

The Michigan Nursing Home Abuse & Neglect Handbook

The Michigan Nursing Home Abuse & Neglect Handbook

**Why Most Injuries Are Never
Reported or Discovered**

*Understanding the Legal Rights
of Injured Residents*

**Michigan Nursing Home Injury Lawyer
Lawrence J. Buckfire**

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F O R E W O R D

Who is Behind This Book and Why Should I Listen to You?

You have done yourself a giant favor by obtaining this book. The information I give you here will help you if you believe you or a loved one has been injured or died due to nursing home negligence. I personally guarantee it.

There is a lot of misleading information out there about nursing home abuse and neglect claims. There are folks out there who try to believe that they will “get rich quick” for every perceived disservice done to them by a nursing home, residential care facility, or caretaker. Some lawyer advertising makes it sound that way, doesn't it?

On the other hand, there are corporations and people out there who would be happier if nursing home neglect lawsuits were simply banned. These folks work to change the laws to make it extremely difficult for even legitimate cases to see the light of day in a courtroom. Many of these efforts are led by owners and operators of nursing homes and other facilities and medical malpractice insurance companies.

These malpractice insurance companies collect big premiums every year from doctors and nursing homes to cover claims for abuse, neglect, and other injuries. Rather than pay victims on

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legitimate claims, they lobby politicians to pass laws so that they do not have to pay out settlements to victims of nursing home abuse and medical malpractice. I'll discuss the frivolous "caps" on damages later in this book.

I wrote this book so that you could have good, solid information about nursing home abuse lawsuits and hiring an attorney for your case. It's about understanding the laws and what you can do to improve your odds of winning if you have a legitimate case. Even if the nursing home committed negligence, I cannot help you if the injuries and damages are not significant. The way the laws are written, there simply is no room for small cases and unfortunately, many victims go uncompensated for this reason.

If a nursing home or residential care facility commits real negligence and you or a family member has been seriously or permanently injured—I can help you.

My name is Larry Buckfire and since 1989 I have been representing individuals and their families in serious and catastrophic injury cases. I learned to handle these cases from the best lawyers that I have known, my father and mother, who were both outstanding attorneys and practiced law for almost 40 years throughout the State of Michigan. They taught me how to handle significant injury cases with the highest degree of skill and integrity and these principles have been the foundation for my law practice.

Some information regarding my background and credentials is below:

- Experienced trial attorney with significant settlements and jury verdicts

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- Highest rating in legal profession for skill and integrity
- Named “Best Personal Injury Lawyer” by Detroit business magazine
- Fighting Insurance Companies Since 1989
- Member of the Michigan Association for Justice
- Member of the American Association for Justice
- Member of the Michigan Brain Injury Association
- Member of the American Lawyer Academy
- Author of Numerous Consumer Books and Reports
- Licensed to practice law in Michigan and Ohio

Both my brother Daniel Buckfire and I joined our parents firm after obtaining our law degrees. We limit our practice to serious accident and injury cases. You can find out more about us and the other attorneys at the firm at our web site at:

www.BuckfireLaw.com.

Our law firm represents individuals throughout the states of Michigan and Ohio in accident, injury, and wrongful death claims. Our office is centrally located in Southfield, Michigan, but we frequently travel throughout Michigan to meet new clients and to handle their cases.

We realize that a lawsuit may be the most important event going on in your life right now. Your case will be personally handled by one of our attorneys – not a law student or secretary. While each case is different, and past results cannot be used to predict

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future success, I can tell you that I have been privileged to help my clients and their families recover millions of dollars in settlements and verdicts from the insurance companies.

If you have not already been to our firm's website, I strongly urge you visit www.BuckfireLaw.com. You will probably agree that this is the best lawyer web site on the World Wide Web because of the useful information, consumer articles, and links to a variety of subjects. We also have informative videos that you can watch on a variety of legal subjects. You can learn more about me, the other lawyers in my office, and the type of great work that we do for clients just like you.

INTRODUCTION

Why Did I Write This Book?

Simple.

I believe that the public needs honest answers about their legal rights in nursing home abuse and neglect cases. Most victims and their families get the runaround and a lot of misinformation after a loved one is injured or dies in a nursing care facility. It is almost impossible to get a real, truthful explanation.

You may have gotten that dreaded phone call that “*there was an accident*” or “*we had to take him/her to the emergency room.*” Or, you may have seen the injury or bedsore yourself, only to be told “*we don’t know how it happened.*” When that happened, you felt betrayed and rightfully so. When an elderly person moves into a nursing home, the family places a tremendous amount of trust in the facility and its staff.

If the patient is injured or dies due to improper treatment and neglect, the person or his or her family should explore taking legal action against the facility. I wrote this book to explore these actions so that a nursing home resident that is injured or has died due to negligence can not only receive compensation for their injuries, but also prevent such tragedy from happening to another resident.

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At our firm, we understand that placing your family member in a Michigan nursing home or extended care facility was one of the most difficult choices you ever had to make. When you finally made that decision, you set out to find the residence that would best provide a safe environment and the most nurturing care possible. You trusted your loved one to the staff of that nursing home.

If you or a loved one has been the victim of nursing home negligence, what you need is useful information that you can trust. If you try to deal with the caretaker, nursing home or insurance company yourself, they will just dismiss your complaint and blame you for the problems, even if the nursing home is at fault.

STOP RIGHT HERE!!!

Put this book down and pick up the telephone directory. Count up the number of lawyers who advertise that they handle nursing home abuse or malpractice cases. I promise you that many have not. How can a consumer tell? Later in this book, I will teach you exactly the process you can go through to make an informed decision to find the best attorney for your case.

I wrote this one-of-a-kind book so that you could have good, honest, useful information to review and study in the comfort of your own home.

No Hype.

No pressure.

Frankly, this book also saves me time. I get many calls each day from people asking me to handle their nursing home negligence

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claims. I have packed a lot of useful information into this book and it saves me hours each day by not having to talk to all of the potential clients who call me. I simply cannot accept every case and if I gave a “free consultation” for each new potential case, there simply would not be enough time to get any work done.

Look again in the telephone directory at all of the lawyers who offer a “free” initial consultation for all new nursing home abuse cases. Folks, a good initial meeting with a client can take several hours. How busy can these other lawyers really be with their actual cases if they are offering “free consultations” to everyone who calls? Writing this book gives me a chance to “talk to you” about what you need to know about nursing home abuse claims so that you can make an informed decision about what steps to take with *your* case. Even if I cannot accept your case, I would like you to be educated about the process so that you do not fall victim to the insurance companies.

I hope that you find this book a useful resource of information. Please feel free to share it with family members, friends, or colleagues who may need information about a nursing home claim. You can also encourage them to contact my office to request their own free book. As always, please feel free to contact me with any questions or concerns.

Lawrence J. Buckfire
Attorney at Law

THIS BOOK IS NOT LEGAL ADVICE

**I Am Not Allowed to Give Legal Advice
in this Book!**

I know the arguments the nursing home industry will make—and so should you—even before you file your claim. The medical industry has spent hundreds of millions of public relations dollars to inflame the public against you and me. We will be in this together.

I am not allowed, however, to give legal advice in this book. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice until you have agreed to hire me *and* I have agreed, in writing, to accept your case.

What is a Nursing Home Negligence Case?

You may have a nursing home neglect or abuse case if you or a loved one has been injured as a result of negligent care while living and being taken care of at a nursing home or a residential care facility. Nursing home abuse is a form of medical malpractice. The Harvard Medical Practice Study done in 1999 revealed that over half of all injuries caused by medical mismanagement (i.e., those not caused by the patient's initial injury) were preventable, and another quarter of those incidents were caused by negligence.¹

Common cause of nursing home abuse and neglect include failure to turn or move immobile patients, failure to bathe patients, failure to supervise patients in baths and showers, failure to monitor nutrition and hydration/dehydration, verbal abuse of residents, failure to supervise patients, and reduced staff-patient ratios.

Being alert of the signs of nursing home abuse is recommended so that you know if your loved one is actually being abused or neglected. Some of these signs include pressure sores and bed sores, infections (including gangrene), unexplained falls resulting in broken bones, medication errors, fractures (frequently hips), decubitus ulcers, sepsis, and residents wandering away from the facility.

1. Institute of Medicine, National Academy of Sciences, *To Err is Human: Building a Safer Health System*, 25 (National Academy Press 1999).

What Must be Proven to Win a Case?

Nursing home neglect and abuse lawsuits are considered medical malpractice cases. Medical malpractice cases are among the most difficult a lawyer will ever handle. A nursing home negligence case requires the patient, the “plaintiff,” to prove that his or her nursing home, residential care facility, or caretaker, the “defendant,” deviated so far from what is accepted as “standard” care and treatment that the law considers them to have been “negligent.”

The plaintiff is also required to prove that the nursing home’s negligence was a primary cause of the injury that the plaintiff has suffered. Your case must be proven by expert testimony. Simply making a mistake or getting a bad result is not enough—we must prove that there was negligence and that negligence led directly to your injury. Yes, it’s true. Nursing home and residential care facilities sometimes “get away with” negligence because the injury that they have caused is not severe.

Remember, too, that just because serious injury or even death occurred at a nursing home does not mean that *negligence* occurred.

How Do You Know You Really Have a Case?

In order to determine whether you have a case, we must first gather all of the pertinent medical records involved in the resident's care. We also gather any investigation reports by a responsible public health agency. These reports often assist us in identifying the specific acts of abuse, neglect, or negligence.

Once all of the records and reports are received and reviewed and we have conducted an interview, we will tell you if it looks as though there is a provable case of nursing home malpractice. If the case *looks* meritorious, experts in the appropriate specialty must be consulted and retained by us. Again, these experts must be of the opinion that the nursing home care received was substandard and that the substandard care caused major injury or death.

Once we have retained experts who are prepared to testify that there is a provable case, we then must serve the facility with a Notice of Intent To File Suit. This essentially tells the nursing home that there is a viable claim being asserted against it. If a nursing home physician was also negligent, this notice must also be served upon that doctor. The nursing home then has six months to reply to the notice and offer a settlement, which is a rare occurrence.

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After that period has lapsed, we can file a lawsuit in the circuit court seeking money damages caused by the neglect or abuse. These include claims for pain and suffering, disability, medical expenses, and other damages provided by the law. A lawsuit must generally be filed within two years of the malpractice or negligence event, but there are some exceptions.

In the tragic event that there was a death involved, we file a Wrongful Death Lawsuit on behalf of the family members. These cases can take a year or more in the courthouse to conclude so great patience from the client is needed. Most nursing home malpractice cases settle “out of court,” rather than going through to a jury trial.

Michigan's Artificial Damages Limit in Nursing Home Abuse Cases

The State of Michigan imposes limits to recovery in nursing home malpractice cases in claims that involve negligence by a physician, nurse, or other health professional. No matter how seriously the injury, there is a maximum recovery you can obtain for non-economic damages, which include pain and suffering, loss of enjoyment of life, scarring and disfigurement, and similar damages. This amount increases slightly every year and I will let you know the current maximum amount when you call my office. There is no limit to the amount that can be received for economic losses, like medical expenses for the past, present, and future.

Michigan was one of the first states to pass such a law. Despite being unfair and unjust, it has been held constitutional by the Michigan Supreme Court. The law is ridiculous because it puts limits on cases brought by malpractice victims with the most serious injuries and does nothing to reduce the number filings of so called "frivolous cases."

What Are The Legal Rights of a Nursing Home Resident?

Under federal law and Michigan law, a nursing home patient and/or health care facility patient has certain rights that all patients should be well aware of. These rights include:

1. The right to receive appropriate care, regardless of race, religion, color, national origin, marital status, sexual preference, or source of payment.
2. The right to be free of mental or physical abuse, and from physical or chemical restraints.
3. The right to privately communicate and consult with an attorney, physician, or any other person of your choice.
4. The right to obtain a copy of, or inspect his/her medical records, and a third party shall not be given a copy without authorization of patient except as required by law and third party contract.
5. The right to adequate and appropriate care and to receive information about his/her medical condition, proposed treatment and prospects for recovery, unless medically contraindicated by the physician in the medical record.

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6. The right to send and receive personal mail unopened, unless medically contraindicated. A patient's or resident's civil and religious liberties shall not be infringed and the facility shall encourage and assist the exercise of these rights.
7. A nursing home, its owner, administrator, employee, or representative shall not discharge, harass, retaliate or discriminate against a patient because a patient has exercised rights protected by the law.

FOR MORE INFORMATION

If you would like more information on the legal rights of nursing home, foster care home, and assisted living patients and residents, you can call the Office of the Michigan Long Term Care Ombudsman Program. The agency is also available for concerned relatives to investigate complaints, suggest remedies, and assist with resident rights, payments, issues, guardianship, and nursing home placement. The toll-free telephone number for the agency is (866) 485-9393.

The Michigan Office of Services to the Aging also has information and important public resources on its website at:

<http://www.michigan.gov/miseniors>.

The Reasons Most Nursing Home Injuries Are Never Reported or Discovered

The statistics regarding nursing home neglect and abuse injuries is staggering. Findings from the National Elder Abuse Incidence Study (NEAIS)—a seminal study conducted in 1996—indicate that roughly 551,000 persons age 60 and older experienced elder abuse, neglect, or self-neglect in domestic settings (National Center on Elder Abuse 1998). Of these cases, only 21% (about 115,000) were reported to and substantiated by Adult Protective Service (APS) agencies; the remaining 79% were either not reported to APS or not substantiated.

The best available estimate of prevalence suggests that between 1 and 2 million residents of the United States age 65 or older have been abused, neglected, or exploited by persons on whom they depended for care or protection (National Research Council 2003). According to the Centers of Disease Control and Prevention (CDC) each year, about 1,800 elderly people living in a nursing home die from fall-related injuries.

As mentioned above, not all cases where a nursing home resident suffers injuries are due to nursing home neglect, however, many of these injuries that are due to neglect are not even reported. Here are the reasons why:

1. Residents don't know they are victims of nursing home malpractice.

Many times, nursing home residents are neglected and do know even realize that they are being neglected or abused. There are four general categories nursing home abuse and neglect can fall into. They include:

- **Harmful neglect:** If a resident in a health care facility experienced bed sores, suspicious or questionable injuries or death, unexplained substantial weight loss or severe dehydration, they may be a victim of harmful neglect.
- **Assault and Battery:** If an employee of a nursing home or residential health care facility threatens or strikes a resident or uses unauthorized physical or chemical restraints assault and battery has been committed.
- **Criminal and Sexual Conduct:** If an employee of a nursing home or residential care facility engages in unlawful sexual contact with a patient, criminal sexual conduct has occurred.
- **Embezzlement/Theft:** If an employee of a nursing home or residential care facility wrongfully removes funds from a resident's account, improperly obtains a financial "loan" or "gift" from a resident, or an employee uses privileged/personal information illegally to obtain credit cards, etc., resulting in identity theft, embezzlement has occurred.

When was the last time that you heard of a nursing care facility calling the family to apologize for their abuse that caused the death of a loved one?

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- 2. No recollection that abuse took place.** Many residents of nursing homes suffer from medical conditions, like dementia or Alzheimer's disease, that cause problems with thinking or memory. If this is the case and the nursing home resident has been abused or neglected, many times it is not even reported because the resident does not have the ability to remember or describe the incident.
- 3. No witnesses to report what took place.** Typically, the only witnesses to an incident would be the nursing staff and other residents in the facility. As you would imagine, the staff does not report their own mistakes and other residents often also have medical conditions that prevent them from reporting or remembering the incident.
- 4. Records falsified or altered.** The medical records at the facility are controlled by the nursing home staff. These can be easily altered or changed, or even just improperly documented, so no one will ever know what truly happened.
- 5. The incident has been covered up.** Nursing home facilities do not like to face lawsuits or be subjected to violations by government regulatory agencies. Repeated violations can result in losing government funding for patients and can result in the facility being shut down.
- 6. No family members around to observe the conditions of abuse and neglect.** Most instances of abuse and neglect are reported by family members and guardians of the resident. Many family members live in other states or a far distance from the nursing home and do not regularly visit the resident due to distance and travel issues. They rely on the nursing home staff to let them know if there

are problems. If no one is around to witness or observe the injury, it often will never be discovered.

- 7. The patient suffered no significant damages.** While we understand that every case is an important case to the patient, the legal system is not set up to handle “small” nursing home abuse cases. We decline many cases each year where it appears that the caretaker was careless, but the resulting injury is not significant. A nursing home caretaker may incorrectly give a patient the wrong medication and this may make the patient ill for several days. If there is a good recovery, however, you probably do not have a case to pursue. This is because the costs of pursuing the case will be greater than the expected recovery. Our court system may not be perfect, but it does act as a filter to keep out all but the most serious cases of nursing home abuse and negligence.
- 8. The injured resident and/or family members of the injured resident are afraid to take action.** Many times a patient or the patient’s family members do recognize that the proper treatment is not being given, but do not speak up. The reason being they are afraid if they say something, worse treatment will be sprawled upon the patient or they think they do not have a serious enough case. If there is any question of whether or not negligence has taken place, you should contact an attorney immediately to discuss the case. You should not be afraid of what the nursing home staff will do and it is in the lawyer’s confidentiality agreement that nothing will be acted upon until the case is actually opened. Think of it this way, if it is found that nursing home abuse and neglect

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has occurred, a lawsuit could prevent such tragedy from happening to another resident.

9. The plaintiff has not retained an experienced attorney.

Nursing home litigation is a world unto its own. It has its own special rules and laws. There are very few lawyers in Michigan who specialize in nursing home malpractice claims. A lawyer unfamiliar with these types of cases can easily miss the important details to prove and win a case.

10. The statute of limitations has expired.

Each state has its own statute of limitations for filing a nursing home malpractice lawsuit. These are strict limits! If the statute of limitations has expired, you cannot file a case. Waiting too long to choose a lawyer may completely bar an investigation as to what actually happened.

The Michigan Statute of Limitations is *two years*. The important question is “Two years from when?” Typically, it is two years from the date of the negligence, but there are exceptions to the rule, including in a case alleging wrongful death.

How Do I Find a Qualified Nursing Home Abuse Attorney?

Choosing an attorney to represent you is an important but daunting task. The decision certainly should not be made on the basis of advertising alone. The Yellow Pages are filled with ads—all of which say basically the same thing. You should not hire an attorney based solely on advertising—anyone can buy a slick commercial.

HOW DO YOU CHOOSE?

How do you find the lawyer in your community that is the best for your case? I believe that there are certain questions to ask that will lead you to the best person for your case—no matter what type of claim you have. It may involve some time on your part, but that's fine because the decision as to whom your attorney will be is very important.

The world of nursing home neglect and medical malpractice claims is, in my opinion, much too specialized for someone who does not regularly handle these cases. Too many times we have looked at cases that other—inexperienced—attorneys have handled.

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The fact that Attorney Ernie drafted a will for your uncle or that Lawyer Linda handled your cousin's divorce case does not make them qualified to handle a nursing home malpractice case. Many attorneys who claim to be specialists in nursing home injury cases do not know the intricacies of this area of the law.

While many lawyers will offer to represent you in your case, it is important to choose a lawyer to represent you that handles serious nursing home malpractice cases everyday and has significant experience and expertise in representing injury victims. Lawyers without this knowledge and experience may not be familiar with or even understand these laws and its many technicalities, which could cause you to lose your case and your opportunity to obtain a settlement in your case.

There is nothing wrong with interviewing several attorneys before you choose one to handle your case. I actually prefer when you do this because it is necessary that you make an informed decision. The attorney that you choose for your case is often the difference between winning a great settlement and receiving no settlement at all.

A lawyer who is too busy or not interested in answering your initial questions will probably be even more difficult to communicate with later on in the case. If a case meets my selection criteria and I am interviewed by a potential client, the client almost always ends up choosing my firm. If you interview a lawyer, make sure you ask the right questions.

What Questions Should You Ask Before You Hire Your Lawyer?

The best way to find the right lawyer is to know the right questions to ask the lawyer before you hire the lawyer for your case. These questions are a good start:

1. What percentage of your practice is devoted to handling serious injury claims?
2. What percentage of your practice is devoted to medical malpractice and nursing home injury claims?
3. Have you ever written any books or reports on nursing home abuse cases?
4. Do you have a website with information on the different types of nursing home malpractice cases?
5. Have you ever taken a medical malpractice case to trial and won a verdict for your client?
6. What kinds of settlements have you received for your clients?

The lawyers at **Buckfire & Buckfire P.C.** will give you direct answers to these questions. Our firm has represented accident and injury victims and their families throughout the State of

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Michigan for almost forty years. Our lawyers have the thorough knowledge, expertise, and experience in handling these cases and understand how to handle difficult cases and best represent our clients.

Most of our clients are referred to us from other clients who have placed their trust in us to represent their family members, friends, and colleagues. Just look at our website and you'll see a large number of both written and video testimonials from former clients who say great things about the work we did for them and how we treated them during our representation of them. Our clients are always represented with the highest degree of legal skill and integrity.

We also receive many referrals from other lawyers and from medical professionals who recognize that we are the law firm to best represent their clients and patients. These referrals are very flattering because they come from other professionals who have dealt with our firm or know of our reputation. They trust us to do to a great job with their own clients and have confidence that we will treat their own clients with dignity and respect while handling their case at the highest level of legal skill.

How Do You Find Out Who Is The Best Lawyer In Your Area?

HERE ARE SOME TIPS

1. First, while your attorney must be licensed in Michigan, **do not limit your search geographically**. There are a small handful of attorneys in Michigan who specialize in nursing home injury cases. *Find the best attorney in Michigan for your case and do not concern yourself with geography*. Our firm handles cases throughout Michigan. Our size and small case load allows us to deliver terrific service whether you are ten minutes or six hours from us.

2. **Results matter**. While past results in major nursing home injury cases do not mean that a similar result will be achieved in your case, the lack of *any* significant verdicts or settlements in nursing home cases ought to be a huge red flag warning.

3. **Get a referral** from an attorney whom you do know. He or she will probably know someone who specializes in your area of need.

4. **Beware of internet “directories” promising to get you a qualified lawyer**. We get solicited almost daily from companies who will offer to place us in their directories for a hefty fee. Most of these “directories of specialists” are a joke.

5. The Yellow Pages. Not everyone advertises in the Yellow Pages. Most of our cases come from referrals from other attorneys or from satisfied clients. *Be careful about the full-page ads.* This advertising typically attracts a lot of case inquiries, including the small cases that we do not accept. Make sure that the attorney you hire is selective enough with his or her cases that your important case does not become just one more file in the pile.

Also be careful not to choose a lawyer that advertises for all types of cases in the ad, like “We Specialize in Medical Malpractice, Criminal, Drunk Driving, Divorce, and Probate Law Cases.” *This is a red flag because each area of the law is highly specialized and no legitimate attorney can specialize in every single area.*

6. Your local bar association probably has a lawyer referral service. Understand that lawyers may have signed up *and paid a fee* to be listed in certain specialties. Their names come up on a rotating basis. *Remember though that the bar association is not making any judgment about who is a good attorney or not.* We could sign up our firm as “divorce attorneys” if we wanted to and no one would check to see if we had ever handled a divorce case!

7. Ask the attorney about other lawyers you are researching. Attorneys who are at the top of their profession are not hurting for cases and will gladly say complimentary things about their peers. If the attorney has nothing nice to say about the others that you have mentioned, this is probably a good time to end your discussion.

8. Ask each attorney if they have *a book like this and/or a web site* so that you can find out more about qualifications and experience *before you walk in the door.*

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9. **Forget fancy slogans and hype.** Slogans like “we are aggressive,” “we care for you,” “we fight for you,” are absolutely meaningless. After all, aren’t these the things that you would expect from your attorney?

10. Here are factors and good points to look for and question your attorney about. Note that not every attorney will meet all of these criteria, but the significant absence of the following should be a big question mark.

- **Experience.** Obviously, the longer you have been practicing a particular area of the law, the more you will know. Experience can be a big factor in many cases and is vital in an area as specialized as medical malpractice. Forget about the ads that brag about “combined experience,” such as “129 years’ *combined* experience in practicing law.” This means they have added up the number of years of experience of each lawyer in the firm. It’s meaningless.
- **Experience actually trying cases.** Ask the attorney how many cases he or she has actually tried. Has he or she achieved any significant verdicts or settlements? The greater the number of cases actually tried and substantial verdicts and settlements achieved, the more likely the insurance companies will respect your attorney.
- **Membership in trial lawyer associations.** In our area, you can certainly find a lawyer who is a member of the Michigan Association For Justice (MAJ), and the American Association for Justice (AAJ)
- **Publications.** Has your attorney written books or given any presentations to groups of lawyers, doctors, or health departments on legal issues.

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- **Professionalism.** Has the attorney been the subject of any disciplinary proceedings by the state bar? In Michigan, this information is available through the State Bar of Michigan.

What Do We Do For You In a Nursing Home Neglect Case?

Here is a more or less a complete list of the tasks we may be called to do in your case. Remember that each case is different, and that not all of these tasks will be required in every case.

- Interview the client
- Educate you about nursing home injury claims
- Gather documentary evidence including medical records and hospital documents
- Interview known witnesses
- Collect other evidence, such as photographs of the injury itself
- Analyze the legal issues, such as statute of limitations, caps on damages, etc.
- Obtain all reports from governmental agencies that investigated reported abuse and neglect
- Talk to physicians or obtain written reports from them to fully understand the client's condition

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- Analyze all health insurance policies and government benefits to ascertain whether any money they spent to pay your bills must be repaid. (Unbelievable as it may sound, your health insurance company and Medicare may be entitled to *full* reimbursement of the money it paid for injuries suffered due to nursing home abuse and neglect.)
- Analyze the validity of any liens on the case. Doctors, insurance companies, Medicare, welfare benefit plans and employers may each assert that they are entitled to all or part of your recovery
- Obtain relevant medical literature to help determine whether negligence or abuse was involved in the injury of the resident
- Recommend whether an attempt should be made to negotiate the case with the insurance company or whether a lawsuit should be filed. (However, you should know that it is the rare malpractice case that can be successfully negotiated before filing suit.)
- Obtain nursing and medical experts to review your claim
- If suit is filed, prepare the client, witnesses and healthcare providers for depositions
- Prepare written questions and answers and take the deposition, under oath, of the defendant and other witnesses
- Produce to the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns
- Go to court to set a trial date

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- Prepare for trial and/or settlement before trial
- Prepare the client and witnesses for trial
- Organize the preparation of medical exhibits for trial
- Organize the preparation of demonstrative exhibits for trial
- Prepare for mediation and/or arbitration
- File briefs and motions with the court to eliminate surprises at trial
- Take the case to trial with a jury or judge
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case
- Make recommendations to the client as to whether or not to appeal the case²

2. Our contract with you does not obligate us to participate in any appeal.

The Legal Process in Nursing Home Malpractice Cases

In most cases today, attempting to negotiate with the nursing home facility and insurance company before filing suit is not a worthwhile endeavor. Insurance companies use pre-suit negotiation only to attempt to find out as much about you, your lawyer, and your doctor as they can. It is my opinion that many lawyers waste precious time attempting to negotiate with the insurance company before filing suit. If I accept your case, it is because we believe it is meritorious and you deserve a trial by jury. We will usually file your suit before negotiating so that if negotiations break down, we will already have a trial date in place to head towards.

In Michigan, there are very strict time limits and procedural guidelines for filing a case. Unlike most other states, a patient must send a “Notice of Intent To File Suit” to all possible negligent parties six months before a lawsuit can even be filed with the court. The failure to serve this letter on the proper parties may prevent the filing of a lawsuit.

Once the lawsuit is filed, both sides engage in the legal process called “discovery.” Each side is allowed to investigate what the other side is going to say at the trial. The defendant will be permitted access to your medical, work history and income

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records. You must give a deposition under oath and also answer written questions under oath. You may be required to submit to a medical examination by a physician of the defendant's choosing. In short, when you file a nursing home malpractice case, your life becomes an open book.

The defendant is also subject to discovery. He or she will answer written and oral questions about his own professional background and qualifications, and he will have to give testimony about the treatment he gave to you. Both sides' experts may also be deposed. Prior to that, each side must disclose to their opponent what it is that their experts are expected to testify to. Other witnesses may be deposed.

In Michigan, you can expect to go to trial within two years or so after the case is filed. The parties usually engage in settlement discussions after all of the depositions are taken and the other work is done to see if they can resolve the case. Your attorney should make recommendations to you regarding a settlement and the likelihood of winning at trial, but ultimately the decision is yours to make.

Why You Should Hire Us

There are many attorneys who advertise for nursing home malpractice and abuse cases. Unfortunately, some of these attorneys have so many small cases in their offices that no case gets their personal attention. Others have no real intention of trying your case themselves, and if the case cannot be settled with the insurance company, they will try to refer the case out for trial. There are good experienced attorneys in this field, but it is very difficult for a consumer to separate the good from the bad. You need to ask your attorney all of the questions we have outlined in this book.

WHAT CASES DO WE NOT ACCEPT?

Due to the very high volume of calls and referrals from other attorneys that we receive, we have found that the only way to provide personal service is to decline those cases that do not meet our strict acceptance criteria. Our practice focuses on the most serious cases of nursing home abuse. Therefore, we generally do not accept the following types of cases:

- Cases with no clear objective evidence of significant injury which is directly caused by the nursing home's care. These cases are expensive and time consuming. The last thing you want to do is to "win" your case, only to

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have the attorney fees and expenses be larger than your personal recovery. I would like to represent everyone who needs a good attorney, but I cannot.

- Cases where the statute of limitations will soon run out. We like to have enough time to adequately investigate and evaluate your claim. Because of the complexity of these cases and the extensive review process, we require sufficient lead time. We do make exceptions in certain cases where the negligence is so evident that significant investigation is not required.
- If your case has already been filed, we will not represent you. We like to do things our way. If you or another attorney have already filed the case, that's fine, but all we can do is wish you "good luck."

WELL, ARE THERE ANY CASES LEFT?

Yes, there are, and that's just the point. Just look at our results.

We represent many clients with valid claims. When we devote our time and resources to representing only legitimate claimants with good claims, we are able to do our best work – getting "bogged down" in lots of little cases, each with a "special problem," is not good for clients with legitimate claims.

WHAT CAN YOU DO FROM HERE?

The most important thing that you can do as a potential nursing home injury plaintiff is to collect and maintain all of your medical records. We are able to obtain records that are not in your possession. Any attorney who ends up representing you will need to have as extensive a record as possible.

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Keep a journal of events, and note the date, time, and circumstances of your developing situation. Details are *very* important—nursing home injury cases may involve looking back at years of the patient’s medical history, particularly if the insurance company argues that your injury was a result of a pre-existing medical condition, rather than from negligence.

Obviously, by requesting this book, you have begun your search for experienced nursing home malpractice counsel. Remember, in Michigan, the statute of limitations could expire in as little as two years. The legal process does take time—you should weigh your options for legal counsel carefully, but you should begin your investigation immediately.

Our Cases and Verdicts

A sampling of some of our medical malpractice verdicts and settlements are listed below. Many, many more may be reviewed on our website at www.BuckfireLaw.com. Remember that each case is different. Once a case is in the hands of the jury, it is out of our control. We do believe, however, that significant trial experience in big cases is an important factor that people should use to choosing one attorney over another. Many of our clients have told us that this is true.

CONFIDENTIAL SETTLEMENTS

As you can imagine, many defendants and nursing homes insist that our settlements remain confidential from public disclosure. Although we prefer that the public be aware of these settlements, many of our clients agree to this provision in order to settle their case. As a result, we cannot report those case results to you.

\$3,750,000 SETTLEMENT FOR HOSPITAL NEGLIGENCE

The daughter of our client went to a university hospital due to depression and suicidal ideations. She was left unsupervised in a room that had an electrical cord that was accessible to her. She attempted suicide and failed, but suffered permanent and irre-

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versible brain damage that requires lifetime medical care and supervision.

\$500,000 SETTLEMENT FOR ANESTHESIA ERROR

A 60 year old woman died during a routine colonoscopy due to an anesthesia error at a hospital. She was not properly monitored or supervised during the procedure and went into respiratory arrest. By the time this was noticed, it was too late to save her life. The settlement in this case was capped under Michigan law.

\$400,000 SETTLEMENT FOR FAILURE TO DIAGNOSE FROSTBITE

Our client was a psychiatric patient who was found in his unheated home in the middle of winter. He was taken to a local emergency department and presented with signs of frostbite. He was not treated for the condition and was then sent to a psychiatric hospital, where the diagnosis of frostbite was made. Due to the delay in treatment, he had both legs amputated below the knees. The settlement in this case was capped under Michigan law.

\$290,000 JURY VERDICT FOR HOSPITAL BEDSORES

Our client was hospitalized at a large urban hospital due to a gunshot wound to the head. He was not properly treated in the hospital and developed Stage IV pressure sores on his buttocks that required surgery. The hospital made no offer of settlement before trial.

Our Services

We are here to represent you at every step of the way in your claim. Sometimes the best advice is that you do not have a claim that can be won. If that is true, we will tell you so. If your case meets our criteria for acceptance, you can be assured that you will receive my personal attention. I will keep you advised as to the status of the case and give you my advice as to whether your case should be settled or whether we should go to trial.

An initial consultation is free. We will fully explain all fees and costs to you before proceeding. Together, as a team, we will decide on the tactics best suited for your case.

Lawrence J. Buckfire. President
BUCKFIRE & BUCKFIRE P.C.

F R E E N E W S L E T T E R S

From BUCKFIRE & BUCKFIRE P.C.

Would you like some practical advice about legal issues in Michigan? Would you like additional information about our law firm and the attorneys and support staff that will make up our litigation team? These are some of the topics that are covered four times a year in a free newsletter sent to your home.

We strongly believe that most legal disputes could be avoided if people had a better general knowledge about the legal system, insurance coverage and the insurance claim process.

There is absolutely no cost or obligation and from time to time we run contests to give away free stuff!

If you subscribe and later feel like canceling the newsletter, there is a number in every issue that you can call to “unsubscribe” or an email address you can email. Don’t worry, this is not the boring, “canned” newsletter that most firms buy and slap their name onto. We write it and we aim to provoke people to pay more attention to their legal affairs.

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