

**AGEISM AND AGE DISCRIMINATION IN HEALTHCARE  
PENNSYLVANIA STATE MATERIALS**

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Spring 2022**

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## **Introduction**

Ageism and age discrimination are prevalent and recurring issues affecting older adults. They are complex, multifaceted concepts that include beliefs and behaviors resulting from stereotypes and prejudice. Their prevalence begins in childhood and is reinforced throughout adulthood. Unfortunately, ageism and age discrimination are usually unrecognized and unchallenged, even by older adults. Hence, it is imperative that all forms are identified, exposed, and acted upon so as to alleviate their occurrence and effect in a rapidly aging population.

The primary and secondary sources listed below pertain to the topic of ageism and age discrimination. The sources were selected because of their relevance and importance to this topic. It is noted that the majority of resources involving these concepts, refer to employment, particularly as they relate to case law. This is quite noteworthy to the extent that discrimination because of age in healthcare is either not recognized or not acted upon with any degree of frequency.

Because of the paucity of resources, specific secondary sources were highlighted. For example, articles that pertained to ageism and age discrimination in healthcare were selected instead of only listing the journal. The majority of these sources referred to the injustices that occurred when ageism and age discrimination were precipitating factors and influenced decision-making and judgment. Also addressed were potential causes, remedies, limited resource allocation, consent, egalitarianism, age as a proxy, respect for dignity, ethics, and the potential barriers that were presented by existing statutes and regulations. Other secondary resources discussed the surrounding issues that were resultant in nature when ageism and age discrimination occurred and referenced the area of elder law.

## **PRIMARY SOURCES**

### **I. THE CONSTITUTION OF PENNSYLVANIA**

Article I

Declaration of Rights

#### **§ 1. Inherent rights of mankind.**

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

#### **§ 26. No discrimination by Commonwealth and its political subdivisions.**

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

### **II. PENNSYLVANIA STATUTES**

#### **Pennsylvania Human Relations Act**

##### **Chapter 17**

##### **43 P.S. § 951**

An Act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Governor's Office; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties. *(Includes physicians' offices and any entity that provides a service.)*

§ 954. Definitions

§ 955. Unlawful Discriminatory Practices

§ 959. Procedure

§ 962. Construction and exclusiveness of remedy

§ 952. Findings and declaration of policy

§ 957. Powers and duties of the Commission

§ 956. Pennsylvania Human Relations Commission

§ 960. Enforcement and judicial review

#### **The Living Will Act**

##### **20 Pa.C.S. § 5441**

§ 5441 This subchapter shall be known and may be cited as the Living Will Act.

§ 5442. Execution

§ 5443. When Living Will Operative

§ 5444. Revocation

§ 5445. Emergency Medical Services

§ 5446. Validity

§ 5447. Form

## **Power of Attorney**

### **20 Pa.C.S. § 5608**

#### **§ 5608. Acceptance of and reliance upon power of attorney**

c) Genuineness.—A person who in good faith accepts a power of attorney without actual knowledge that a signature or mark of any of the following are not genuine may, without liability, rely upon the genuineness of the signature or mark of:

- (1) The principal.
- (2) A person who signed the power of attorney on behalf of the principal and at the direction of the principal.
- (3) A witness.
- (4) A notary public or other person authorized by law to take acknowledgments.

(d) Immunity.—A person who in good faith accepts a power of attorney without actual knowledge of any of the following may, without liability, rely upon the power of attorney as if the power of attorney and agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority that:

- (1) The power of attorney is void, invalid or terminated.
- (2) The purported agent's authority is void, invalid or terminated.
- (3) The agent is exceeding or improperly exercising the agent's authority.

€ Request for information.—A person who is asked to accept a power of attorney may request and, without liability, rely upon without further investigation:

- (1) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney or an affidavit under section 5606 (relating to proof of continuance of powers of attorney by affidavit).
- (2) An English translation of the power of attorney, if the power of attorney contains, in whole or in part, language other than English.
- (3) An opinion of counsel relating to whether the agent is acting within the scope of the authority granted by the power of attorney if the person making the request provides in writing or other record the reason for the request.

(f) Additional request for information.—A person who has accepted a power of attorney, whether or not the person has a certification or an opinion of counsel under subsection € or an affidavit under section 5606, and has acted upon it by allowing the agent to exercise authority granted under the power of attorney, shall not be precluded from requesting at later times a certification or an opinion of counsel under this subsection, subsection € or an affidavit under section 5606 with regard to any further exercise of authority by the agent under the power of attorney.

(g) English translation.—An English translation or an opinion of counsel requested under this section shall be at the principal's expense, unless the request is made more than seven business days after the power of attorney or any revision or addition to a power of attorney:

- (1) is presented for acceptance; or
- (2) after being previously accepted by a person, is presented to exercise a power not previously exercised by the agent in a transaction with that person.

(h) Limitations.—Except as otherwise provided by law, nothing in this section shall in itself:

- (1) validate a forged instrument conveying an interest in real property;
- (2) provide that the recording of a forged instrument gives constructive notice of a conveyance of an interest in real property; or
- (3) limit the liability of an insurer, indemnitor or guarantor of contractual obligations to indemnify, hold harmless or defend a person who accepts or relies upon a power of attorney.

## **Liability for Refusal**

### **20 Pa.C.S. § 5608.1**

§ 5608.1. Liability for refusal to accept power of attorney

## **Activities through Employees**

### **20 Pa.C.S. § 5608.2**

§ 5608.2. Activities through employees

For the purposes of sections 5608 (relating to acceptance of and reliance upon power of attorney) and 5608.1 (relating to liability for refusal to accept power of attorney), the following shall apply:

(1) A person who conducts activities through employees shall be considered to be without actual knowledge of a fact relating to a power of attorney, a principal or an agent, if the employee conducting the transaction involving the power of attorney is without knowledge of the fact.

(2) An employee has knowledge of a fact if the employee has actual knowledge of the fact or acts with conscious disregard or willful ignorance regarding the existence of the fact.

## **Death Action**

### **42 Pa.C.S. § 8301**

(a) General rule. — An action may be brought, under procedures prescribed by general rules, to recover damages for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another if no recovery for the same damages claimed in the wrongful death action was obtained by the injured individual during his lifetime and any prior actions for the same injuries are consolidated with the wrongful death claim so as to avoid a duplicate recovery.

(b) Beneficiaries. — Except as provided in subsection (d), the right of action created by this section shall exist only for the benefit of the spouse, children or parents of the deceased, whether or not citizens or residents of this Commonwealth or elsewhere. The damages recovered shall be distributed to the beneficiaries in the proportion they would take the personal estate of the decedent in the case of intestacy and without liability to creditors of the deceased person under the statutes of this Commonwealth.

(c) Special damages. — In an action brought under subsection (a), the plaintiff shall be entitled to recover, in addition to other damages, damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.

(d) Action by personal representative. — If no person is eligible to recover damages under subsection (b), the personal representative of the deceased may bring an action to recover damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.

## **Survival Action**

### **42 Pa.C.S. § 8302**

All causes of action or proceedings, real or personal, shall survive the death of the plaintiff or of the defendant, or the death of one or more joint plaintiffs or defendants.

## **Validity of agreement to arbitrate.**

### **42 Pa.C.S. § 7303**

A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

## **Court proceedings to compel or stay arbitration.**

### **42 Pa.C.S. § 7304**

(a) Compelling arbitration.

(b) Stay of arbitration.

(c) Venue.

(d) Stay of judicial proceedings.

(e) No examination of merits.

### III. PENNSYLVANIA REGULATIONS

#### Title 6 Aging

##### **PART I. Department of Aging**

###### Chapter 3. Fair Hearings and Appeals

###### § 3.1. Purpose, scope and authority.

- (a) This chapter sets forth a system of appeals and fair hearings which apply to grievances or complaints about services and activities funded by the Department.
- (b) Provisions in this chapter include the following subjects:
  - (1) Parties who may request a fair hearing.
  - (2) Types of decisions or actions which are appealable.
  - (3) Procedures for filing complaints, appeals or requests for hearings.
  - (4) Procedures that area agencies on aging and the Department will follow for appeals and fair hearings.
- (c) This chapter is adopted under the act of June 20, 1978 (P. L. 477, No. 70) (71 P. S. §§ 581-1--581-12) and in conformity with the Older Americans Act of 1965 (42 U.S.C.A. §§ 3001--3057g) and 45 CFR Part 1321 (relating to grants for state and community programs on aging) to assure the continued eligibility of the Commonwealth and its political subdivisions for Federal grants-in-aid.
- (d) Except where inconsistent with the procedures set forth in this chapter, appeals and hearings shall be governed by the rules set forth in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

###### Chapter 11. Older Adult Daily Living Centers

###### Subchapter A. Licensure and Operation Requirements

(Major Categories are listed below)

General Provisions

General Requirements

Staffing

Physical Site

Fire Safety

Program Components

Discharge Policy

Center Services

Health

Medications

Nutrition

Transportation

Protective Devices

Client Records

General Licensing Provisions

Legal Entity

Application

Inspection

Fees

Licensure

Negative Sanctions

Appeals

###### Subchapter B. Statement of Policy

§ 11.401. Advisory Committees.

§ 11.402. Specialized Services

§ 11.403. Additional Services

§ 11.404. Program Staff Training Guidelines.

Chapter 15. Protective Services for Older Adults

(Major categories are listed below)

General Provisions

Program Administration

Reporting Suspected Abuse, Neglect, Abandonment or Exploitation

Investigating Reports of Need for Protective Services

Agency Access to Persons and Records

Emergency Intervention

Individual Rights of Parties Involved

Provision of Services

Confidentiality

Financial Obligations

Staff Training and Experience Standards

Criminal History Record Information Reports

Reporting Suspected Abuse

Staff Training and Experience Standards

Criminal History Record Information Reports

Reporting Suspected Abuse

Other Administrative Provisions

Chapter 20. Family Caregiver Support Program

(Major categories are listed below)

General Provisions

Program Administration

Caregiver Participation

Core Program Services

Reimbursement Benefits

Other Provisions

Chapter 21. Domiciliary Care Services for Adults

(Major categories are listed below)

General Provisions

Eligibility Determination, Certification and Application Processes

Department of Aging Responsibilities

Provider Rights and Responsibilities

Client Rights and Responsibilities

Other Administrative Provisions

Chapter 22. Pharmaceutical Assistance Contract for the Elderly

(Major categories are listed below)

General Provisions

General Payment Principles

Claimant Eligibility

Application Process

Eligibility Redetermination Process

Continuing Claimant Responsibilities

Provider Participation

Misutilization and Abuse of Program Benefits

Provider Misutilization and Abuse

Claimant Hearings and Appeals



Provider Hearings and Appeals  
Other Administrative Provisions

Chapter 30. Designation and Redesignation of Area Agencies on Aging

(Major categories are listed below)

General Provisions

Designation of Area Agencies

Redesignation of Area Agencies

Chapter 35. Area Agency on Aging Advisory Councils

(Major categories are listed below)

General Provisions

Composition of the Advisory Council

Responsibilities of the Advisory Council

Responsibilities of the Area Agency

Responsibilities of the Department

**Title 28 Health and Safety**

**Part IV Health Facilities**

**Subpart C. Long-Term Care Facilities**

Chapter 201. Applicability, Definitions, Ownership and General Operation of Long-Term Care  
Nursing Facilities

Chapter 203. Application of Life Safety Code for Long-Term Care Nursing Facilities

Chapter 205. Physical Plant and Equipment Standards for Long-Term Care Nursing Facilities

Chapter 207. Housekeeping and Maintenance Standards for Long-Term Care Nursing Facilities

Chapter 209. Fire Protection and Safety Programs for Long-Term Care Nursing Facilities

Chapter 211. Program Standards for Long-Term Care Nursing Facilities

**Subpart G. Home Health Care Agencies**

Chapter 601. Home Health Care Agencies

General Provisions

Licensure

Governance and Management

Services

**Subpart H. Home Care Agencies and Home Care Registries**

Chapter 611. Home Care Agencies and Home Care Registries

General

Governance and Management

**Part VI. Health Care Cost Containment Council**

Chapter 903. Appeals Procedure

Chapter 911. Data Submission and Collection

Chapter 912. Data Reporting Requirements

Chapter 912. Data Reporting Requirements

Chapter 913. Payor Data Reporting Requirements

Chapter 915. Data Access Criteria and Procedure

**Title 55: Human Services**  
**Part III. Medical Assistance Manual**

Chapter 1101. General Provisions

§ 1101.21. Definitions

§ 1101.21a. Clarification Regarding the Definition of “Medically Necessary” Statement of Policy.

*Benefits*

§ 1101.31. Scope.

§ 1101.32. Coverage Variations.

§ 1101.33. Recipient Eligibility

*Participation*

§ 1101.41. Provider Participation and Registration of Shared Health Facilities.

§ 1101.42. Prerequisites for Participation.

§ 1101.42a. Policy Clarification Regarding Physician Licensure Statement of Policy

§ 1101.42b. Certificate of Need Requirement for Participation—Statement of Policy

§ 1101.43. Enrollment and Ownership Reporting Requirements

*Responsibilities*

§ 1101.51a. Clarification of the Term “Within a Provider's Office” Statement of Policy

*Fees and Payments*

§ 1101.61. Reimbursement Policies

§ 1101.62. Maximum Fees.

§ 1101.63. Payment in Full

§ 1101.63a. Full Reimbursement for Covered Services Rendered Statement of Policy

§ 1101.64. Third-Party Medical Resources

§ 1101.65. Method of Payment

§ 1101.66. Payment for Rendered, Prescribed or Ordered Services.

§ 1101.66a. Clarification of the Terms “Written” and “Signature” Statement of Policy

§ 1101.67. Prior Authorization

§ 1101.68. Invoicing for Services

§ 1101.69. Overpayment Underpayment

§ 1101.69a. Establishment of a Uniform Period for the Recoupment of Overpayments from Providers (Cobra)

§ 1101.71. Utilization Control

§ 1101.72. Invoice Adjustment.

§ 1101.73. Provider Misutilization and Abuse.

§ 1101.74. Provider Fraud.

§ 1101.75. Provider Prohibited Acts.

§ 1101.75a. Business Arrangements Between Nursing Facilities and Pharmacy Provider Statement of Policy.

§ 1101.76. Criminal Penalties

§ 1101.77. Enforcement Actions by the Department

§ 1101.77a. Termination for Convenience and Best Interests of the Department Statement of Policy

*Administrative Procedures*

§ 1101.82. Re-Enrollment.

§ 1101.83. Restitution and Repayment.

§ 1101.84. Provider Right of Appeal.

*Violations*

§ 1101.91. Recipient Misutilization and Abuse

§ 1101.92. Recipient Prohibited Acts, Criminal Penalties and Civil Penalties.

§ 1101.93. Restitution by Recipient.

§ 1101.94. Recipient Right of Appeal.

§ 1101.95. Conflicts Between General and Specific Provisions.  
Chapter 1181. Nursing Facility Care  
Chapter 1187. Nursing Facility Services

#### **IV. PENNSYLVANIA CASES**

*Burkett v. St. Francis Country House*, 133 A.3d 22 (Pa. Super. Ct. 2016)

*Ezrin v. Hospice Preferred Choice, Inc.*, 017 WL 11657241 (Pa. C.P. 2017)

*Grossman v. Barke*, 868 A.2d 561 (Pa. Super. Ct. 2005)

*Hendricks v. Manor Care of West Reading PA*, WL 5970730 (Pa. Super. Ct. 2015)

*Joe v. Mercy Fitzgerald Hospital*, WL 6929345 (Pa. C.P. 2012)

*Lesko v. Frankford Hospital-Bucks County*, 15 A.3d 337 (Pa. 2011)

*Macpherson v. The Magee Memorial Hospital for Convalescence*, 128 A.3d 1209 (Pa. Super. Ct. 2015)

*Mannion v. Manor Care, Inc.*, 2006 Pa. Dist. & Cnty. Dec. (Pa. C.P. 2006)

*Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651 (Pa. Super. Ct. 2013)

*Thompson v. Nason Hosp.*, 591 A.2d 703 (Pa. 1991)

#### **SECONDARY SOURCES**

#### **V. DIGESTS**

##### **A. West Key Number Digest System**

The West Key Number System addresses Age Discrimination in Healthcare under 198H Health.

##### HEALTH

##### III. Government Assistance

##### A. In General

##### B. Medical Assistance in General; Medicaid

##### C. Federal Medical Assistance to the Elderly (Medicare)

##### D. Hospitals and Clinics (566 Nursing Homes)

##### VI. Consent of Patient and Substituted Judgment

##### 900 In General

##### 901 What law governs

##### 902 Constitutional and statutory provisions

##### 903 Right of patient to refuse treatment in general

##### 904 Consent of patient

##### 910 Substituted judgment; role of guardian or others in general

##### 912 Incompetent persons in general

##### 913 Terminal illness; removal of life support

##### 913 Terminal illness; removal of life support

##### 917 Duty to revive; effort required

## **B. Lexis Digest System**

The Lexis Digest System (Topics) addresses Age Discrimination under Public Health and Welfare Law and the subcategories of: Healthcare, Social Security, and Social Services as well as Healthcare Law and the subcategories of: Healthcare Litigation, Medical Treatment, and Regulators.

### **PUBLIC HEALTH AND WELFARE LAW**

#### *Healthcare*

General Overview

Services for Disabled & Elderly Persons

#### *Social Security*

Medicaid

Medicare

#### *Social Services*

Disabled & Elderly Persons

Emergency Services

General Overview

### **HEALTHCARE LAW**

#### *Healthcare Litigation*

Actions Against Facilities

Actions Against Healthcare Workers

#### *Medical Treatment*

End-of-Life Decisions

Failures & Refusals to Treat

Failures to Disclose & Warn

Human Remains

Incompetent, Mentally Disabled & Minors

Medical Devices

Patient Confidentiality |

Patient Consent

#### *Regulators*

Health Systems Agencies

Joint Commission of Accredited Healthcare Organizations

Statewide Health Coordination Councils

US Centers for Medicare & Medicaid Services

US Department of Health & Human Services

## **VI. LEGAL PERIODICAL ARTICLES**

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Williams, Phoebe Weaver. *Age Discrimination in the Delivery of Health Care Services to Our Elders*. Vol. 11, Iss. 1 Marq. Elder's Advisor Article 3 (2012).

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## VII. SEMINAR MATERIALS

Abrandt, Jeffrey G., chair, *34th Annual Elder Law Institute*, Practising Law Institute (2022).

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## VIII. TREATISES

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1. Origins and legacies
2. The enforcement of medical law
3. Before birth
4. Confidentiality and privacy
5. Consent
6. Clinical negligence
7. Research on human subjects
8. Resource allocation
9. The end of life
10. Organ donation and the ownership of body parts
11. The future of medical law

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### **Goodrich Amram 2d Procedural Rules and Forms**

Rule 2051. Definitions

Rule 2053. Guardian to Represent Incapacitated

Rule 2054. Actions by and Against Incapacitated Persons. Averments in Plaintiff's Pleadings

Rule 2055. Service on Incompetents [Rescinded]

Rule 2056. Procedure When Incapacity of a Party Is Ascertained

Rule 2057. Nonsuit. Directed Verdict. Judgment Notwithstanding the Verdict.

Rule 2058. Setoffs and Counterclaims  
Rule 2059. Form of Application for a Guardian Ad Litem  
Rule 2060. Removal of Guardian Ad Litem and Appointment of Substitute  
Rule 2061. Affidavits  
Rule 2062. Incapacitated Person Judicially Determined to Have Capacity During Pendency of Action  
Rule 2063. Judgment and Costs  
Rule 2064. Compromise, Settlement, Discontinuance and Distribution  
Rule 2074. Effective Date. Pending Actions

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Shepherd, Lois. *Aging Populations and Public Health Ethics*, (2019).

Yannick, Stephan & Angelina R. Sutin. *Determinants and Implications of Subjective Age Across Adulthood and Old Age* (2018).

## IX. LEGAL ENCYCLOPEDIAS

### A. Pennsylvania Law Encyclopedia

26 P.L.E. Health § 21 (2021)

The Department of Health exercises exclusive jurisdiction over health care providers in accordance with the provisions of the Health Care Facilities Act.

38 P.L.E. Physicians and Surgeons § 14 (2021)

§ 14. Right to Die

Under statute, an individual of sound mind who is 18 years of age or older or who has graduated from high school or has married may execute at any time a living will governing the initiation, continuation, withholding, or withdrawal of life sustaining treatment.

## **B. Summary of Pennsylvania Jurisprudence 2d**

### *Probate, Estates, and Trusts*

Part One. Succession

Part Two. Particular Estates and Administrators

Part Three. Trusts

Part Four. Miscellaneous Provisions

### *Torts*

Part Two: Specific Torts

(Chapter 25. Wrongful Death)

I. Overview of the Right of Action

II. Measure of Recovery

III. Right to Share in Award

IV. Approval of Settlements and Allocation of Proceeds

V. Review of Verdicts

Part Three. Particular Factual Situations

(Chapter 37. Malpractice)

IV. Liability of Health Care Providers

A. In General

B. Legislation Relating to or Affecting Medical Malpractice Claims or Liability

C. Liability Based on Breach of Standard of Care

D. Liability Based on Lack of Consent; Unauthorized Operation or Treatment

E. Procedure

## **XI. PENNSYLVANIA FORMS**

### *West's Pennsylvania Forms*

#### *Estate Planning*

Part II. Personal and Health Care Planning

Chapter 3. Powers of Attorney

Chapter 4. Anatomical Gifts

Chapter 4A. Care of Animals

Chapter 4B. Trust Advisor

Chapter 4C. Qualified Personal Residence Trust

### *Dunlap-Hanna Pennsylvania Forms*

#### *Forms of Wills and Trust Agreements*

Chapter 65 Wills

Chapter 66 Advance Health Care Directives—Living Wills and Health Care Powers of Attorney

Chapter 67 Charitable Trusts

Chapter 68 Uniform Transfers to Minors Act; Designation of Custodian

Chapter 69 Durable Powers of Attorney

Chapter 70 Trusts

Chapter 71 Qualified Retirement Plans: Beneficiary and Payment Designations

### *Register of Wills and Orphans' Court*

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*American Jurisprudence Pleading And Practice Forms*

*Medical Malpractice (Liability for Injuries)*

Nursing Homes; Rest Homes; Health Clinics

Research References:

§ 175. Introductory comments

§ 176. Complaint, petition, or declaration--Injuries sustained by patient on negligently maintained floor--Against nursing home

§ 177. Injury to patient from negligent care--Ulcerous bedsores

§ 178. Injury to resident from negligent care--Against skilled nursing care facility--Ulcerous bedsores--Wrongful death

§ 179. Negligent failure to prevent suffocation by disengaging ventilator hose--Against hospital and attending physician--Wrongful death

§ 180. Injury to patient from negligent care--Negligence of convalescent home and physician--Amputation of limb

§ 181. Failure to provide medical care--Negligence and breach of contract

§ 182. Fractured leg—Res ipsa loquitur--Negligence and statutory causes of action

§ 183. Negligence--Failure to safeguard patient at risk for falls

§ 184. Wrongful death--Seeking compensatory and punitive damages

§ 185. Neglect of patient--Intentional infliction of emotional distress--Statutory violations

§ 186. Wrongful death--Negligent overmedication by nursing home and staff

§ 187. Resident left unattended in geriatric chair

§ 188. Complaint in federal court--Failure to provide medical care--Violation of Racketeer Influenced and Corrupt Organizations Act, fraud, and breach of contract