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WHITE PAPER ALERT

Confidentiality Agreements

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**CONFIDENTIAL COMMUNICATION
NOT FOR DISSEMINATION**

Confidentiality Agreements

California Elder Abuse and Dependant Adult Civil Protection Act

C.C.P. §§ 2031.1 & 2031.2 (effective 01/01/2004)

California AB 634 has added two new sections, 2031.1 & 2031.2 to the California Code of Civil Procedure which greatly effect the day to day handling of EADACPA actions. Under these sections confidential settlement agreements in Elder Abuse and Adult Dependent Civil Protection Act cases are disfavored. Such agreements are unenforceable under specified circumstances. Also a stipulated confidentiality agreement does not extend to evidence of elder abuse and information subject to a protective order that is not evidence of elder abuse shall remain under seal 30 days after filing.

2031.1. (a) Notwithstanding any other provision of law, it is the policy of the State of California that confidential settlement agreements are disfavored in any **civil** action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult **Civil** Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code). (b) Provisions of a confidential settlement agreement described in subdivision (a) may not be recognized or enforced by the court absent a showing of any of the following: (1) The information is privileged under existing law. (2) The information is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code. (3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction. (c) Nothing in paragraph (1), (2), or (3) of subdivision (b) permits the sealing or redacting of a defendant's name in any information made available to the public. (d) Except as expressly provided in this section, nothing in this section is intended to alter, modify, or amend existing law. (e) Nothing in this section may be deemed to prohibit the entry or enforcement of that part of a confidentiality agreement, settlement agreement, or stipulated agreement between the parties that requires the nondisclosure of the amount of any money paid in a settlement of a claim. (f) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

2031.2. (a) In any **civil** action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult **Civil** Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code), any information that is acquired through discovery and is protected from disclosure by a stipulated protective order shall remain subject to the protective order, except for information that is evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code. In that instance, after redacting information in the document that is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code, a party may file that particularized information with the court. The party proposing to file the information shall offer to meet and confer with the party from whom the information was obtained at least one week prior to filing that information with the court. (b) The filing party shall give concurrent notice of the filing with the court and its basis to the party from whom the information was obtained. (c) Any filed

information submitted to the court shall remain confidential under any protective order for 30 days after the filing and shall be part of the public court record thereafter, unless an affected party petitions the court and shows good cause for a court protective order. (d) The burden of showing good cause shall be on the party seeking the court protective order. (e) A stipulated protective order may not be recognized or enforced by the court to prevent disclosure of information filed with the court pursuant to subdivision (a), absent a showing of any of the following: (1) The information is privileged under existing law. (2) The information is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code. (3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction. (f) If the court denies the petition for a court protective order, it shall redact any part of the filed information it finds is not evidence of abuse of an elder or dependent adult as described in Sections 15610.30, 15610.57, and 15610.63. Nothing in this subdivision or in paragraph (1), (2), or (3) of subdivision (e) permits the sealing or redacting of a defendant's name in any information made available to the public. (g) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

If you have any questions or desire further information on this, or any other topic, please contact:

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