

Age doesn't matter: the vulnerable adult statute in practice

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In March of 2008, 97 year-old Charles Bradley got pneumonia and was transferred from Everett Rehabilitation and Care Center to Providence Hospital. At Providence it was quickly discovered that Mr. Bradley had a "gaping, foul-smelling wound" where his penis once was. Mr. Bradley's son was immediately called into the room and questioned point-blank about whether he knew about his father's condition, and also whether he had in fact caused it. When the reaction of the son made it clear he had no idea what the doctors were talking about, one of the doctors called for a nurse to take pictures because the doctors "wanted to document that he came to us that way." Two pictures were taken, which would become some of the best physical evidence we had in this case. Mr. Bradley died of pneumonia and penile cancer two weeks later.

Over the course of 30+ depositions of Certified Nursing Assistants (C.N.A.'s), R.N.'s, the facility Administrator and other senior management, and also numerous informal interviews with former employees of the facility, it was determined what had happened. Over the last six to nine months that Charles Bradley lived at Everett Rehabilitation, Mr. Bradley developed the symptoms of penile cancer. The cancer began as a pimple on his penis, and then became a small open wound. Mr. Bradley's penis then slowly auto-amputated, falling off piece by piece into his adult incontinence pad. At least five, but as many as ten or more Everett Rehabilitation employees knew about this and saw it happening. The staff was not only changing his diaper at least once a day, but also showering him and helping him to the bathroom every time he went. During those six to nine months, although the staff knew about the problem, they documented it only twice, by writing two different abbreviated notes on the "M.D. Board" (the least urgent method of contacting the doctor). The staff never told the family, never verbally told the doctor, never called the hospital, and never offered any treatment other than occasional pain medication. One R.N. even testified that she "knew about the problem, but went on vacation and when I came back, I forgot about it."

Although the facts of the case were shocking, we had the following challenges: (1) Mr. Bradley was 97 years old and was not going to live long anyway; (2) the nursing home obviously didn't cause the cancer; (3) Mr. Bradley was, by all accounts, "difficult," "very private," and sometimes yelled at the staff and called them names; (4) the treatment options for penile cancer for a 97 year old are not good, and include a partial penectomy, and may well have been declined by Mr. Bradley anyway; (5) the doctor (who we chose not to sue) testified that he read the two notes on the M.D. Board and "was alarmed," but that when he asked Mr. Bradley about it Mr. Bradley said "it's all better" and "I don't want you to look;" (6) the nursing home records indicated that Mr. Bradley often told the staff that he was not in pain, and only occasionally took over the counter pain medication while he was there; (7) Mr. Bradley was now deceased; and (8) the defendants had a C.N.A. who intended to testify that he had multiple conversations with Mr. Bradley wherein Mr. Bradley told him that he knew what was happening, had made peace with God, and was "ok with it" (think "Dead Man's Statute").

We had the following facts in our favor: (1) Everett Rehabilitation's Administrator testified that the facility's employees had "neglected" Mr. Bradley. This was a key admission, which led us to argue that the requirements of the Vulnerable Adult Statute were instantly met, and that we were therefore entitled to actual attorneys fees and actual costs (which by the time the case was settled was by our calculations over \$500,000); (2) Mr. Bradley had a nice family; (3) our gerontologist and R.N. experts testified that there were numerous deviations from the standard of care; (4) various facility employees' testimony was vastly contradictory, ranging from "we never knew anything about it because he always held a wash cloth over his privates when we changed him," to "I knew but figured that someone else was treating it;" (5) our discovery showed that over the last year of Mr. Bradley's life, the defendants had cut C.N.A. hours while vastly increasing the number of high-acuity ventilator patients at the facility; and (6) Mr. Bradley was one of the only African-American residents, and was in a room at the end of the hallway on the far side of the ventilator patients, where he could easily be ignored. Essentially, the company had put profits over people.

Discovery showed that Everett Rehabilitation had been issued four separate Statements of Deficiency by the Department of Social & Health Services in the eight months prior to Mr. Bradley's hospital admission. The facility was repeatedly cited for harming residents, failing to supervise residents, and failing to notify family and physicians of changes in the residents' conditions.

The nursing home's defenses were (1) we didn't know about it because he wouldn't show us; (2) what we did know we put on the M.D. Board and therefore met our duty, and from there it was up to the doctor; (3) it was the doctor's fault; (4) it was Mr. Bradley's fault; (5) it wasn't painful; (6) there was nothing anyone could do for him anyway; (7) Mr. Bradley had a right to refuse care, and we honored that right; and (8) Mr. Bradley had accepted his plight and had made peace with it.

The case was venued in Snohomish County Superior Court before Judge Wynne. The case settled two weeks before trial for \$3,500,000 payable now. Plaintiffs would not agree to confidentiality. The settlement is the largest reported nursing home settlement in the State of Washington.

Our office consulted with attorney Matthew Boller of Madison, Wisconsin, regarding the nursing home's corporate structure, and attorney Phil Talmadge regarding appellate issues.

Defendant Everett Rehabilitation and Care Center is owned and operated by Defendant Sunbridge Health Care Corporation, Inc., of Albuquerque, New Mexico. Defendant Sun Healthcare Group, Inc., a publicly traded corporation, operates four other nursing homes in Washington and over 184 nursing homes nationwide.

James Gooding and Scott F. Lundberg, WSAJ EAGLE members, are shareholders at Graham Lundberg & Peschel. Mr. Gooding specializes in nursing home liability and trial work. Mr. Lundberg specializes in all other types of negligence and serious injury cases.