

Doors Open for Public Nursing Home Litigation?

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The United States Supreme Court has held an individual's private right of action to sue a public nursing home for violations of federally protected rights in [Health and Hospital Corporation of Marion County v. Talevski](#). The Court held that a private individual could sue for rights protected by the Federal Nursing Home Reform Act ("NHRA"), which sets the federal minimum quality standards for nursing homes to ensure that seniors receive quality care. The family of nursing home resident, the late Gorgi Talevski, sued the nursing home under the provisions of the NHRA, prohibiting the use of unnecessary restraints on residents and requiring pre-discharge notice to residents.

Specifically, the Court found that the NHRA unambiguously creates an enforceable § 1983 right, to sue government employees and others when acting "under the color of state law". The Court used the *Gonzaga* test to decide whether the NHRA unambiguously granted an individual right of action upon a class of beneficiaries. Under *Gonzaga*, a Court must be able to determine that Congress intended to create a federal right for an identified class of individuals and the statutory language in question is phrased in terms of "persons benefited" and contains "rights-creating, individual-centric language with an unmistakable focus on the benefited class." The Court determined that the restraint and discharge provisions of the NHRA met this test.

This decision is limited to public nursing homes (e.g., county or state-owned nursing homes), as it has been established that private nursing homes are not subject to suit under § 1983. As a result, this holding creates a disparate degree of litigation exposure between private and public nursing facilities. Although this decision only addresses two provisions of the NHRA, the precedent opens the possibility that suit can be brought under other provisions that satisfy the *Gonzaga* test.

Dinsmore will continue to monitor any legislative or other actions related to this ruling.

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