



FATE

Quarterly Newsletter of Foundation Aiding The Elderly

President's Message

Why Sue Nursing Homes

by Carole Herman

A monumental event took place in Superior Court in Sacramento County. For the first time in that county, a jury reached a verdict in an elder-abuse case against a nursing home.

I sat through five weeks of this trial. It was difficult to hear all the suffering, that the plaintiff Anne Mae Ollison endured, while she was a patient at Eskaton Homestead of

Fair Oaks. But, like the trooper she was -- and with the constant hand-holding of her daughter Henrietta and her husband Ted -- Annie Mae was in the courtroom every day listening to the testimony.

This was not an easy time for her or her family. Annie Mae was in court because she had lost both of her legs. Bedsores resulting from Eskaton Homestead's neglectful care led to this calamity.

The jury ruled against Eskaton Homestead, and awarded Annie Mae \$3.1 million. What this did was to send a message to the nursing home industry, that we citizens will punish you for abusing our loved ones.

Why are people like Annie Mae suing nursing homes for elder abuse? After all, there is a government

agency -- the California Department of Health Services, Licensing and Certification Division -- charged with enforcing federal and state nursing home regulations, regarding provision of proper care.

So why didn't Annie Mae just file a complaint with that agency, so Eskaton would be held accountable for its egregious act? Well, Henrietta, Annie's daughter did file a complaint about the poor care and bedsores, that caused her mother to lose both legs. However, Henrietta never heard back about that complaint, so she assumed (as many do) that the agency was doing its job and had cited the facility.

Not so.
After Henrietta



CAROLE HERMAN

contacted FATE for assistance, FATE researched the status of the complaint. Unbelievably, FATE discovered that the complaint had not been substantiated by the State investigator. How could that be? Annie Mae had lost both of her legs, yet the Department of Health Services maintained it could not verify this.

Since FATE knows the due process, it

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FATES MISSION IS:

“Assuring our elders are treated with care dignity and the utmost respect during their final years when they can no longer take care of themselves.”

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- Patient & Family Rights Advice
- Elderly Service Referrals
- Long Term Care Facility Evaluation

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Nursing Homes - Their Profits Just Keep Growing

Do the nursing homes cries of poverty add up?

According to U.S.News, they don't.

In September of 2002, the magazine reported that although public funding has effectively made nursing home care a full-blown government program, the money comes with no guarantees of quality.

U.S.News conducted a home-by-home examination of the industry's finances, examining hundreds of thousands of pages of nursing home financial statements with the findings showing the industry is profitable and growing with operators spinning a far brighter tale for Wall Street than for Capitol Hill.

The magazine's study also found no evidence that the industry was losing profits due to inadequate federal payments as it claims . And, even though it reports touchy financial times in their government filings, operators steer big chunks of revenue to themselves or related businesses before calculating the bottom line. Make no mistake, nursing homes are crying "wolf" when it comes to making a profit.

Board Member Profile: JUDY BOOTHBY

Judy Boothby: This Hygienist Makes House Calls

Neither politics nor lawsuits prevent Judy Boothby from making her appointed rounds.

Boothby, a dental hygienist, travels from her home to visit 30 to 40 patients in nursing homes, assisted living facilities and private homes in the greater Sacramento area.

Her fellow dental hygienists recognize her as a pioneer in her field. That's because Boothby makes house calls with her high-tech gear. But being a pioneer comes with controversy. For more than a decade, the State of California has debated whether to allow

dental hygienists to work independently, or only under supervision of a dentist.

For Boothby, her pioneering work in making house calls has made for "... a very interesting journey."

Boothby's journey as a pioneer began in 1987. That's when the California Legislature and the governor approved a pilot program that allowed Boothby and 17 other hygienists the authority and opportunity to not have to be supervised by dentists. California decided this experiment would help it decide if it should expand this option to all



JUDY BOOTHBY

hygienists.

Because of the pilot project, patients who had trouble seeing dentists, either due to mobility or other problems, could be seen by the dental hygienists dentist's office, who saw them at their homes, nursing homes or other venues.

In order for this to happen, patients would first have to have approval from their dentist, in the form of

written consent from a dentist or doctor. Only then could they be seen by a hygienist outside a dental office.

The California Dental Association was not happy, however. It argued that hygienists might begin diagnosing patients — something they are not trained to do or to provide. As a result, the Association sued to block the pilot project. Its suit succeeded with

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WHAT IS ADVOCACY

"Advocacy; the function of an advocate; pleading in support of advocate; Latin advocatus ; a person who pleads, intercedes or speaks for another: see avokey "to call a cause to a higher tribunal"

Advocator; " a patron saint; a person who advocates something."

FATE LAUNCHES WEBSITE

FATE has launched its website thanks to a donation from the Pamela and Donald Murphy Family Trust. Now by going to www.4Fate.org you can access information on the organization and obtain consumer information which addresses the following subjects:

- Assessment and Care Planning
- Information on Drugs
- Licensing and Certification Division Offices
- Oversight and Complaint Process
- Patient's Bill of Rights
- Reports on Nursing Homes
- To File a Complaint
- Types of Care Facilities
- What to look for in a Nursing Home
- Your Rights to Make Health Care Decision

Supporters of the advocacy work FATE does may now use the website to make donations to FATE. With the serious budget crisis in California, oversight by the State agencies responsible for monitoring long-term care facilities will suffer. Thus, the services of FATE are needed more than ever.

FATE SUES TO ENFORCE MINIMUM STAFFING STANDARDS

Hundreds of California nursing homes endanger the lives of their patients, because they fail to staff their facilities at the minimum levels required by State law. As a result, FATE has filed a law suit on behalf of the public. It seeks injunctions which will force large, nursing-home chains to hire enough nursing staff, so that they comply with the law.

The practice of providing insufficient skilled nursing staff is the underlying cause of most of the preventable health problems experienced by

nursing home residents. According to lawyer Mark Todzo of the Lexington Law Group, a San Francisco public interest law firm and lead counsel for FATE, understaffing is not only a deplorable practice, but a violation of State law .

It is unfortunate that we need court intervention to bring operators into compliance with the basic requirement of minimum staffing.

Defendants involved in this legal action include Covenant Care California, Inc.; Kindred Healthcare, Inc.; Mariner Health Care, Inc. and Pleasant Care Corporation.

Message - *Cont. from page 1*

requested a hearing and the complaint was re-opened. As a result, Eskaton Homestead of Fair Oaks was issued a Class A Citation with a \$15,000 fine assessment. This fine has yet to be paid since Homestead took advantage of its due process, and filed a lawsuit against the State seeking dismissal of the citation by the courts.

The nursing-home industry has complained that because of lawsuits filed against them, they are losing money (refer to *USNews Article* on page 2) and can't provide necessary care. We advocates disagree and have sent a message to the industry to stop pointing its finger at the victims. If the industry were providing

proper care, there would be no law suits.

It's not an easy task to be a plaintiff in a law suit, especially against an industry that has a lot of money (most of which is our tax dollars) and powerful attorneys representing them.

Currently, it appears that the only way to hold the nursing home industry accountable, for its crimes against our

loved ones, is through civil law suit, which are filed by people like Annie Mae and her family.

Postscript: Annie Mae Olliston died on Christmas, 2002. FATE was honored to have represented her.

Boothby - *Cont. from page 3*

the main issue focusing on governmental procedure, rather than dental care.

Not to be undone, the State of California responded by immediately creating another pilot. However, it changed how to implement it so that it would not provoke another suit by the dental association.

The pilot increased the number of dental hygienists from 18 to 21, all of whom were allowed to visit patients.

Boothby was the first to receive a licence and quickly bought \$5,000 worth of equip-

ment and a van. This was the start of her business.

Despite being an experienced hygienist since 1969, dentists did not respond kindly to Boothby's pioneering status as an independent.

"I was kicked out of a lot of places because the dentists [contracted by the nursing homes] said, 'Don't allow that woman in there,'" Boothby stated.

However, Boothby possessed a determination to forge on as a result of a deeply, personal experience. Her father had died

from a brain tumor.

"I noticed that he had no dental care in the nursing home," Boothby said. "And I thought, why isn't there a better continuity of care in these facilities, for dental care? So that kind of planted the seed for me."

Boothby's concern about the lack of dental care patients receive in nursing homes caused her to join FATE's board.

Her business - Out & About, is now a successful operation. It includes a chairside dental assistant —her daughter, Heather

Boothby, who has a degree in gerontology, just like her mother — and an office manager.

Boothby's business includes patients from all walks of life -- those on Medi-Cal as well as private pay.

About two-thirds of her patients are seniors. The others suffer from physical or mental ailments, which make it difficult, it not impossible, to visit a dentist.

As America ages, Boothby knows that the need for hygienists making house calls will explode. She hopes that California will have enough independents to meet the need.

Nursing Home Complaints

One of FATE's services is filing complaints with the state regulatory agencies on behalf of nursing home, residential care and acute care hospital patients and residents.

Some of these complaints result in the Department of Health Services citing these facilities for violations of Federal and State nursing home regulations. The following citations and deficiencies resulted from recent complaints.

CITATIONS AND DEFICIENCIES

Auburn Gardens Care Center, Auburn, CA... Class A Citation, Penalty Assessment

\$16,000. Facility failed to ensure adequate patient supervision to prevent an accident resulting in a broken hip, failed to provide adequate devices to prevent falls and failed to implement a plan of care. Violations presented an imminent danger that serious harm would occur.

Arden Rehabilitation & Health Center, Sacramento, CA.... Deficiencies. Failure to implement policy regarding catheter care, assessment of patient's rash and timely notification to the physician, delay in provision of dental care, lack of pharmacist's evaluation of the use of drugs and lack of assessment of patient bowel status.

Arden Rehabilitation & Health Center, Sacramento, CA.... Deficiencies. Failure to provide the required nursing hours, failure to perform full assessment of patient who fell two times and to address symptoms in the care plan, failure to ensure that patients was showered to maintain good personal hygiene, failure to ensure patient was assisted to the toilet in a timely manner, and failure to follow physician medication orders as written.

Arden Rehabilitation & Health Center, Sacramento, CA..... Class B Citation.. Failure to maintain an on-going assessment of Patient and did not notify patient's attending physician of a change in symptoms or of an unusual occurrence.

Arden Rehabilitation & Health Center, Sacramento, CA ... Deficiencies. Failure to ensure that patient received good personal hygiene and grooming as required and according to patient's plan of care.

Kaiser Hospital/ Morse Avenue, Sacramento, CA.... . Deficiencies. Violation of patient rights by administering antipsychotic medications without consent from the patient or surrogate decision maker and writing PRN (as needed) orders for physical restraints.

Mission Carmichael, Carmichael, CA Class B Citation with a \$1,000 penalty assessment.... Failure to administer medications and treatments according to regulations. Failure to document patient care policies and procedures. These failures had immediate relationships to the patient's health, safety and welfare.

CITATIONS AND DEFICIENCIES

Sierra Vista Hospital, Sacramento, CA ...Deficiencies. Failure to protect patients from harm and failure to report the incident. Patient was assaulted four times by another patient who was known by the staff to be assaultive.

Sonoran Rehabilitation and Care Center, Phoenix, AZ...Deficiency. Facility failed to monitor administration of medications.

Stollwood Convalescent Hospital, Woodland, CA...Class A Citation with a \$18,000 penalty assessment...Facility failed to provide patient with good nutrition and with necessary fluids for hydration; facility failed to identify patient care needs; facility failed to implement the care plan and failed to monitor signs and symptoms of high blood sugar and facility failed to notify the physician of any adverse changes in patient's condition.

SunBridge Brittany Care Center, Carmichael, CA ..Deficiencies. Failure to employ sufficient nursing staff to meet the minimum daily required nursing hours per patient. Failure to implement the policy and procedure for change of condition resulting in the family not being notified of transfer to an acute hospital where patient later died. Failure to evaluate intake and output records on a timely basis.

SunBridge Brittany Care Center, Carmichael, CA...Deficiencies. Failure to implement its "Scabies" policy and procedures related to follow up of potentially exposed individuals who had contacted scabies in the facility. Failure to provide the minimum staffing of 3.2 nursing hours per patient.

SunBridge Fountainview Care Center, Carmichael, CA...Deficiencies. Failure to provide each resident with sufficient fluid intake to maintain proper hydration and health.

Sunrise Healthcare Center (Lenox Healthcare of Roseville), Roseville, CA...

Class A Citation with a \$16,000 penalty assessment. Facility failed to identify an continually assess patient's change of medical condition relating to dehydration and failed to develop a care plan to insure patient was meeting nutritional and hydrational needs, which led to deteriorating condition necessitating acute care hospitalization.

Sutter Roseville Medical Center, Roseville, CA...Deficiencies. Hospital failed to have current written policies and procedures that address the prevention and treatment of pressure ulcers (bed sores) resulting in patient developing two pressure sores without the hospital initiating a plan of care.

Walnut-Whitney Convalescent Hospital, Carmichael, CA... Deficiencies. Facility failed to meet required staffing ratio of 3.2 nursing hours per patient.

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Your financial support allows FATE to continue its work. If you are able to make a donation, please send it in the enclosed FATE envelope. Thank you for your support to combat elder abuse.

Sincerely,

Carole Herman