

**ASSOCIATION OF CORPORATE COUNSEL- 2007 ANNUAL MEETING
CLO CLUB HYPOTHETICAL SCENARIO- CLO2**

**Board Emergency Response Preparedness “Best Practices”
October 31, 2007 (11:00 a.m. until 12:30 p.m.)**

You are the Chief Legal Officer for Springbrook, Inc., a company that operates several nursing homes in New England. Minimum standards of care for such facilities that participate in the Medicare and Medicaid programs are established by the 1987 federal Omnibus Budget Reconciliation Act (OBRA), which includes provisions originally contained in the Federal Nursing Home Reform Act. The federal Center for Medicare and Medicaid Services has delegated to state agencies the task of inspecting nursing homes to determine compliance with OBRA standards.

When you arrive at work one morning, your public affairs office informs you that the investigative news team of the NBC television affiliate in Portsmouth, New Hampshire has just revealed what it describes as a pattern of substandard care and occasional serious abuse in many nursing homes in New Hampshire. In particular, the station says that it has uncovered serious problems in the four Springbrook nursing homes in the state.

The station says that former employees have disclosed that in two homes Springbrook employees have deliberately engaged in euthanasia of elderly residents. The station maintains that it also has evidence that administration of the wrong medication resulted in the death of three residents, and that on four occasions residents suffering from dementia wandered off and could not be located for several hours. Finally, the news team has aired undercover film footage of some residents being treated roughly by nursing home staff. That footage has already migrated to You Tube, where it is available to the general public. The station says that the employees engaged in such conduct were hired on the basis of applications that failed to disclose that they had criminal records.

Families of residents of the nursing homes, as well as national and state nursing home watchdog organizations, have expressed outrage at the station’s report, and the state attorney general has vowed to conduct an immediate investigation. In addition, the federal Center for Medicare and Medicaid Services has indicated that it will open an inquiry into whether Springbrook should be barred from participation in the Medicare and Medicaid programs. The CEO calls you and other top officials into his office and says that the Board of Directors has asked for a presentation as soon as possible that lays out the course of action that the company should follow in the next twenty-four hours and in the period beyond.

As CLO, you lead the team...

Questions to Consider

- 1. What steps/practices would you take in connection with conducting an internal investigation? Who should be included in the process and what are their respective roles?**

- 2. What steps/practices would you implement in connection with responding to potential government actions and civil suits? Who should be included in the process and what are their respective roles?**

- 3. What practices would you consider in connection with communications strategies (internal and external)? Who would play roles and what would your role as CLO be?**

- 4. What are the key challenges in creating and implementing a crisis management & response program? What types of practices, including best practices, can be implemented?**