if instead you put the same frog into a pot of cold water and gradually raise the water temperature until it boils, the frog won't recognize the gradual nature of the temperature change, staying complacently in the pot until it dies. The concept here is that when faced with a striking contradiction our senses are alerted to the change in circumstances and an appropriate reaction results. Faced with a continuum of smaller incremental changes introduced gradually, however, can instead create a facade of consistency and safety that may lull us into inaction regardless of the escalating danger.

The world of the long term healthcare professional is one of perpetual motion where the normal state of being is an environment of continuous change. A world where one can never accept the status quo lest they turn around to find themselves suddenly in the proverbial boiling water shared by our unfortunate frog. Like a fireman, I earn my living dousing flames after the disaster has struck but after 20 years of responding to emergency calls my partners and I decided it was time to be proactive in the support we provide our friends that work so tirelessly in their service to those in need. Hence, four years ago came the birth of the Wroten & Associates Long Term Healthcare Conference. For those of you who have not joined us at our conference previously, my question is "where have you been?" This is a fantastic day to meet up with old friends and make a few new ones. It's an opportunity to take a leap out of the boiling pot of water and to refresh, safely in the company of friends and supporters who recognize the challenges you face and great value of your work. Our line-up of speakers this year is nothing short of incredible and the cost can't be beat (it's free folks). The venue is once again the Disneyland Grand Cali-



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**Register Today!** PAGES 4 & 5

**4th Annual Wroten & Associates Long Term Healthcare Conference**



Thursday, May 31, 2012  
at Disney's Grand Californian,  
Anaheim, California.

## E-NEWSLETTER

Digital Newsletter Available



Sign up today:  
[www.wrotenlaw.com](http://www.wrotenlaw.com)

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“Conference Invite”

(Continued from page 1)

fornian Hotel. Continuing education credits and food will be provided...and again, did I say it won't cost you anything? And this year our keynote speaker is the best selling author of the New York Times best seller “The Memory Bible”, Dr. Gary Small (Director of the UCLA Longevity Center and Geriatric Psychiatry). All our conference attendees will receive a copy of Dr. Small's newest book, “The Alzheimer's Prevention Program” and Dr. Small has graciously agreed to stay to personally sign your book. Just take a moment to look over the amazing list of healthcare executives who have agreed to share the wealth of their experience with our audience and I'm certain you'll find a way to join us.

May 31st will be an amazing day for an amazing group...YOU! Tell a friend, bring a friend. I look forward to seeing you at the 4th Annual Wroten & Associates Long Term Healthcare Conference! ■

<sup>1</sup>The frog and the scorpion metaphor warns the wary about well known foes who tout themselves as friends. It's akin to letting the fox into the henhouse to “guard” its prey.

# LONG TERM HEALTHCARE CONFERENCE REFLECTIONS





PART 2  
OF SERIES

## Using Effective Progressive Discipline to Reduce Employee Turnover

By Laura Sitar



**T**oo often we look at progressive discipline as a means of getting a poor performing employee out the door with an evidence trail to use when the employee sues. Don't get me wrong, the thing I like most when I review

a new discrimination or retaliation case is a well documented employee file. But that's just one side of the story. Remember Positive Coaching and Employee Development from the last newsletter? Those core philosophies from AYSO's soccer programs are equally applicable to a company's discipline policies.

Progressive discipline is a means of imposing increasingly more serious discipline for repeated infractions. The goal is to eliminate undesired behavior and encourage good behavior. Ultimately, most discipline should be undertaken with a genuine interest in helping an employee improve performance or behavior issues. It's one aspect of the positive coaching and employee development which helps improve employee satisfaction and reduce turnover. Of course, sometimes performance improvement isn't possible. It's only then that documentation of progressive discipline becomes important as it will later serve as support for the decision to terminate the employee.

Unfortunately, most of us would rather praise someone for a job well done than sit down with that employee to discuss policy violations or poor performance. Supervisors often let performance issues build until they've "had it" with an employee. Then the supervisor uses every little infraction as grounds for written disciplinary action. All too often the employee is oblivious to the problem. The employee

who is habitually late or absent from work with no consequences thinks it's not a problem while fellow employees who have to pick up the slack certainly notice and are frustrated. That's were added turnover comes in. Employees want every member of the team to be held accountable for his or her contribution to the success of the facility. They want work to be predictable and to run smoothly. They want everyone to follow the same rules. When they look around and see that's not happening, they look for other places to work. The most successful supervisors are those who see progressive discipline as one means of coaching and developing their individual employees and improving the overall team.

What should your progressive discipline policy look like? It should be a policy in your employee handbook spelling out unacceptable behavior. It provides guidelines to help employees understand the consequences of their actions.

Here are a few tips:

1. First and foremost, start your policy by affirmatively telling your employees they must always use good judgment and the highest standards of ethical conduct in carrying out their job responsibilities. Since your policy cannot cover every situation, this is the most important direction you can give your employees.
2. Spell out unacceptable behavior very clearly. If it is important that employees wear closed-toed shoes for safety reasons, spell it out. You can't list everything, but list the key things that tend to create problems.

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# Wroten & Associates LONG TERM HEALTHCARE CONFERENCE

## LONG TERM CARE – A DIFFERENT CONVERSATION BRINGING CHALLENGES INTO FOCUS

### Keynote Speaker

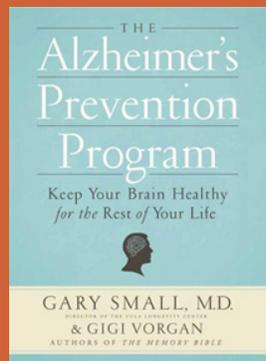
**Gary Small, M.D.**

Co-Author,

**THE ALZHEIMER'S**

**PREVENTION PROGRAM:**

Keep Your Brain Healthy for  
the Rest of Your Life



Dr. Gary Small is a professor of psychiatry and director of the UCLA Center on Aging at the Semel Institute for Neuroscience & Human Behavior. His research, supported by the National Institute of Health, has made headlines in the Wall Street Journal, New York Times, and USA Today. Scientific American magazine named him one of the world's leading innovators in science and technology. Dr. Small lectures throughout the world and frequently appears on The Today Show, Good Morning American, PBS, and CNN. He has written five books, including The New York Times best seller, The Memory Bible.

### BRAIN GAMES SAMPLER

adapted from

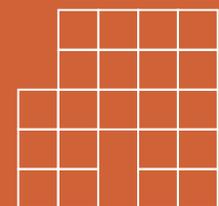
**THE ALZHEIMER'S**

**PREVENTION PROGRAM**

This brain teaser gives you a sample of the kinds of exercises you can do to tweak your neural circuits. Try it—you might enjoy it. The key is to train but not strain your brain.

**COUNTING SQUARES.** Let's get your right brain charged up with your frontal lobe in the visual spatial puzzle below.

Count up the number of squares in the figure to the right.



**Go to [www.wrotenlaw.com](http://www.wrotenlaw.com) to check your answer!**

# Conference Agenda

# May 31 8am-5pm

- 7:00-8:00 **Check-in & Breakfast**
- 8:00-8:15 **Opening Remarks:**  
Kippy L. Wroten, Esq.
- 8:15-9:15 **What's Hot and What's Not-State and Federal Regulations:**  
Joan Redden, V.P. Clinical Risk Management, Skilled Healthcare, LLC
- Complementing Quality of Care with Innovation and Efficiency:**  
Budgie Amparo, Executive VP Quality and Risk Management, Emeritus Senior Living
- 9:15-10:30 **Legal Panel:**  
Roland Rapp, General Counsel, Executive VP, Chief Administrative Officer, Skilled Healthcare, LLC  
Jonathon Allred, VP, General Counsel, Corporate Secretary, EmpRes Healthcare Management, LLC
- 10:30-10:45 **Networking Break**
- 10:45-11:00 **Legal Update:**  
Wroten Attorneys Speak
- 11:00-12:15 **Alzheimer's Prevention Program: Can We Keep our Brains Healthy?**  
Gary Small, M.D., Parlow-Solomon Professor on Aging, David Geffen School of Medicine UCLA  
Director, UCLA Longevity Center and Geriatric Psychiatry  
Semel Institute for Neuroscience and Human Behavior
- 12:15-1:30 **Lunch and Book Signing by Gary Small, M.D.**
- 1:30-1:45 **Legal Update:**  
Wroten Attorneys Speak
- 1:45-3:00 **Evolving Exposures in the Long Term Care Industry:**  
Joanne Wayman, VP Claims, Allied World Assurance Company  
Lee Sommars, Senior VP, Lockton Companies
- 3:00-3:15 **Networking Break**
- 3:15-4:30 **Employment Panel:**  
Judy Pearson, Senior V.P., Marsh Risk and Insurance  
Stacey Zartler, Labor Relations Counsel, Kindred Healthcare

## Disney's Grand Californian Hotel Anaheim, CA

### Parking

Valet parking is available for \$21/day. Self-parking is \$15/day, and the lot is located across Disneyland Drive. It's about a 5-minute walk to the hotel entrance.



## Who Should Attend?

This educational conference is offered exclusively for those who work in the long term care industry.

- Owners • Nurses • Administrators • In-House Counsel
- Risk Managers • Operators • Staff • Insurance Professionals

## CEU Units

Continuing Education Units are available.

## Cost

Wroten & Associates, Inc. is providing this educational conference at no charge.

## Registration

Register on-line at: [www.wrotenlaw.com](http://www.wrotenlaw.com)  
Email questions to: [events@wrotenlaw.com](mailto:events@wrotenlaw.com)



Scan this code with your smartphone for a quick link.

**Registration Deadline:**  
**May 11, 2012**

## Managing Your Time

By Marilyn Allemann, L.C.S.W



**D**o you find yourself running out of time each month, week, day or hour? For most of us it seems that there is never enough time in a day to get everything done. When you become proficient in managing your time you gain control. Effective time management helps you to set priorities, manage interruptions, minimize distractions, and

improve your focus and concentration. Of course, the end result is about task completion, and a sense of accomplishment and satisfaction. Here are a few effective time management tips:

### Prioritization

Prioritization is an essential skill needed to make the best use of your own efforts and those of your team. Without prioritizing your tasks you may spend a long time working hard without achieving the desired results. To work efficiently you need to work on the most important tasks first, keeping in mind, timelines and deadlines. Prioritizing based on deadlines, project value, or profitability is most common. Objectively evaluate the tasks or projects to be completed and put them in order of importance. When time is limited and demands are seemingly unlimited, prioritization helps you to direct your time where it is most needed.

### Managing Interruptions

Setting your priorities is one thing, but knowing what to do to minimize interruptions during your day is another important step in managing your time. Everyday interruptions at work or at home can be a barrier to managing your time effectively and, potentially, can be a barrier to your success. Consider for a minute the many interruptions that occur daily. There may have been phone calls, hallway conversations, emails, colleagues stopping by your office, and anything else that demands your attention and distracts you from the task at hand. These interruptions can break your focus which in turn requires time for you to spend re-engaging with your thought processes to successfully complete your work. The key to controlling interruptions is to know what they are and whether they are necessary. You can plan for them in your daily schedule. Set limits assertively and professionally, with those who interrupt you unnecessarily. You can also pre-empt interruptions by having scheduled meetings with people addressing their question and needs during the meeting. Learn to say “no.” Saying no in a courteous and sincere manner, followed by a brief explanation of why, may be the best course of action to take. Be careful, if you are a manager, your job is to be available to people and to handle urgent issues that arise so make sure people know they can interrupt you if there is a genuine emergency.

The ability to concentrate and to use your time well is everything if you want to succeed in business--or almost anywhere else for that matter. - Lee Iacocca

### Minimizing Distractions

No matter where you work or what you do, you most likely deal with distractions on a daily basis. According to a study done in 2007 by Basex, an economy research and advisory firm, it is estimated that distractions cost businesses in the United States \$588 billion per year. Learning how to minimize distractions may dramatically increase your productivity, effectiveness and, as a bonus, reduce your stress.

Some of the common distractions we face at work include email, phone calls, internet browsing, a disorganized workspace and coworker interruptions as discussed above. Strategies like scheduling email checks and scheduling responses to emails are helpful. For instance check your emails when you first arrive at work and schedule other specific times during the day. Minimize phone call distractions by letting your co-workers and team members know that you won't take non-essential calls between specific times, especially if you are working on a time sensitive project. Internet browsing can take up an enormous amount of time. Turn off your browser when you are not using it. A disorganized desk or office can be very distracting. When your office is organized you can be more productive and less distracted looking for things. Scheduling a time to be available for questions can also be an effective way of minimizing distractions. Closing your office door or putting a sign on your door indicating you don't want to be disturbed unless it is necessary, may help minimize distractions.

### Improving Focus and Concentration

We have all experienced sitting at our desks trying to focus on a task and have found our minds wondering. No matter what our intentions may be, we just can't concentrate. Our work environment is important and plays a large role in our ability to concentrate. Make sure your desk and chair are the right height so that you are comfortable. Put up pictures with natural images or landscapes that you enjoy. Listening to soft music can help and some people use a “white noise” machine to drown out other distracting noise. Nutrition is also important in improving your concentration and focus. Drink a lot of water as dehydration can make us feel tired, irritable and slow. Getting up from your desk and briefly stretching or moving around during the day is another way of improving your focus and concentration.

Wouldn't we all love to have a couple of extra hours in each day. That being impossible, we must work smarter. Time management is an essential skill that helps you keep your work under control and at the same time helps keep your stress to a minimum. Using the above helpful time management tips will help us to work in a focused, productive and efficient manner! ■

Additional information can be found on Marilyn Allemann's website, [www.MastersExecutiveCoaching.com](http://www.MastersExecutiveCoaching.com). Please contact Marilyn Allemann directly at [mwallemann@sbcglobal.net](mailto:mwallemann@sbcglobal.net) with any questions.

## “Employee Turnover Series”

(Continued from page 3)

3. List the discipline employees should expect to receive if they engage in inappropriate behavior. Fit the discipline to the severity of the offense. Wearing sandals to work probably warrants a verbal warning. Intentionally and maliciously hitting a resident certainly warrants swift termination.
4. Address issues as they occur, not just when you want to terminate an employee. Let employees know you are addressing issues quickly so that the employee is aware of the problem and has a chance to improve.
5. Always document verbal warnings. Nothing fancy is needed. Simply put a note in the employee’s file documenting the date you had a conversation regarding the employee’s performance.
6. For most lesser violations or performance issues the sequence of verbal warning, written warning, final written warning and termination works well. Always tell employees at the final written stage that they will likely be terminated if they violate the policy again.
7. Inform employees your progressive discipline policy only provides guidelines and reserve the right to take any disciplinary action deemed necessary, up to and including termination, at any time.
8. Be consistent with all employees. Nothing supports a claim of discrimination or retaliation better than policies that are enforced inconsistently.

Now’s a good time to review your progressive discipline policy. Is it up to date? Do supervisors use it as a coaching and development tool and not just to get rid of employees? And try to make sure that you are using it as a tool to reduce rather than increase termination. ■

## Dying with Dignity: A Different Perspective

By Regina Casey



**M**y mother, who has lived in an Assisted Living Facility for the last five years,

recently died at the age of 91. Watching my mother go through the dying process gave me a better understanding of some of the challenges the long term care industry faces when assisting families through the death of a parent. I want to share some of my observations with our readers in the hope it may be of some value to those of

you who assist residents and their family through the dying process.

As an attorney who has represented health care providers over the past 25 years, I have been called upon to defend many wrongful death cases in which families claim their loved one died due to neglect or abuse. Most of the time, what plaintiffs claim is a result of poor care is simply the normal changes that occur when a person is at the end of life. For example, a common allegation raised in a complaint is that the nursing staff failed to provide adequate hydration and

nutrition resulting in weight loss, dehydration and malnutrition. A plaintiff’s attorney will argue the patient was not fed because the facility had an insufficient number of staff to assist with feeding. The food was not palatable as it was allowed to get cold. The water pitcher was not within reach and fluids were not offered.

Those of you who know me are aware that I began my career as a nurse and am familiar with changes that occur in the end of life. Those of us who have medical training know there are cer-

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## “Dying with Dignity”

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tain physical and mental changes that are expected as one begins the dying process. One loses their appetite and desire to eat as death approaches and eventually one may lose the ability to swallow. Organs shut down and patients may develop pressure sores, regardless of the quality of care provided.

My mother was no different from most dying patients as she too lost weight, became malnourished and dehydrated prior to her death. I would visit my mother

daily and would often find a cold plate of untouched food next to her bed. At no point, however, did I think to blame the caregivers because my mother no longer would eat or drink. I would bring my mother's favorite foods and spent hours trying to encourage her to eat, without success. I knew it was not the fault of the nursing staff that my mother was neither hungry nor thirsty, but a normal step in the decline towards death. I also knew she was not suffering from her failure to eat or drink. It is well docu-

mented in the medical literature that starvation is not a painful process as many may think.

What is the difference between my reaction and that of a daughter who chooses to file a lawsuit blaming a facility's staff for her mother's death? The answer I believe is the level of understanding of the dying process and realistic expectations. No daughter could love her mother more than I and my grief over her loss was as great as any other. My mother died with dignity and grace thanks to the

good care she received from her caregivers. So all of you reading this article who are healthcare providers and caregivers, I thank you for the wonderful service you provide to your residents and patients and their families by assisting them through this difficult phase in life. I also urge you to remember how important it is to make sure families are educated about the dying process so when they lose a loved one, they thank you, not sue you. ■



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