

## **CASE ALERT**

January 2002

**Action based on professional caretaker's criminal conviction for elder abuse was subject to extended statute of limitations applying to restitution for criminal conduct.**

***Guardian North Bay Inc. v. Superior Court (Myers)*  
01 CDOS 10669**

A California court of appeal has held that personal injury actions arising from a professional caretaker's criminal abuse of elders are subject to the extended statute of limitations applicable to actions for restitution for injury caused by criminal conduct, rather than the more limited statute applicable to actions based on professional negligence.

After Guardian North Bay Inc. pleaded no contest to six counts of felony elder abuse of patients, Arlene Myers and other relatives of three patients who had been abused by Guardian filed separate actions for damages against Guardian. The complaints alleged that Guardian was convicted of violating Pen. Code §368 by willfully injuring or endangering the plaintiffs' deceased parents while they were patients in Guardian's skilled nursing facility. Guardian demurred to the complaints, contending they were time-barred by Code Civ. Proc. §340.5, which provides a maximum three-year limitations period for medical malpractice actions.

The trial court overruled the demurrers, finding that the actions were timely filed within one year after entry of judgment of conviction against Guardian, consistent with Code Civ. Proc. §340.3, which provides a limitations period of at least one year after the judgment of conviction for an action based on the defendant's commission of a felony offense.

The court of appeal held that the trial court properly found §340.3 to be the applicable statute of limitations. The court determined that the complaints at issue fell squarely within the provision of §340.3 because they were damages actions based on allegations of injury resulting from Guardian's commission of a felony.

The court rejected Guardian's contention that because the claims were based on professional negligence, §340.5 was the more specific and, thus, the controlling statute. Looking to the language of §368, the court found that conviction under that statute is based not on negligence, but on the perpetrators "willfully" causing or permitting injury or suffering to an elder within the perpetrator's care. To be convicted under §368, Guardian must have been found to have engaged in such "willful" conduct. Its acts were consequently outside the scope of the professional negligence provisions of §340.5.

*Note: This opinion is not final. It may be withdrawn from publication, rehearing may be granted or the Supreme Court of California may grant a hearing. If any of these events take place, the opinion would be unavailable for use as authority.*

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