LEVERAGE A MAVERICK MENTALITY TO SUCCESSFULLY DEFEND ELDER ABUSE CLAIMS.

Learn to develop creative strategies to blindside plaintiff's counsel and derail their attack on your corporate leaders and coffers. Push your boundaries in litigation management through effective teamwork and novel approaches.

INTRODUCTION:

Elder Abuse claims are not new, but they are increasingly used to pack a punch with jurors and enhance remedies. Separating out and dismissing elder abuse allegations are essential in managing costs.

1. Corporate Ratification is a Reptilian Strategy
2. Defining and Executing a Maverick Defense Strategy
3. Essential Teamwork Requirements and Finding Unexpected Support from Team Members

CORPORATE RATIFICATION

- Corporate Ratification is a legal concept that holds a corporation liable for the actions of its employees or agents even if the corporation didn't specifically approve the actions.
- To prove ratification in CA and recover punitive damages, a plaintiff must not only prove ratification but also satisfy the requirements of section 3294(b) of the Code of Civil Procedures which outlines standards for proving malice, fraud, or oppression.
  - Corporation must have known about wrongful conduct or acted with conscious disregard (recklessness).
  - Managing agent must have known: reckless policy, employee, or repeatedly failed to intervene.

REPTILIAN STRATEGY

- Strategy as old as time: appeal to the jury's primal instinct of self-preservation and safety.
  - Focus on Safety Failures
  - Deflect away from evidence and make the jury feel personally threatened.
  - Evoke fear and anger
- Tactics include:
  - Early focus on safety related inquiries (policies, staffing, staff training) – Discovery/Depo Bombs
  - Focus on community harm (this pattern could happen to anyone)
  - Emotional appeal (managerial and executive salaries, wage compression of frontline staff)

STATE DIFFERENCES

- CA has the Elder Abuse and Dependent Adult Civil Protection Act:
  - Provides enhanced remedies and expands scope beyond intentional acts to include reckless behavior.
  - Allows victims and their families to pursue damages against additional parties.
  - CA hospitals can be held liable for actions of their employees, even those actions that are negligent or malicious
- Each state has their own definition of elder abuse and the age it applies.
- States vary on damages caps, enhanced damages applications and statute of limitations

WHAT IS MAVERICK MINDSET?

- Build Skills and Confidence
- Prioritize People and Teamwork
- Push Boundaries

RESPONDING TO THEIR PLAYBOOK

- Currently, we focus on preventing negligence, not creating evidence of ethical and trustworthy leadership
- We do not build skills and muscle memory on reducing the appearance of corporate ratification.
- We get caught flat-footed in depositions and testimony rather than responding with data and factual evidence
  - NDNQI data
  - Staffing metrics
  - Nursing Acuity Reports
  - Charitable Donations/Work on Tax Reports

NDNQI REPORTS

- National Database of Nursing Quality Indicators – nursing sensitive
- Correlational Data - Focuses on links between nurse staffing levels/ratios/skill mix and patient outcomes.
- Benchmarking Data - Drillable to unit, type of nursing care, and whole hospital comparisons. (i.e., Med Surg Nursing units for medium sized community-based hospitals)
- Stratifies data over time against HAPIs and Falls quarterly and annually
- Voluntold program by CMS

NURSING-SENSITIVE QUALITY MEASURES		Structure Measure	Process Measure	Outcome Measure
STAFFING MEASURES 	Nursing Hours per Patient Day *(NQF)*	✓		
	RN Education/Certification	✓		
	Skill Mix *(NQF)*	✓		
	Nurse Turnover	✓		
	Nursing Care Hours in Emergency Departments, PeriOperative Units and Perinatal Units	✓		
	Skill Mix in Emergency Departments, PeriOperative Units and Perinatal Units	✓		
QUALITY MEASURES 	Patient Falls *(NQF)*		✓	✓
	Patient Falls with Injury *(NQF)*		✓	✓
	Pressure Ulcer Prevalence *(NQF)*		✓	✓
	Healthcare-Associated Infections (HAI)			
	– Catheter-Associated Urinary Tract Infection (CAUTI) *(NQF)*			✓
	– Central Line Catheter Associated Blood Stream Infection (CLABSI) *(NQF)*			✓
	– Ventilator-Associated Pneumonia (VAP) *(NQF)*			✓
	– Ventilator-Associated Events (VAE)			✓
	Psychiatric Physical/Sexual Assault Rate			✓
	Restraint Prevalence *(NQF)*		✓	
	Pediatric Peripheral Intravenous Infiltration Rate			✓
	Pediatric Pain Assessment, Intervention, Reassessment (AIR) Cycle		✓	
	Falls in Ambulatory Settings			✓
	Pressure Ulcer Incidence Rates from Electronic Health Records		✓	✓
	Hospital Readmission Rates			✓
	RN Satisfaction Survey Options		✓	✓
	– Job Satisfaction Scales			
	– Job Satisfaction Scales—Short Form			
	– Practice Environment Scale (PES) *(NQF)*			

Nurse Leadership Clinical Unadjusted

View Standardized Scores | Compare by: Hospital Type | Hospital - Excel Report | Print Hospital Report | Mean | Median

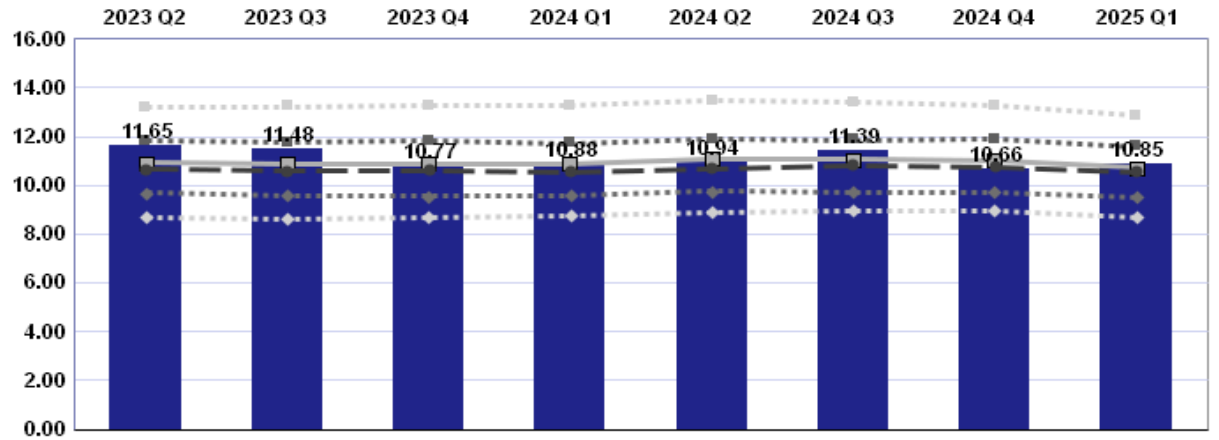
Summary of Unadjusted Measures — 2025 Q1

Measure	Unadj	Qtr Value	Mean	# of Hospitals
Total Number of Patient Falls	✓	29.00	40.08	1,537
Number of Hospital Acquired Pressure Injuries	✓	2.00	6.52	1,37
Total Number of Injury Falls	✓	7.00	9.67	1,537
Number of Unassisted Patient Falls	✓	18.00	32.34	1,537
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure	✗	5.11	4.27	1,268

Unadjusted Staffing Measures - Mean

TNHPPD:Total Nursing Hours Per Patient Day

Peer Group: General Hospitals — Avg N=1,260



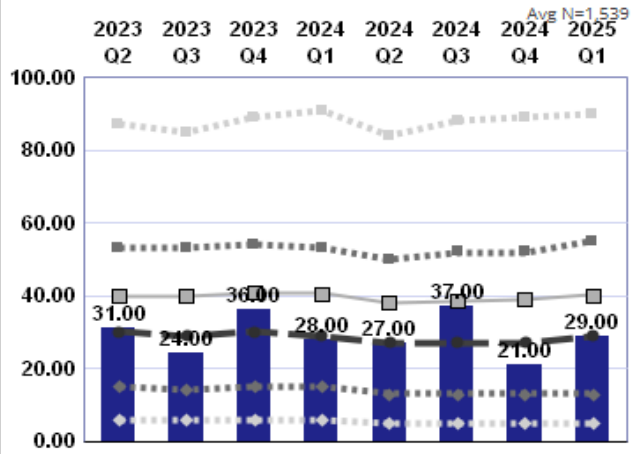
✗ Below Performance Goal ✓ Above Performance Goal

Hospital | Mean | 10th Pctl | 25th Pctl | 50th Pctl | 75th Pctl | 90th Pctl

Patient Falls - Mean

Falls:Total Number of Pa...

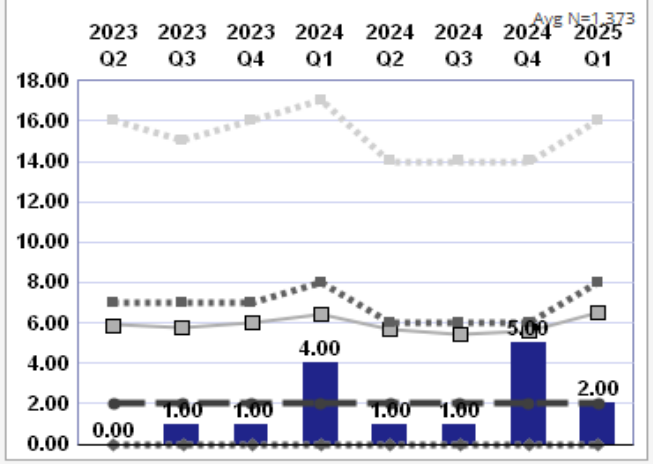
Avg N=1,539



Pressure Injuries - Mean

HAPI:Number of Hospit...

Avg N=1,373



Infections - Mean

Avg N=N.D.

No data returned for this view. This might be because the applied filter excludes all data. Please review all selections.

Executive Overview - Facility Dashboard

Unadjusted | Standardized

Top Decile | Top Quartile | Out-Perform Median | Under-Perform Median | Bottom Quartile | Bottom Decile

Measure	High Better	Methodist Hospital of Southern California — General Hospitals								Rank
		2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2	2024 Q3	2024 Q4	2025 Q1	
Percent of Surveyed Patients with Hospital Acquired Pressure Injuries Stage 2 and Above	Lower Better	0.00	0.74	0.60	2.38	0.56	0.50	1.92	0.95	1
Total Nursing Hours Per Patient Day	Higher Better	11.65	11.48	10.77	10.88	10.94	11.39	10.66	10.85	1
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure Categories	Lower Better	6.79	3.38	1.41	3.82	5.73	3.26	4.36	5.11	3

Measure	Unit - Clinical	Clinical Unit Type	ClinicalServiceLine	AgeServed	High Better	All U.S. Facilities								Units Rank
						2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2	2024 Q3	2024 Q4	2025 Q1	
Percent of Surveyed Patients with Hospital Acquired Pressure Injuries Stage 2 and Above	2 Tower - Surgical	Adult Surgical	Surgery	Mixed Adult	Lower Better	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1
	4 Tower - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	0.00	1
	5 Tower - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.00	N.D.	0.00	0.00	0.00	0.00	0.00	0.00	1
	3 Tower Rehab	Adult Rehab	Not Applicable	Mixed Adult	Lower Better	N.D.	N.D.	N.D.	0.00	0.00	0.00	0.00	0.00	1
	3 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.00	0.00	0.00	5.71	0.00	0.00	0.00	0.00	15
	ICU - 2 North and Hoffelin Building	Adult Critical Care	Not Applicable	Mixed Adult	Lower Better	0.00	7.69	0.00	0.00	0.00	0.00	6.67	0.00	16
	Intermediate Care Unit	Adult Step Down	Not Applicable	Mixed Adult	Lower Better	N.D.	N.D.	N.D.	0.00	0.00	12.50	0.00	0.00	17
Total Nursing Hours Per Patient Day	3 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	11.22	11.00	10.53	10.62	10.70	11.09	10.47	10.42	18
	5 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	11.16	10.93	10.77	10.93	10.61	11.28	10.55	10.72	18
	5 Tower - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	9.15	9.62	9.39	9.95	10.32	12.80	11.44	13.98	20
	4 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	10.76	10.55	10.09	10.34	10.42	10.88	10.23	10.27	21
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure Categories	3 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.74	0.18	0.18	0.04	0.00	0.07	0.30	0.71	22
	3 Tower Rehab	Adult Rehab	Not Applicable	Mixed Adult	Lower Better	N.D.	N.D.	0.00	0.00	0.64	0.00	0.24	0.08	22
Total Nursing Hours Per Patient Day	2 Tower - Surgical	Adult Surgical	Surgery	Mixed Adult	Higher Better	10.56	10.73	10.40	10.76	11.05	10.94	10.09	10.35	22
Percent of Total Nursing	5 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.23	0.57	0.11	0.07	0.27	0.29	0.37	2.59	25

	5 Tower - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	9.15	9.62	9.39	9.95	10.32	12.80	11.44	13.98	20
	4 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Higher Better	10.76	10.55	10.09	10.34	10.42	10.88	10.23	10.27	21
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure Categories	3 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.74	0.18	0.18	0.04	0.00	0.07	0.30	0.71	22
	3 Tower Rehab	Adult Rehab	Not Applicable	Mixed Adult	Lower Better	N.D.	N.D.	0.00	0.00	0.64	0.00	0.24	0.08	22
Total Nursing Hours Per Patient Day	2 Tower - Surgical	Adult Surgical	Surgery	Mixed Adult	Higher Better	10.56	10.73	10.40	10.76	11.05	10.94	10.09	10.35	22
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure Categories	5 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.23	0.57	0.11	0.07	0.27	0.29	0.37	2.59	25
Percent of Surveyed Patients with Hospital Acquired Pressure Injuries Stage 2 and Above	5 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.00	0.00	2.70	3.45	0.00	0.00	2.63	2.94	26
	4 North - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	0.00	0.00	0.00	2.86	3.03	0.00	5.71	2.78	27
Percent of Total Nursing Hours Supplied by Agency Staff of All Licensure Categories	5 Tower - Medical Surgical	Adult Med-Surg Combined	Medicine	Mixed Adult	Lower Better	29.53	14.29	0.28	0.00	0.00	0.00	2.17	0.80	27
Total Nursing Hours Per	3 Tower Rehab	Adult Rehab	Not Applicable	Mixed Adult	Higher Better	N.D.	N.D.	8.58	9.02	8.91	9.46	8.72	8.99	29

NDNQI REPORTS

- Have Quality integrate this data into their HAPI data reports
- Benchmark – Show the comparisons
- Have the CNO/CNE participate in an annual quality presentation discussing staffing levels data (Skin Resource staff are not included in NDNQI)
- Practice makes perfect – the CNO narrative and comfort with this discussion is key and should be shared with staff. Let them know you pay attention!
- Risk can request unit specific data for the time during which an alleged elder abuse case occurred. Forward to counsel.

NURSING ACUITY

- In CA, nurse acuity systems must be evaluated annually with front line staff. (I would recommend this as a best practice regardless.)
- Their feedback creates change to the acuity program
- Annually, the CNO should present to the Board a summary of this report and corrective actions taken to improve its validity and reliability
- This summary should be shared at staff meetings and documented.
- Daily staffing sheets should record influx of new patients, discharges/transfers, staffing and acuity adjustments per unit.

CDPH INVESTIGATIONS

- Risk or quality should maintain a log of all reportable events and onsite CDPH visits.
- Include:
  - Case #
  - Event Type
  - Institution reported, patient complaint or other notification process to CDPH
  - Internal findings
  - CDPH conclusions
- Annual Summary of CDPH findings and corrective actions taken

CDPH ANNUAL REPORTS:

Year	# Visits	# With Findings	# Without Findings
2018	20	2	18
2019	22	3	19
2020	40	2	36
2021	72	1	71
2022	36	2	34

Spike in '21 due to staffing complaints to CDPH

Year	# Visits for HAPI	# With Findings	# Without Findings
2018	8	0	8
2019	6	1	5
2020	4	0	4
2021	6	2	4
2022	3	1	2

Increase use of Registry during COVID-19 ('21) correlates with NDNQI data.

HUMAN RESOURCES

- Demonstrate compliance with annual staff training requirements around abuse and HAPIs/Falls.
- Consider obtaining local hospital association surveys on skill mix and wages
  - If favorable, can leverage to show that your prevailing wages are at or above normal for your state/region.
  - Show evidence of bonuses offered when staffing is tight. Quantify and correlate with policies/procedures on managing staffing shortages
  - Budgets for increase in staff wages

FINANCE

- Tax Records require an accounting of charitable/community benefits provided annually
- Risk may not know about this data or not be informed about it
- Staff are not informed abut the totality of charitable work conducted by the organization and its leaders.
- Risk should be copied on the Community Needs Assessment, resulting total scope of charitable work provided, and its cost.

BOARD REPORTS

- Annual report - team leaders place people first.
  - Team from Risk, Quality, and Nursing to present
  - Message to the Board:
    - We work together to keep our patients safe
    - We have a playbook and we practice ensuring that we manage consistently
    - We adapt and try something new if one thing doesn't work
    - The data demonstrates we are improving our capacity to maintain staffing ratios, improve skill mix, respond quickly to adverse events, and maintain transparency with CDPH.

BOARD REPORTS

- In summary link this report to your efforts to provide for patient and staff safety
- Why?
  - Defeat the reptile:
    - Remove Fear – this is a good place for patients to come
    - Provide evidence that patients are safe through data
    - Create a clear paper trail that the organizational leader put “People before Profits”

WHAT REALLY HAPPENS

- CNO performs nursing acuity evaluation quickly with limited analysis or staff input
- CNO is not involved in data analysis of NDNQI data nor conversant in how he/she is responding to the correlations
- Staffing sheets do not accurately record changes to staffing or acuity throughout the shift nor Nursing Leadership's response to it.
- Leaders get defensive in deposition
- Plaintiff takes charge in deposition and discovery requests

PUSH BOUNDARIES

- Teamwork – have each other's back before a complaint is filed
- Presentation of data – in groups and to the Board. Be a Wing Man.
- Annual aggregation of data validating efforts at maintaining and improving patient safety in the Risk Office – Checklist
- Prep for depositions of Executive leaders and stick to the facts. Know the facts. Act with confidence.
- Discovery requests of plaintiff should include evidence of malice, fraud, reckless disregard.

WORKING WITH COUNSEL

- Prepare Packet to go to counsel at the start of the case
- Packet can include:
  - Nurse Acuity Evaluation
  - NDNQI Annual Report
  - CDPH Annual Summary of Findings (especially around staffing and HAPI/Falls)
  - Charitable contributions – Total and number of man hours provided
- Get granular staffing data on the unit at the time of the occurrence.
- Show how your reporting processes and responses work.

CONCLUSION

- We often focus on preventing harm and reducing negligence claims through:
  - staff training
  - documentation enhancements
  - documentation quality reviews
- Corporate Ratification and Elder Abuse Claims carry greater financial risk.
- Mitigation strategies involve teamwork, confidence, building leadership data skill sets.

QUESTIONS?

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