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Nursing home advocates challenge treatment law

Bob Egelko

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Advocates for nursing home patients are challenging a California law that allows doctors to decide when a patient is mentally incompetent to refuse treatment.

A lawyer for California Advocates for Nursing Home Reform, which filed the suit Tuesday in Alameda County Superior Court, said doctors have used the 1992 law to administer mind-altering drugs, put patients in physical restraints and, in one case, remove a feeding tube.

By enforcing the law, California is "tossing out the concept of informed consent," said the lawyer, Mort Cohen, a law professor at Golden Gate University. "We give these residents fewer protections than we do prisoners or persons with mental illness."

Cohen said nursing home ombudsmen estimate that 10,000 residents of long-term care centers statewide have been classified as mentally incapacitated and lack a surrogate such as a conservator, relative or public guardian to speak for them when doctors are making decisions about treatment.

The suit seeks court orders requiring a legal hearing before a nursing home resident is found to be incapacitated, and says residents or their representatives should have the final word on refusing treatment. Cohen cited a 2004 state Supreme Court ruling that allowed prison inmates to refuse drug treatment unless a judge decided an inmate was mentally incompetent and dangerous.

The state Department of Public Health, the defendant in the suit, declined to comment on the state law or Cohen's arguments.

The law allows doctors and other medical staffers at nursing homes to make decisions about treatment if a physician determines that the patient lacks the mental capacity for informed consent and does not have a legal representative. Cohen said doctors frequently ignore evidence that a nursing home resident is competent or has a designated surrogate.

In one case from Santa Cruz, he said, a doctor found a woman incompetent and administered antipsychotic drugs without checking with two family members who were available to advise the woman on medical treatment. He said an independent psychiatrist had later found that the woman was competent.

Another patient, from Placer County, was shackled to his bed and fed through a tube after his doctor judged him incompetent despite a contrary statement on his medical chart, Cohen said.

He said staff members had later asked the man whether he wanted to live or die. When the patient refused to answer, Cohen said, they disconnected the tube, revoked an order for life-sustaining care and sent him to a hospice, where he died about two months later.

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