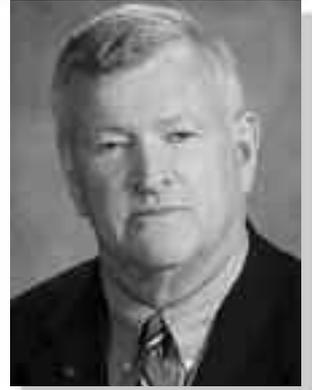


Annual Meeting Program Will Focus On Nursing Homes/Assisted Living Facilities

William T. Wilson, 2005–2006 Senior Lawyers Conference Chair



At the December meeting of the Senior Lawyers Conference (SLC) Board of Governors, we were privileged to hear from Senator Emmett W. Hanger Jr. of Augusta County, who chairs the Senate Committee on Rehabilitation and Social Services. His committee oversees legislation that affects nursing homes and assisted living facilities. I reported in the October 2005 *Virginia Lawyer* that I was trying to contact the chairs of key committees in the House of Delegates and the Senate to ask about some of the problems that face nursing homes and assisted living facilities, in an effort to see how the SLC could help. Senator Hanger was kind enough to spend almost two hours explaining to the board of governors the legislature's concerns about these facilities and what the SLC could do. As we get older, all of us face the possibility of living in one of these institutions, and we certainly want the care provided to us, our friends and our families to be of high quality.

Not long ago, the *Washington Post* ran a series of articles that included horror stories arising from the operation of some assisted living facilities. The same sort of thing happens in nursing homes. Too frequently, these institutions are understaffed, at times with people who are under qualified, leading to patient neglect and abuse.

I was recently involved in a case in which an elderly woman, while in a nursing home recovering from surgery for a broken hip, was allowed to fall, breaking her other hip. The nursing home neglected to call the family's doctor. The staff put the patient back to bed, and she spent the night in agony. Because she had Alzheimer's disease, she was unable to describe her discomfort. The next morning, the staff dressed her while she cried out in pain and then took her to the local hospital for a postsurgical examination. When she repeatedly cried out, the orthopedic surgeon suspected something was wrong and ordered x-rays. It was then that the second broken hip was discovered. A lawsuit was filed and a large verdict was returned against the nursing home. When collection efforts began, we discovered that the nursing home not only was mortgaged to the hilt, but it also was one of a network of nursing homes which was insured by one

liability insurance policy with total coverage for all homes and all claims in the amount of three hundred thousand dollars. We also discovered that the premium for the policy was \$375,000. It was, of course, a ridiculous situation, but it made me even more concerned than ever about how some nursing homes and assisted living facilities are structured and operated. This particular nursing home was owned by a married couple, but it was a part of a corporate network of facilities located in several states. We suspected a scheme to thinly capitalize the corporate network to the prejudice of creditors, and we filed a suit to "pierce the corporate veil." I tell you all of this because, more and more, nursing homes and assisted living facilities are owned by out-of-state individuals and companies, and Virginia's regulatory oversight is inadequate regarding corporate structures and liability insurance.

The General Assembly has been active in recent years in efforts to improve the quality of nursing homes and assisted living facilities, but there is much to be done. Assisted living facilities are looking more like nursing homes every day. When some of our mental hospitals were downsized years ago, many people who should have been put in nursing homes or other medical settings ended up in assisted living facilities. There has been much controversy about that trend, and the General Assembly needs to do more to regulate in that area.

The SLC is still wrestling with the question of what we can do to help the General Assembly improve these institutions. One thing we have planned is a program at the Annual Meeting of the Virginia State Bar in Virginia Beach in June 2006 entitled "So You Are Going to a Nursing Home/Assisted Living Facility." It is my hope that we can bring together a panel that will paint a broad picture of what is going on at nursing homes and assisted living facilities and that will suggest possible improvements in those institutions. I hope that many of you will attend.

I would now like to talk a little bit about hospital-acquired staph infections, another subject I addressed in my October 2005 column. To quote a *Legis Brief* (October, 2005, Vol. 13, No. 42) of the National Conference of State Legislatures:

Hospital acquired infections, also known as healthcare-associated infections, are garnering greater attention as the debate over health safety grows. Legislation forcing hospitals to detail the number of patients infected while under their care may provide patients and insurers with information they can use in their role as consumers. It may also give hospitals an incentive to adopt better infection control practices. The Centers for Disease Control and Prevention reports that roughly two million patients contract an infection while in a hospital each year in America. These infections result in 90,000 deaths and an estimated total cost of \$4.5 billion.

That article states that hospitals have never thoroughly tracked infection rates. There is, however, a voluntary survey of hospitals which has been conducted by the U.S. Centers for Disease Control and Prevention since 1970. Approximately three hundred hospitals throughout the United States participate in that survey. The survey deals only with large hospitals, however, and the procedures which are reported are limited. The responses of individual hospitals are never made public. In my judgment, the time to shine the light of day on the hospital-acquired infection situation is at hand. I am happy to report to you that through the efforts of, among others, Delegate Harry R. "Bob" Purkey of Virginia Beach, legislation was passed in the 2005 General Assembly that requires Virginia hospitals, beginning July 1, 2008, to report hospital-acquired infections. I do not know why the start-up date is so far off when so many deaths and injuries occur because of this problem. Although I realize that there are technical issues involved and that reporting infection rates can have a negative impact on some hospitals, the overall good of the public should be the dominating factor, and now is the time to gather this information. Hospitals and doctors are concerned about this

problem, but historically they have tried to deal with it internally without involving the General Assembly or the public.

During a program on healthcare and senior citizen-related issues at the VSB Annual Meeting last June, I asked for a showing of hands from those who either had personally contracted a hospital infection or had family members or close friends who had. Almost everyone in the room raised a hand. Several years ago, a member of my immediate family almost died from a hospital-acquired staph infection. What should have been a relatively straightforward lung operation with a short convalescence turned into months of agony and rehabilitation. This experience brought the problem to my attention. In that case, the hospital wrote off well over \$150,000 in medical costs.

For those of you who really want an eye-opener, I refer you to "Infection Epidemic Carves Deadly Path," a series in the *Chicago Tribune* in July 2002, as well as the aforementioned *Legis Brief* article.

I have been in touch with Delegate Purkey about this subject, and he has promised to make his staff and his resources available to the SLC. The SLC has not taken on this issue as a part of its 2005–2006 program, but the board of governors is receiving information from me on the subject so that it will be better informed.

If you have questions or comments regarding nursing homes, assisted living facilities or hospital-acquired staph infections, please send them to Patricia Sliger, SLC Liaison, at Virginia State Bar, 707 East Main Street, Suite 1500, Richmond 23219-2800; fax (804) 775-0501; or sliger@vsb.org. ☞