Valley Perspective | PERSPECTIVE ON ELDER ABUSE

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State Looks to Lawyers to Reform Nursing Homes

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[**September 19, 1999**](http://articles.latimes.com/1999/sep/19)|GARY N. STERN | Gary N. Stern, an attorney specializing in elder abuse litigation, is a public member of the state Department of Consumer Affairs' Respiratory Care Board. He lives in Granada Hills.

After decades of silence and denial, America is finally waking up to the horror of nursing home neglect and abuse of the elderly. Leading the way in exposing such neglect are lawyers, now armed with tough new laws passed by a state Legislature fed up with the status quo.

It used to be that lawsuits were rarely pursued by families victimized by nursing homes because the justice system did not put much value on old people. Today the victims of nursing home abuse can fight back, thanks to a legal system that now listens.

In 1992, the California Legislature passed tough new laws relating to elder abuse. In the introduction to the new law, the Legislature complained about the historical legal landscape: "Infirm elderly persons and dependent adults are a disadvantaged class . . . cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays and the lack of incentives to prosecute these suits." The Legislature then made a remarkable statement, given the predominant view that lawyers are the cause of all problems in the world: "It is the . . . intent of the Legislature . . . to enable interested persons . . . to engage attorneys to take up the cause of abused elderly persons."

The Legislature knew what it was doing. It knew that elder care is extremely difficult and often thankless work, usually done well only by those who are well-paid and well-trained. But there is a line beyond which no caregiver should cross--into the realm of reckless conduct and abuse--and when that line is crossed, the nursing homes must pay.

This explicit validation of lawyers and lawsuits is unprecedented. Not even the powerful lobby representing nursing homes could stop it. That is because the Legislature did not overreach in its attempt to stamp out abuse. The new law only seeks to punish clear instances of reckless neglect and abuse.

Nevertheless, the nursing home industry tried everything to stop the law. Finally, just a few months ago, the California Supreme Court upheld it. The court was not impressed with an industry that did not want to be penalized even for clear cases of abuse. It was nothing short of remarkable that an industry that acknowledges many of its problems also balked at a law that punishes not the careless mistake but the repeated and reckless examples of abuse.

As a lawyer who really does try to take on only those elder abuse cases that meet the legal requirements, I am tired of the "sky-is-falling" claims of the health care lobby. I have no patience for sorry arguments that the new elder abuse laws will put thousands of nursing homes out of business. Thank goodness the state Supreme Court rejected the hysteria put forth by the industry.

Lawmakers, consumer advocates and the health care industry need to come together to try to improve an industry desperately in need of improvement. As a first step, the California Legislature has passed Assembly Bill 1160, which toughens the enforcement procedures for the state's nursing homes. The governor needs to sign this bill.

Every legitimate case of elder abuse involves a crossing of the line into outrage. But most cases also illustrate the problems with a system that does not provide adequate training to nurse aides, lacks proper enforcement manpower and, most critically, lacks the government and private insurance funds that would make a difference.

In the meantime, there is absolutely nothing wrong with arming consumer attorneys with the tools needed to punish willful, wanton and reckless acts perpetrated on those so obviously unable to protect themselves.

How can anyone argue for less?