

The Dorothy System: Tracking Nursing Home Staff Who Abuse Patients

On April 14, 1998, Texas Health Enterprises, Texas largest nursing home operator, agreed to pay \$4.65 million to the estate of a partially paralyzed woman who was sexually abused repeatedly by a male nurse's aide. This agreement was reached days after the company was found grossly negligent and ordered to pay the woman's estate \$2.75 million in actual damages for pain and suffering and mental anguish. Texas Health Enterprises, based in Denton, Texas, operates 109 facilities in Texas, including one in Midland, Texas, where the woman was a patient. The nursing home's parent company, HEA Management Group, Inc., was also named in the suit. *Fough vs. Texas Health Enterprises, Inc.*, No. 9540847362 (Denton County, TX District Court).

Dorothy Cooper was only 62 when, in January 1991, she suffered a stroke which subsequently resulted in her admission to the nursing home. She also suffered from diabetes, hypertension and glaucoma. Ms. Cooper, although incontinent, confined to a wheelchair and requiring assistance in dressing, was reported to be social and interactive with the nursing staff in the first two years at the nursing home, as well as alert and clear in speech and able to feed herself. However, by June of 1993, Ms. Cooper had been admitted to the hospital for acute bronchitis, chest pain, cystitis and dehydration and a diagnosis of presenile dementia was made.

Mistaken Criminal History Searches and Training Abuses

In 1991, Johnny Gordon, a 33 year old, six foot, 200 pound man with a criminal history and an outstanding health warrant for gonorrhea, applied to be a nurse's aide at the Texas Health Enterprises facility in Odessa, Texas. Under state law, the facility was required to request a criminal history, which it did, mistakenly classifying him as a female. Searched in state records as a female, no criminal history was found. Three weeks after he was hired he was fired by the assistant director of nurses for repeatedly slapping a frail and helpless 87-year-old female patient.

After some period of time in Kansas, Gordon returned to Texas and in October of 1992, he applied at another Texas Health Enterprise Facility, Terrace West, in Midland, Texas. The required criminal check was done, but the facility submitted a handwritten form to authorities with what looked to be the name "Johnny Cordon." The incorrect name came up clear of any record and he was again hired by the company. Instead of enrolling him in the required 80 hour nurse's aide training course, he was placed immediately in patient contact, despite a state law requiring that any nurse's aide not receiving certification within 120 days must be removed from patient contact.

In late May of 1993, Terrace West was cited for a training deficiency and directed to enroll uncertified nurse's aides, including Gordon, in a registered nurse's aide training and competency evaluation program. As a consequence, Gordon was required to attend the course at yet another sister facility, Terrace Gardens in Midland. Terrace West had been disqualified and prohibited by the state from giving the course due to its record of bad care practices. The training facility was required to do a criminal history check, which they failed to do. The administrator testified that they routinely did not do the required check. During the course, the assistant director of nurses who had previously fired Gordon for patient abuse was substituted in as the trainer. She recognized Gordon and reported him to the administrator of the training facility as well as to her own supervisor, but nothing was done.

Despite the fact, that as of June 15, 1993, Gordon was recognized and known by the company to be a patient abuser, he was assigned for the next month to provide care to helpless female residents, including assisting with showers and perennial care. Though company policy required a female to be present during all female patient showers, this policy was ignored and Gordon often gave showers without a female present.

Discovery of Sexual Abuse

On July 20th, while in the shower stall, Gordon brutally raped Ms. Cooper twice with a shower head, then returned her to her bed and relived himself sexually, spilling his semen across her body. It was this substance (reported as being on top of and in between Ms. Cooper's vaginal area and appearing to look and smell like semen) that alerted two nurse's aides who reported their findings to the nursing supervisor. But this observation was ignored, with testimony indicating that the nursing supervisor left for lunch and to shop for wallpaper. The two aides then reported their findings to a charge nurse who went to Ms. Cooper's room, did a visual check, decided it was a vaginal infection and called the physician who ordered Monostat suppositories. The aides remain concerned and demanded that the director of nursing call the police. Ms. Cooper was taken to a hospital emergency room where a sexual assault examination revealed bruising to her left thigh and vaginal area, which was tender to the touch and included a brown mucous discharge. She resisted an internal pelvic examination.

Johnny Gordon was arrested, pled guilty to the charges and was sentenced to five years in prison. Tragically, Gordon's sexual abuse was not confined to the July 20th incident. In May of 1993, nursing notes indicated dramatic changes in Ms. Cooper's behavior. She was withdrawing from staff, locking her legs in the bed rails, screaming at night as if having a nightmare and refusing personal care. Significantly, there was no evidence of this behavior at any time prior to May of 1993. Additionally, trichomonas was noted in a lab report that May.

Dorothy Cooper lived only one year following the discovery of her sexual assaults. In September of 1993, she was transferred, without a discharge care Plan for sexual assault, to another nursing home where her sister was a resident. Her post trauma symptoms of anxiety and agitation went ignored. She complained of lower back pain and leg pain, would cry out and moan, state she was cold, had difficulty eating and sleeping and had chronic vaginal infections.

The Trial

Trial evidence established that the defendant was negligent in hiring Gordon by:

1. Failing to check job references;
2. Ignoring a two year gap in his employment history;
3. Failing to verify his nurse's aide certification status with the State of Texas and the State of Kansas; and
4. Failing to submit the criminal history checks required under law.

It was undisputed that Gordon had previously served time in the penitentiary for felony crimes, which made him ineligible for employment in a nursing home.

Expert testimony was provided on the nature and duration of Ms. Cooper's mental anguish. A clinical specialist in psychiatric nursing, testifying for the plaintiff, stated that the traumatic nature of the abuse was a permanent injury due, in part, to the post trauma symptoms and the daily reminders of the assaults that were prompted by bathing and personal care. A defense psychiatrist testified it was a short term, upsetting situation (bothering her for two to three weeks), but did not believe that it persisted over a long period of time because her memory was impaired by vascular dementia.

The jurors found that Texas Health Enterprises and its parent company, HEA Management Group Inc., were negligent and that Texas Health Enterprises showed gross negligence.

The Settlement

In addition to the monetary settlement, the settlement agreement requires Texas Health Enterprises to institute a system that will enable them to identify employees fired for abusing or neglecting patients from sister facilities and to make a good faith effort to identify persons already in the system who fall into that classification. All new hires will be checked against the system. Although not required by the settlement, it was strongly suggested that the crosscheck system be named, "The Dorothy System," after Ms. Cooper. The heirs to Ms. Cooper's estate are her nieces and nephews, as Ms. Cooper's husband predeceased her and they had no children. The heirs joined together in an agreement contributing a significant portion of the award to the National Citizens' Coalition for Nursing Home Reform, based in Washington, D.C.