

Nelson Hardiman Assists Client in Obtaining Licensure of Residential Drug Treatment Facilities



Klean W. Hollywood, LLC, an operator of sober living community-based residences, received **licenses** – over the objections of the City of West Hollywood – to operate **residential drug treatment facilities** in West

Hollywood. Responding to pressure from local neighborhood activists, the City had submitted repeated objections to the residential facility licensing. The facility is the first of its kind in West Hollywood.

Nelson Hardiman assisted with the licensing process before the California Department of Alcohol and Drug Programs (ADP), including responding to the City's objections. "We are delighted that Klean has secured licensure," said Harry Nelson. "The value of the expanded resources to treat addiction and support recovery, in a community where such resources were previously absent, cannot be overstated."

Nelson Hardiman Prevails in

Case of First Impression re: Medical Marijuana Collective



Last year, Nelson Hardiman was forced to sue the City of Los Angeles on behalf of a medical marijuana collective to return seized cannabis that the police had recovered following a robbery, but refused to return.

The City of Los Angeles claimed that it was not required to return seized cannabis to a collective based on its interpretation of state law. Nelson Hardiman argued that the case was analogous to *City of Garden Grove v. Kha*, in which the California Court of Appeal established that state and local law enforcement officers are obligated to respect California law and the property rights of a qualified medical marijuana patient. In that case, both the California Supreme Court and U.S. Supreme Court refused to hear the City of Garden Grove's appeals after it was ordered to return seized cannabis to a patient.

Based on the arguments presented, Los Angeles Superior Court Judge Anne Egerton disagreed and ordered the cannabis returned to the collective.

Nelson Hardiman Protects Physicians from Preliminary Injunction



Nelson Hardiman successfully defended the owner of a physician medical group in an action seeking temporary restraining order (TRO) and preliminary injunction. The physician owner of the Center for Optimum Health (CFOH), a

West Los Angeles-based medical practice, had sued two physicians and one of the physician's wives for supposed misappropriation of trade secrets, as well as for alleged violation of contractual non-competition and non-solicitation covenants. Nelson Hardiman attorneys argued that the patient contact information did not constitute trade secrets, and that under California case law (including *Bosley Medical Group v. Abramson* (1984) 161 Cal.App.3d 284 and *Edwards v. Arthur Andersen* (2008) 44 Cal.4th 937), the covenants not to compete and not to solicit were unenforceable under Business & Professions Code Section 16600. The Superior Court, Hon. Robert O'Brien presiding, agreed with Nelson Hardiman's arguments and denied relief. The Court recognized the primacy that California law places on ensuring the right of physicians and others to earn a livelihood.

Nelson Hardiman regularly advises physician group employers and physician employees, as well as buyers and sellers of medical and other healthcare businesses, on the legal limitations of covenants not to compete and not to solicit. This case exemplifies the critical role of ensuring that you understand what is and what is not enforceable when negotiating and structuring business arrangements in

professional health care services, and ensuring that your contracts conform to California law.

Nelson Hardiman earns victory over Kaiser in Medicare Part C Administrative Hearing



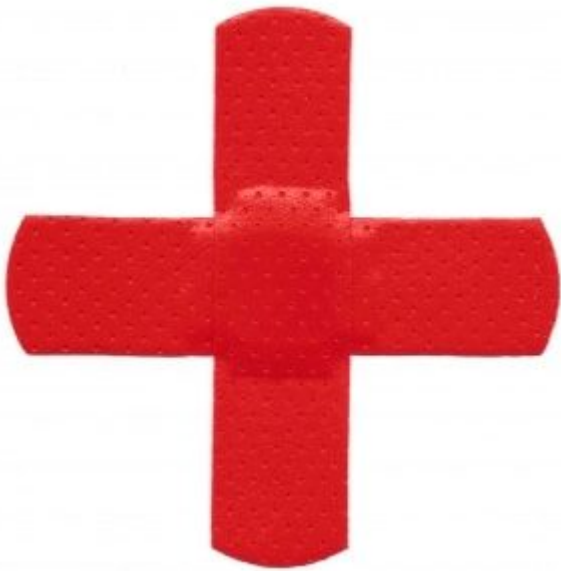
Administrative Law Judge Sharon Turner ruled in Nelson Hardiman's favor in a Medicare Part C Administrative Hearing against Kaiser Foundation Health Plan before the Office of Medicare Hearing Appeals in Irvine, California. The case involved Kaiser's denial of responsibility for over \$300,000 in hospital costs incurred at Cedars-Sinai Medical Center after Kaiser failed to offer a minimally invasive treatment to a patient suffering from severe heart disease who was hospitalized while exploring options at Cedars-Sinai. Although Maximus, the Medicare QIC contractor, had ruled in Kaiser's favor, Judge Turner reversed, holding Kaiser responsible.

In this case, Kaiser had incorrectly advised the patient, who was not an appropriate candidate for open heart surgery, that the only option available was palliative care and that the underlying heart condition was essentially untreatable. The patient subsequently discovered that Kaiser had failed to provide information about the possibility of percutaneous valve replacement, which was being offered at Cedars-Sinai.

While the patient was visiting Cedars-Sinai for a consultation, the hospital's Director of Interventional Cardiology and Cardiac Catheterization was concerned and referred the patient to the emergency room, where the patient was diagnosed with a heart attack, leading to hospitalization, angioplasty, and valvuloplasty.

Although Cedars-Sinai physicians saved the patient's life, Kaiser, the Medicare Advantage (Part C) contractor, denied financial responsibility. Maximus, the QIC contractor for Medicare Part C, sided with Kaiser, holding the patient and Cedars-Sinai responsible. Nelson Hardiman then appealed to the Office of Medicare Hearing Appeals, arguing that Kaiser should bear financial responsibility. After a full-day hearing, Administrative Law Judge Sharon Turner agreed. "It is fitting that Kaiser should bear responsibility when its patients are forced to look elsewhere for good care," said Nelson Hardiman managing partner Harry Nelson. "We hope that this case will remind Kaiser that informed consent means patients need to be informed not only of risks and benefits, but of alternatives."

Nelson Hardiman Obtains Dismissal of Charges



A primary and urgent care physician was successfully exonerated of all charges in two unrelated cases, which together endangered his physician's and surgeon's certificate. Regarding the untimely death of a patient, Nelson Hardiman was able to show with expert testimony that there were no repeated or significant deviations from standard of care. Attorneys were also able to

demonstrate that all charges of negligence were unwarranted. In the second incident, Nelson Hardiman was able to successfully defend their client from being found culpable for actions committed by another physician in his practice. The Medical Board of California has dismissed all charges.

Nelson Hardiman Rebuffs West Hollywood's Efforts to Enjoin Sober Living

In July 2010, the City of West Hollywood filed suit against the owners of apartment units that are being used as "sober living" residences for people in recovery from drug- and alcohol addiction. In September 2010, the City moved for a preliminary injunction to stop the usage. Nelson Hardiman argued that the City's motion omitted a necessary and indispensable party – Klean W. Hollywood. Nelson Hardiman also argued that, notwithstanding the "Not in My Backyard" protests of local residents, the City failed to make a compelling case

that the City was harmed by the use. On November 30, 2010, Los Angeles Superior Court Judge Linda Lefkowitz agreed, ruling in favor of Nelson Hardiman's clients and denying the City's motion. In a related action filed by Nelson Hardiman, Klean is suing the City for violating the civil rights of the residents of the apartments.

Accusation Dismissed

An Emergency Medicine Physician's medical license was successfully defended by Nelson Hardiman Attorneys. The Doctor was accused of repeated negligent acts and failure to maintain adequate records regarding the care and treatment of two unrelated patients. Nelson Hardiman attorneys demonstrated through expert testimony, and third party records corroborating the doctor's adherence to standard of care given presenting symptoms, that the doctor was innocent of repeated negligent acts and did in fact maintain adequate records. No disciplinary action against the doctor's Physician's and Surgeon's certificate was taken and the accusation dismissed.

Nelson Hardiman DEA Lawyer Protects Physician's License

In a case where Medical Board revocation of a physician's license seemed a foregone conclusion, Nelson Hardiman **lawyer** and partner, Harry Nelson, secured a career-saving probation.

At the outset, the physician, an oncologist, was accused of serious misconduct. The physician had been convicted by the **DEA** of multiple felonies resulting from importation of unapproved drugs in violation of the Food, Drug and Cosmetic Act and federal prescription drug laws. The Medical Board threatened to revoke his license. However, Nelson Hardiman's tenacious defense succeeded in limiting the Board to a five-year probation that enabled the doctor to continue practicing medicine.

Nelson Hardiman overcame the Board's argument that the physician was a smuggler and related allegations of unprofessional conduct by presenting evidence that the doctor brought low-cost cancer drug—with the same chemical composition as those approved by the FDA—from abroad solely to provide to patients who lacked insurance and could not afford their expensive American counterpart drugs. By highlighting the altruistic motives of a doctor who did not comprehend FDA requirements, Nelson Hardiman averted the medical license revocation of a physician who had dedicated a lifetime of service to his profession without regard to patients' ability to pay. As a result, this dedicated physician continues to provide medical services to the uninsured and other patients in his community.

Medical License Revocation Prevented

In what at first glance appeared to be a serious case where the Medical Board would revoke a physician's license, Nelson Hardiman's successful defense resulted in a five-year probation that enabled the doctor to continue practicing

medicine. The physician had been convicted of multiple felonies resulting from importation of unapproved drugs in violation of the Food, Drug and Cosmetic Act and federal prescription drug laws. Nelson Hardiman overcame the Board's argument that the physician was a smuggler and related allegations of unprofessional conduct by presenting evidence that the doctor brought low-cost oncology medications—with the same chemical composition as those approved by the FDA—from abroad solely to provide to patients who lacked insurance and could not afford their expensive American counterpart drugs. By highlighting the altruistic motives of a doctor who did not comprehend FDA requirements, Nelson Hardiman averted the medical license revocation of a physician who had dedicated a lifetime of service to his profession without regard to patients' ability to pay. As a result, this dedicated physician continues to provide medical services to the uninsured and other patients in his community.