



Long-term care lawsuits: Sadly, a growth industry

Actions are increasingly based more on emotion and psychological trauma than true abuse or neglect.

BY DAVID HAHKLOTUBBE

Tragically, elder abuse is real and is on the rise. To make matters worse, barring any immediate cultural paradigm shift, the baby boom generation can expect to fall victim in larger numbers. As most of us understand, statistically, the vast majority of elder abuse is perpetrated by family and is fiduciary in nature. However, lawsuits against long-term care providers are on the rise as well, and, are increasingly based more on emotion and psychological trauma than true abuse or neglect.

Culture the culprit

When asked to review cases as an expert consultant, it pains me to see so much preventable loss of quality of life. For this, I fault our culture. Because we live in a society that values vanity and youth above most else, we fear aging, rather than acknowledge it, much less embrace it. All you need to do to confirm my statement is turn on the television. We are obsessed with “defying” aging and “getting back into the game.” God forbid that we grow a gray hair or form a laugh line. Truly, even as a gerontologist, I am afraid of my own outward signs of aging, anticipating that I will be treated very differently. While I pledge not to run to the “Just for Men” when the time comes, I also pledge not to go quietly into that good twilight.

Economy fueling the fire

Thus, being our current reality, it should come as no surprise that we spend

Recipe for Long-Term Care Lawsuits

David's Ingredients:

- 1 Entire culture based on vanity and youth that ignores the aging process
- 1 Long-term care industry focused on census and bottom line
- Unlimited Families in crisis being ignored, thirsting for education and guidance
- Handful Psychological traumas – fresh and painful
- Dash Disappointment
- Pinch An incident that commonly occurs in long-term care, otherwise expected

Directions:

Add all ingredients together at once. Be sure to do things like hike care fees unexpectedly, charge large move-in fees, co-mingle residents of different acuity in a confined space, retain clients beyond the facility's qualifications or licensing parameter, argue rather than be empathic and by all means, fan the flames by not hiring a qualified consultant to enhance your program with a plan for managing families through the transition. Sit back and watch as your facility's complaint and depositions land on my desk.

most of our time running from our aging process. (Newsflash: it always catches up to you!) And, yes, contrary to the typical American belief, “aging is a process, not an event.”

So, why is this statement so important? I believe that it is the cornerstone for much unnecessary litigation and loss of quality in our lives. If we collectively viewed aging as it is, a process, we would prepare for the obviously inevitable. Sadly, most people wait too long to place their parent or loved one into long-term care settings. In fact, most people that do seek out long-term care actually needed it six months to a year before.

With the current economy, Americans are waiting even longer. The end result is a more frail population entering into long-term care, which is a real recipe for disaster. In fact, the question shouldn't be, “Why are there so many lawsuits involving long-term care providers?” it should be, “Why wouldn't there be?”

Education is the panacea

As an avid reader, nothing bothers me more than a rant, no matter how well put together. While I like the passion that drives a rant, I hate walking away without a solution. So, what's the solution to this, you ask? Education. Education is the



Top 3 most common suit themes that cross my desk based on unaddressed psychological traumas by facility operators vs. true abuse or neglect:

- Falls – top of the list, without question. While falls can result in injury or death, it is completely out of the question to think or believe that falls are preventable. Whether the provider is foolish enough to claim that they have a fall prevention program or just not setting the family's expectations at a reasonable level and warning them that falls are to be expected, the result is the same: lawsuit. For the facility, the lawsuit will usually be settled out of court, with an increase in liability insurance premiums, if they have any – or, the lawsuit will put the facility out of business, if they don't.

- Elopement of those afflicted with dementia – again, regardless of the level of security in a facility, even the most cognitively impaired resident can manage to find a way from the home. The reality is that anyone with dementia is a flight risk. The rule of thumb is that while you can turn your back on a person, you should never turn your back on this affliction. Homes that claim to be “secured” are running a risk if they don't share this information with the resident's family members. Once again, the family's expectations must be set at a reasonable level.

- Death just prior to, or during, hospice care – the system is often partly at fault for this. While it is forbidden to force-feed or force-hydrate people in these facilities, it can be considered neglect and often is interpreted as such by the resident's family. Educating the family prior to the likely event of meal or fluid refusal, which is a natural part of the dying process, would set their expectations at a reasonable level.

While these are solid examples of cases that are potentially avoidable if facilities become more proactive and employ education to set reasonable expectations to minimize disappointment, the reality is – neglect and abuse does happen. The vast majority of the cases I read are legitimate and based on evidence of poor care. My goal is to minimize the suits that have no merit but still result in restitution. In these cases, there are no true victors.

— David Hahklotubbe

panacea to this situation. And, not surprisingly, there is a glaring lack of education available.

While many of these long-term care homes may not necessarily be guilty of any real abuse or neglect, they are certainly almost always guilty of not educating the families of what to expect. Most assisted living homes are so preoccupied with “census” that they don't spend the time to hold the hand of the family.

In my professional opinion, there is a triad of care. I refer to it as my “f” model, even though it's phonetic. The “f's” are: *Facility, Physician* and ... you guessed it, *Family*. In the initial certification course I

teach, I warn long-term care operators that they will have to expect to spend more time managing the family than their residents.

Trauma a factor

Why is this? Again, the question should be, why wouldn't this be the case? In the face of the chaos of navigating an “unexpected event,” the long-term care industry is confusing. Now, add the immense amount of common psychological traumas – here's my short list: Denial, Grief, Loss, Paranoia, Anger, Guilt, Shame, Self-Doubt, Cognitive Dissonance, Anxiety, Fear, Depression, Change, Disappointment and Projection, to name

a few, are all coexisting, in concert, with placement into long-term care.

Disappointment rings your phone

To say the least, these psychological traumas are volatile. The fuse is lit when the adult child or responsible party is faced with the mortality of their loved one, and through osmosis, theirs as well. When you read my solution the first time, it may seem overly simple, but you can't argue with success. The key in my opinion is to avoid *disappointment*.

Simply defined, *disappointment* is when expectations are not met. If you place Mom or Dad in a long-term facility and expect that they will acclimate immediately, enjoy their fellow residents, never fall or lose their laundry, not decline or receive true one-on-one care, you are on your way to having me read your case.

Again, *education* is cheap. I can vouch for that as a provider – and education is certainly cheaper than my rates are for reviewing your case. While I would happily give up this revenue stream if it meant that there would be a sharp increase in the quality of life for long-term care residents, I just don't think our culture is ready for this. So, I'll do my part, both in the classroom and in the courtroom.

Until then, age well my friends.



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