

The Dallas Morning News Rape Leads to Reform

Dorothy Cooper was a child of the Great Depression, one of eight children who went to work in the West Texas cotton fields after their father lost his railroad job.

Her schooling was sporadic, her life difficult. But Ms. Cooper was a survivor.

"She viewed her life as having been a hard one, but she was proud of learning to survive without welfare and knowing how to live on nothing," said psychologist Cynthia Martin Cannici.

Despite Ms. Cooper's independence, age and infirmity eventually sent the childless woman, who had outlived five husbands, to a Midland nursing home.

There, in 1993, the partially paralyzed 65-year-old was raped by a nurse's aide. She died the next year, one of thousands of people who finish their lives in long-term care facilities, unnoticed by the outside world.

Four years later, she has found a niche in history: Prodded by a lawsuit, the Denton company that owns the nursing home where Ms. Cooper was assaulted has agreed to set up a system named for her that is designed to prevent the hiring of known abusers.

Attorneys for Ms. Cooper's relatives say such a system might have prevented the assaults on Ms. Cooper: Her attacker had been fired from another of the company's nursing homes a year earlier for hitting a female patient.

Patient advocates say the Dorothy System is the first of its kind in the nation. The nursing home industry will be watching its implementation.

"It's an interesting concept," said Tom Suehs, director of the Texas Health Care Association, a trade group that represents about 80 percent of Texas' nursing homes.

He said he was waiting to see details but would like to explore the possibility of expanding the system: "We think anything that improves the quality of care and quality of staff is worthwhile."

Texas Health Enterprises, the largest nursing home chain in Texas and its parent, HEA Management Group Inc., agreed last month to implement the system and pay \$4.65 million to settle the lawsuit filed by Ms. Cooper's relatives.

The system will register employees fired for abuse and neglect over the last five years and in the future at all of the chain's 108 nursing homes. Job applicants will be checked against the registry.

The agreement was reached after a jury found the corporation negligent for hiring Johnny Gordon, the man convicted of raping Ms. Cooper. Texas Health Enterprises agreed that the rape was horrible but asserted that Mr. Gordon, not the company, was to blame.

No one who monitors care in the states more than 1,100 nursing homes expects the Dorothy System to be a cure all for patient abuse.

But Russ Schell of Dallas, an attorney for Texas Health Enterprises, called the system a step in the right direction.

"To be truly effective," he said, "it would need to be industry wide and probably, to be of optimal effectiveness, would need to include other healthcare organizations outside the nursing home industry, such as hospitals... As long as someone anywhere is willing to misrepresent their background, there is always a potential they will fall through a crack in the system."

But for the one chain, at least, the Dorothy System will plug a hole through which most patient abusers now slip, said David Marks of Houston, lead attorney in the lawsuit and the man who devised the system.

The Texas Department of Human Services keeps a registry of certified nurse's aides who have abused or neglected patients. But new employees at long-term care facilities can work for six months before they are trained and certified.

Lacking a Registry

No one registers uncertified employees, such as Mr. Gordon, who mistreats patients during the training period.

"That's the hole," Mr. Marks said. "The state doesn't maintain any information now on non certified nurse's aides and that's the area with the most history of abuse."

It would cost very little for the state to put such a registry in place, Mr. Marks said.

"When there is an allegation of abuse, the state is required to come out and do an investigation," he said. "The abuse is either substantiated or invalidated and the person accused of the abuse can appeal any findings. So the state already has the information."

But the Department of Human Services would want a legal opinion before implementing the system statewide, said agency spokesman Oscar Wise.

"We could put names of alleged perpetrators in the system," he said, "but would we legally be able to respond to queries about names? If these people haven't been convicted of anything, I doubt it would float."

Mr. Schell, the Texas Health Enterprises attorney, also warned of potential litigation by employees falsely accused and fired.

"This opens up the whole Pandora's box of employer employee litigation," Mr. Schell said. "I don't think anyone has thought it through all the way."

A nursing home employee's first six months on the job the months before certification are especially critical if the worker is new, said Lou O'Reilly, founder of Texas Advocates for Nursing Home Residents.

"Nursing homes are desperate enough to try to provide care that they are not looking at the people they are hiring," she said. "Aides are paid minimum wage. It's a rough job with no fringe benefits — there is a huge turnover."

"So families need to observe what is going on; watch for skin tears, overmedication and see if their loved ones are unclean or malnourished."

"But," she added, "50 percent of the residents have no relatives to visit, no one to monitor what is going on ... and almost 50 percent of the people who turn 65 this year will go into a nursing home. That is touching a lot of families."

A Classic Example

Indeed, Texas nursing homes have more than 126,000 beds. Ms. Cooper's case is a classic example of the missing safeguards, said Mr. Marks, the Houston attorney. Because she was partially paralyzed and incontinent, nurse's aides had to bathe her and change her soiled clothing. Mr. Gordon bathed her routinely.

Texas allows male aides to provide the most private care to female patients, but says a woman must be present. In consistently understaffed nursing homes, however, the requirement of a second aide is often ignored, Mr. Marks and Ms. O'Reilly said.

Because Mr. Gordon was not certified, his prior abuse did not appear on the state registry. Nor did required criminal background checks find his five felony convictions, including burglary, theft and forgery, apparently because of clerical errors.

Beginning in May 1993, daily nursing logs reported Ms. Cooper crying out at night, resisting when someone tried to change her clothing and trying to refuse baths. But Mr. Gordon continued to bathe her and to molest her. Descriptions of an assault using a shower head had jurors at the lawsuit trial in tears.

Only when attendants found semen on Ms. Cooper were the sexual assaults discovered. She told officials what had been happening and that Mr. Gordon had threatened to kill her if she told.

He pleaded guilty and was sentenced to five years in prison.

After two months Ms. Cooper was moved to a nursing home where her sister lived.

"She would sit in the lobby with her sister and take her hands and touch her sister's face, Mr. Marks said. "Somehow, I found that one of the most touching things about this case."

Mr. Marks focused on nursing home problems as a young assistant District Attorney in Galveston County and as a special prosecutor for the Texas attorney general. He now devotes his private law practice to nursing home cases.

He took Ms. Cooper's case and continued it after her death, he said, because he saw a potential reform.

"A very simple system could have prevented what happened to Dorothy," he said, "and could prevent future tragedies like that."

After Ms. Cooper died in 1994, distant relatives agreed to continue the case. One of them, Melissa Hasson, 29, operates a foster care home for elderly people in Aloha, Ore. She knew little about her "Aunt Dorothy," her father's sister and knew nothing of the assaults until Mr. Marks' office contacted her after Ms. Cooper's death.

"I was devastated," she said. "I couldn't even imagine something like that."

Oregon law requires certification for all nursing home employees, Ms. Hasson said. "That means before anyone could work in a nursing home. Period. Even in the kitchen. Even in housekeeping. You don't work until you are cleared."

Ms. Martin Cannici, a psychologist, studied Ms. Cooper's life for Mr. Marks in preparation for the lawsuit's trial. She said the rape case was one of the worst she ever studied because of Ms. Cooper's vulnerability.

"She had no escape from being in a nursing home facility," Ms. Martin Cannici said. "She had no one to rely on but the staff ... even in a different place, it was the same type of setting and she could never feel safe again."

Ms. Cooper's physical condition continued to deteriorate in early 1994. She was withdrawn and listless, Ms. Martin Cannici said.

"She could not speak, but responded when spoken to. She remained fearful during personal care, crying and giving a panicked look She died on Aug. 7."