WORKING WITH ELDERLY OR DISABLED

INTRODUCTION

Defendant is charged with three counts of elder abuse and two counts of wrongful discharge of a nursing home resident. Defendant is an employee at the Rehabilitation Center of Bakersfield, a skilled nursing facility, that provides care and housing to the elderly. The People allege that Defendant discharged residents without adequate notice and in an unsafe manner in violation of the law.

At arraignment, the People requested that Defendant not work with the elderly or disabled during the pendency of this action. Defendant objected, arguing that additional time and notice was needed to review discovery and oppose the request. The court agreed to defer the issue for future consideration and set the case for pretrial on September 29, 2017.

Since Defendant's conduct is a threat to public safety, the Court should restrict Defendant from working with the elderly or disabled as a condition of bail.

ARGUMENT

I. Defendant's Conduct of Repeatedly Discharging Nursing Home Residents in an Unsafe Manner without Adequate Notice Presents a Danger to Public Safety

The Court has discretion to "set bail on the terms and conditions [it] deems appropriate." (Cal. Penal Code, § 1269c.) In determining bail, the Court considers protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing trial. (Cal. Penal Code, § 1275.) "The public safety shall be the primary consideration." (*Id.*) The Court has broad discretion to place conditions on defendants who are released pending trial. (*In re York* (1995) 9 Cal.4th 1133, 1137 (upholding O.R. condition on drug offenders to submit to drug testing and search and seizure.).)

Defendant is charged with elder abuse and wrongfully discharging nursing home residents. The following is a brief summary of the allegations. Bettie F. was told she owed the nursing home money when she in fact did not. Defendant sent her to an independent living apartment, although she was unable to walk or toilet on her own. Bettie F. could not get out of the transport van and needed to be sent to the hospital in an ambulance where she slept in the hallway for two nights. Lloyd W. was discharged from the nursing home without legal notice or

PEOPLE'S MOTION FOR BAIL CONDITION PREVENTING DEFENDANT FROM WORKING WITH ELDERLY OR DISABLED

justification. He ended up in the hospital which aggravated his psychological issues and required that he be physically restrained. He spent a week in the hospital. James M. was discharged from the nursing home without notice or medication instructions. He was unable manage his care and a wound on his nonamputated leg quickly sent him back to another facility. Defendant's nursing home has been repeatedly given deficiencies by the Department of Public Health for improper discharges.

These discharges not only exposed elderly individuals to physical danger, but also inflicted emotional distress. Transfer trauma is recognized as "death, depression, or regressive behavior, caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relative who may be unable to reach the new facility." (Cal. Health & Safety Code, § 1771(t)(2).)

Defendant was charged with a violation of Penal Code section 148 in 2010. He has no prior convictions.

II. Defendant's Due Process Rights Do Not Outweigh the Public Interest in the Safety of Nursing Home Residents

Defendant has a nursing home administrator license. The People anticipate that Defendant will argue that the proposed bail condition will infringe on his due process rights. (*Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 637.) Unlike a care provider, an administrator is primarily a business manager who oversees admissions, discharges, staff, finances, etc. Defendant can do this type of work without working in a facility where he is in charge of elderly and disabled individuals. Defendant would be free to work in other forms of health administration under the proposed bail condition. Defendant would only be prevented from working with a vulnerable community he has repeatedly exposed to harm.

Alternatively, Defendant Should Be Ordered to Submit Information Regarding III. the Residents He is Discharging

If the Court is inclined to allow Defendant to work with elderly and dependent adults, the People would ask at the least that Defendant be ordered to produce documents showing the circumstances under which his nursing home is discharging its residents. Defendant should produce a facepage, any discharge planning notes, nursing notes related to discharge, any doctor's orders related to discharge, a payment reconciliation, the last week of rehabilitation notes, the names and contact information for responsible parties or family members, and a discharge planning questionnaire. As a heavily regulated industry, the nursing home is already required to permit inspection of these records. (Govt. Code, § 12528.1; 22 Cal. Code of Regs § 51476(g).)

CONCLUSION

Defendant should not be working with the elderly or disabled while criminal charges are pending. The People request that the Court order this as a condition of bail.

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Dated: September 14, 2017

Respectfully Submitted,

XAVIER BECERRA Attorney General of California

LUKE VANDERDRIFT

Deputy Attorney General

Bureau of Medi-Cal Fraud and Elder Abuse Attorneys for the People of the State of California

PROOF OF SERVICE

2	Case: People v. Rush Melliti
3	Case No. BM906166A
4	
5	I am a citizen of the United States and a resident of Sacramento, California. I am over the age of eighteen years, and not a party to the above-entitled action. My business 2329 Gateway Oaks Drive,
6	Suite 200, Sacramento, California.
7 8	On September 14, 2017, I served a true copy of the attached People's Motion for Bail Condition Preventing Defendant from Working with Elderly by method(s) indicated below:
9	BY PERSONAL SERVICE: By hand delivering a true copy thereof, at his office with his clerk therein or the person having charge thereof, at the address indicated below:
11	BY MAIL: By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the U.S. Post Office Box addressed as indicated below:
12 13 14	BY FACSIMILE TRANSMISSION: By Faxing a true copy thereof to the recipient at the facsimile number indicated below: (510) 451-3002
15	BY EMAIL TRANSMISSION: By Faxing a true copy thereof to the recipient at the facsimile number indicated below:
17	Paul Wolf
18	Wolf, Pennella & Stevens, LLP 717 Washington Street, 2 nd Floor
19	Oakland, CA 94607
20	Fax: (510) 451-3002
21	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 14, 2017 at Sacramento,
22	California.
23	Avethe de Alba
24	Ivette De Alba
25	