

# Nursing Home Negligence In New York

This one-day seminar is designed for attorneys, nursing home administrators, directors of nursing, insurance professionals and legal staff.

**New York, NY**  
**January 26, 2006**

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**Robert A. Hyman**

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*Med League Support Services, Inc.*

**Jeffrey M. Levine, M.D.**

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**Richard T. Mermelstein**

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# Critical Issues On The Agenda

9:00 a.m. - 9:50 a.m.

## I. Tampering And An Overview Of Liability Issues

— *Patricia Iyer, RN, MSN, LNCC*

- A. Most Common Causes Of Liability
- B. Trends In Settlement
- C. Identifying Tampered With Nursing Home Records

9:50 a.m. - 10:30 a.m.

## II. Causes Of Litigation In Nursing Homes: How To Improve Care And Reduce Risk

— *Jeffrey M. Levine, M.D.*

- A. Nursing Home Care In The United States: The Challenge Of Our Society
- B. Pressure Ulcers
- C. Malnutrition And Dehydration
- D. Injurious Falls And Accidental Death

10:30 a.m. - 10:45 a.m.

**Break**

10:45 a.m. - 11:45 a.m.

## III. Medical And Legal Aspects Of Chemical And Physical Restraint In The Nursing Home

— *Jeffrey M. Levine, M.D.*

- A. Historical Aspects Of Regulation Of Restraint
- B. Chemical Restraint
- C. Physical Restraint
- D. Our Duty To Maximize Function Within A Realistic Plan

11:45 a.m. - 12:45 p.m.

**Lunch (On Your Own)**

12:45 p.m. - 1:45 p.m.

## IV. Nursing Home Neglect And Regulations With A Concentration On The Duty To Assess And Plan Continued Care

— *Robert Hyman*

- A. The Statutes And Regulations Related To Nursing Home Litigation
- B. The Duty To Assess, The Assessment Process And The MDS
- C. The Duty To Plan The Care
- D. PHL §2801-D And Other Causes Of Action

1:45 p.m. - 2:30 p.m.

## V. Assisted Living Facilities

— *Sean J. Doolan, Esq.*

- A. Overview Of The Assisted Living Industry
- B. Statutory And Regulatory Protections Of Residents
  1. Assisted Living Reform Act
  2. New York State Statutes
    - a. Public Health Law Article 28
    - b. Public Health Law Article 7
- C. Case Selection
  1. Initial Intake
    - a. Criteria For Selecting Cases
    - b. Who Is The Client?
  2. Presuit Discovery Considerations
    - a. Evidence Gathering
- D. Theories Of Liability
  1. Common Law Negligence
  2. Wrongful Death
  3. Consumer Fraud
  4. Breach Contract
- E. Discovery Considerations
  1. Demands
  2. Bill Of Particulars
  3. Freedom Of Information Requests
- F. Damages
- G. Settlement Considerations

2:30 p.m. - 2:45 p.m.

**Break**

2:45 p.m. - 3:45 p.m.

## VI. How The New York Courts Have Dealt With Public Health Law 2801-D

— *Richard T. Mermelstein*

- A. Is The Reality As Bad As The Advanced Publicity?
- B. Tactical And Strategic Issues In Defending The Nursing Home
- C. Discovery Issues

3:45 p.m. - 4:30 p.m.

## VII. Handling Of Nursing Home Claims In Professional Liability Cases From A Claims Management Perspective

— *Richard T. Mermelstein*

- A. Pre-Litigation Management
- B. Litigation Management

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## Our Distinguished Faculty

**Sean J. Doolan, Esq.**, is a sole practitioner with offices in the capital region and Rockland County, New York. He is of counsel on nursing home matters to the upstate firm of Martin, Harding and Mazzotti, LLP. His practice includes personal injury litigation with a concentration on nursing home abuse and neglect. He is an active member of the Nursing Home Group of the American Trial Lawyers Association and handles nursing home cases throughout New York State. Mr. Doolan has been a guest speaker for the New York State Bar Association and for Professional Education Systems Institute, LLC on the topics of nursing home litigation and negligence. One of Mr. Doolan's cases recently set a favorable legal precedent in the Appellate Division First Department on the issue of a nursing home resident's rights under the New York Public Health Law. Mr. Doolan graduated with a B.A. degree from the City University of New York at Hunter College and he received his law degree from Pace University School of Law. Prior to opening his own practice he has worked as an assistant district attorney in Bronx County prosecuting white-collar crimes and as the DWI Prosecutor in Greene County. He is admitted to practice law in New York State and Federal Courts. Mr. Doolan has been a guest speaker for Lorman in the past. He was a contributing author to *Nursing Home Litigation: Investigation and Case Preparation*, 2nd edition, published by Lawyers & Judges Publishing Company, scheduled to be released later this year. He is currently working as a contributing author for the 3rd edition of *Nursing Malpractice*, published by Lawyers & Judges Publishing Company, scheduled for publication in 2006.

**Robert A. Hyman** concentrates his practice in the representation of the victims of nursing home and elder care neglect and abuse, medical malpractice, automobile accidents, negligence, construction accidents, and premises liability. Mr. Hyman is a President's Club member of the Association of Trial Lawyers of America (ATLA) and has been a member of its Nursing Home Litigation Group (NHLG) for 10 years. He is a member of the New York State Trial Lawyers Association and the New York State Bar Association. Mr. Hyman is also a member of the National Citizens Coalition for Nursing Home Reform, (NCCNHR), the Long Term Care Community Coalition, (LTCCC), Friends and Relatives of Institutionalized Aged, (FRIA), and the American Medical Directors Association, (AMDA). Mr. Hyman's education included undergraduate degrees in biology and chemistry with a minor in mathematics, a master's degree in cell and molecular biology, and graduation, *cum laude*, from the Vermont Law School. He has more published decisions of successful cases against nursing homes and adult homes in New York than any other attorney. Mr. Hyman has previously lectured in 2003 and in 2005 and presented a paper entitled: "Civil Prosecution Of A Nursing Home Case - Plaintiff's Perspective, A Primer For The Plaintiff's Attorney". He has lectured for Lorman in January 2005 and presented a paper entitled "Nursing Home Negligence In New York - Nursing Home Neglect And The Regulations In New York". Mr. Hyman's main office is located at 23 Washington Ave., Pleasantville, New York. He may be reached at (914) 747-8000 or by e-mail at [rhyman@injuredseriously.com](mailto:rhyman@injuredseriously.com).

**Patricia Iyer, RN, MSN, LNCC**, has coauthored or edited several books written for attorneys, including *Nursing Home Litigation: Investigation and Case Preparation*, second edition in press; *Medical Legal Aspects of Medical Records*, in press; *Nursing Documentation*, Fourth Edition (2004); *Medical Legal Aspects of Pain and Suffering* (2003) and *Nursing Malpractice* (2001). She earned her master's degree in nursing from the University of Pennsylvania and is certified as a legal nurse consultant through the American Association of Legal Nurse Consulting. Ms. Iyer is a past president of the American Association of Legal Nurse Consultants. She is the president of Med League Support Services, Inc. located in Flemington, New Jersey. Med League assists attorneys who handle cases that involve medical issues. Services are provided for criminal, matrimonial, personal injury, employment, products liability, medical, nursing and nursing home malpractice. In addition, Ms. Iyer testifies as an expert fact witness on the pain and suffering experienced by plaintiffs as documented in the medical records.

**Jeffrey M. Levine, M.D.**, focuses his work on improving the quality of care delivered to elderly persons. He is president and founder of SeniorHealth Consulting Inc., which provides education and medical-legal and risk management advice to insurance companies, attorneys and facilities regarding care of the aged. Dr. Levine received his fellowship training in geriatrics at the Mount Sinai Medical Center in Manhattan. He is board certified in internal medicine, is a certified medical director, certified wound-care specialist and holds a certificate of added qualifications in geriatrics. He is president of the Metropolitan Area Geriatrics Society, which is an educational resource for geriatric caregivers in the tri-state area. Dr. Levine is a consultant to the U.S. Department of Justice, the New York State Department of Health, and various law enforcement organizations on matters of quality care of the aged and health care fraud. His book, *Medical-Legal Aspects of Long-Term Care* was released by Lawyers and Judges Publishing Co. in 2002.

**Richard T. Mermelstein** is a partner based in the Wilson, Elser, Moskowitz, Edelman & Dicker LLP's White Plains office. His practice focuses on the defense of medical product manufacturers and physicians in medical malpractice actions. He also handles the defense of general liability matters. Mr. Mermelstein earned a B.A. degree, *magna cum laude*, from the State University of New York at Albany and a J.D. degree from Boston University School of Law, where he was editor of the *International Law Journal*. He is admitted in Massachusetts and New York, as well as the U.S. District Court for the District of Massachusetts and the U.S. District Court for the Southern and Eastern Districts of New York. He is a member of The Association of Bar of the City of New York: Tort Litigation Committee.

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