



Re: American Board of Home Care

Please allow this to serve as a letter of introduction to the American Board of Home Care (“ABHC”), a non-profit organization formed to promote legal and ethical business practices and common standards of professional conduct in the home care industry.

The membership of ABHC is limited to home care companies that have been carefully vetted to confirm that they actually *employ* the caregivers they assign to clients, and that each of those caregivers is screened for criminal backgrounds and covered by his or her employer’s insurance policies (including workers compensation, professional and general liability insurance).

Attached, for your reference, is a list of ABHC members located here in Orange County. Over the years, in-home care has increasingly been provided by “registries” and “agencies” who, unlike the members of ABHC, assign *independent contractors* to work as caregivers to clients.

When companies place a caregiver in a home as an independent contractor, and not as an employee, there are many unexpected risks facing the patient involved. For example, under applicable laws, the patient is likely to be deemed the “employer” of the caregiver, thereby incurring very substantial liabilities for paying the caregiver’s social security, Medicare, federal and state unemployment, and state and federal payroll taxes, as well as interest, fines and penalties for any back taxes due. In addition, once a patient is deemed to be the caregiver’s employer, that patient faces potentially devastating liability – without the protection of workers compensation insurance – for any injuries sustained by the caregiver while on the job.

The “independent contractor” business model has grown in California even though Labor Board regulations and other laws *require* that such caregivers be treated as employees. The spread of companies using this model appears to be driven by a number of factors, including competitive pressures, a booming underground economy, and the general lack of regulatory enforcement.

Generally, home care companies placing caregivers as independent contractors do *not* disclose the risks they are placing on elderly and other patients receiving services in their homes.

Indeed, in our experience, many of these companies actually *mislead* consumers by representing (in published literature and telephone conversations) that they “employ” their caregivers when, in fact, they do not. Some companies even adopt a practice of employing a handful of caregivers to obtain copies of insurance policies that can be produced on demand, but then placing the vast majority of their caregivers in homes as *independent contractors* (without disclosure).

In an effort to reverse these trends, and to provide a means by which elderly and other consumers can be protected from increasing fraud and hidden liabilities, the ABHC was formed in 2007.

The American Board of Home Care *certifies* that its member companies are “employer model” organizations – offering the public a uniform standard of accountability and protection. As part of the application process, each ABHC member provides proof of workers compensation coverage for caregivers sent into the homes of patients/clients, and this workers compensation coverage is verified *each year* to ensure ongoing eligibility for membership. Among other things, ABHC members pledge in writing *never* to assign independent contractors to patients.

The ABHC urges you to adopt its membership list for use in discharging patients. We believe that limiting patient referrals to ABHC members will, among other things, (i) provide protection to a largely elderly and vulnerable patient population, (ii) establish a minimum standard for patients, thereby promoting improved quality of care, (iii) eliminate predatory companies that engage in deceptive practices, and (iv) minimize potential exposure to unexpected liabilities.

Needless to say, I would be delighted to meet with you in person to answer any questions and provide more information about our ABHC members in Orange County!

Richard N. Davis
President
American Board of Home Care

