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Courtesy of Boice family lawyer

Joan Boice, with husband Myron on their 50th anniversary, died on Valentine's Day in 2009 after being moved to a nursing home.

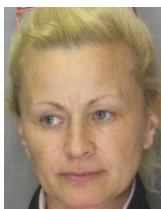
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Suit: Facility let woman 'waste away'

By Andy Furillo

afurillo@sacbee.com

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First came the little signs, such as her repeated failure to switch on the electricity strip that fired up her computer. Then she forgot to include a key ingredient to her traditional Christmas crinkle cookies.

More mental lapses made Joan Boice a hazard behind the wheel, and her doctor took away her driver's license. With an official diagnosis of Alzheimer's disease, her family opted to put her into assisted living.

In September 2008, she wound up at Emeritus at Emerald Hills in Auburn, which promises on its website to "always treat our residents as we would our own loved ones."

Three months later, when her condition worsened to the point that she had to be transferred into a nursing home, Boice's children discovered that "pressure ulcers" had formed on both of her feet, on her right hip and inside her right elbow. Four of them had turned into open wounds.

On Valentine's Day 2009, little more than three months after she had moved out of Emerald Hills, Boice was dead at 82. Her doctor listed the pressure ulcers as a significant condition contributing to her death.

Later in the year, her family filed a lawsuit in Sacramento Superior Court, charging Emeritus with elder abuse and wrongful death, a case that has since gone to trial and is now in its second month of testimony before Judge Judy Holzer Hersher.

In their presentation to the jury, the plaintiffs' lawyers have focused on the corporate practices of Emeritus, the largest assisted-living operator in the country. They charged that Emeritus' efforts to reduce labor costs and increase profits led to inadequate staffing and training – and its failure to discover Boice's bedsores.

"In truth, Emeritus is committed to one thing: becoming the largest long-term care provider in the world," plaintiffs' lawyer Lesley Ann Clement of Sacramento said in her trial brief. "Focused only on increasing revenue and acquiring more facilities, Emeritus systematically broke laws designed to protect frail elders."

Clement put on evidence that Boice was so infirm she never should have been allowed in the front door at Emerald Hills and that the facility was so understaffed there were nights when nobody worked the overnight shift in the memory care unit.

A mother, a retired teacher and a lifelong homemaker, Boice "was a victim of Emeritus' corporate empire-building," Clement said in the brief, neglected by Emerald Hills in Auburn "to waste away in bed."

In their brief, defense attorneys Kim M. Wells of Sacramento and Bryan R. Reid and Rima M. Badawiya of San Bernardino said that instead of a "corporate conspiracy," the case should be only about Boice, who already had been devastated by Alzheimer's by the time she got to Emerald Hills. When officials of the assisted-living facility found out she had pressure ulcers, they worked with her family to get her out of there as fast as they could and into a nursing home better equipped to accommodate her deteriorating condition.

"There is no indication that anything other than Mrs. Boice's underlying serious and declining medical condition led to her failure to thrive and eventual death," the defense brief said.

The Emeritus attorneys say the Auburn facility complied with state regulations for assisted-living facilities that require staffing to "be sufficient in numbers, and competent to provide the services necessary to meet resident needs."

"(T)here simply is simply no causal connection between any harm to Mrs. Boice and staffing," the Emeritus lawyers maintained.

Assisted-living market expanding

The Emeritus trial is taking place amid boom times in the assisted-living industry. Already in California, 164,824 seniors pay an average of \$3,513 per month to live in California's 7,757 assisted-living facilities, according to the California Assisted Living Association, numbers that are expected to accelerate over the next two decades.

As of 2012, roughly 20 million Americans were 75 or older. The figure is expected to double by 2040, according to the National Investment Center for the Senior Housing and Care Industry, an investor's guide for the assisted-living marketplace.

Some advocates for the elderly say that as more people move into assisted living, distinctions between residents are breaking down between the facilities.

Generally, healthier and wealthier private-pay "residents" have lived on flowered grounds in hotel-like common accommodations in assisted-living communities. Meanwhile, "patients" likely to be receiving some form of government assistance have received long-term care in the more heavily scrutinized nursing homes.

"Assisted-living residents are looking more and more like nursing home residents, yet there is not a regulatory system in place to protect them," said Toby Edelman, senior policy attorney with the Center for Medicare Advocacy in Washington, D.C. "Not that the nursing home regulatory system is perfect, but at least there is one."

The California Assisted Living Association says its residents don't need 24-hour care and that its industry should come under a different regulatory framework than one set up for nursing homes.

"Assisted-living regulations should be specific to this model of care and not replicate the institutional approach provided in nursing homes," association spokeswoman Heather Harrison said in an emailed statement. "Instead of creating more institutional settings, efforts should be focused on promoting and supporting innovative, person-centered care options in residential environments."

Short of a tougher regulatory framework, more inspections and stiffer fines for violators, it's up to the courts – and lawsuits like the one filed by the Boice family – to provide stricter oversight of assisted-living facilities, according to some advocates.

"That's the only way the industry is being held accountable," said Carole Herman, president of the Foundation for Aiding the Elderly, which claims the Boice family's attorney, Clement, as a board member.

Minor violations quickly corrected

With 477 "communities" in 44 states, including six in the Sacramento area, Emeritus is the largest

assisted-living provider in the United States. With 2011 revenues of \$1.25 billion, the company showed a positive cash flow of \$61.7 million, but interest to finance debt incurred on its acquisitions put the company in the red by \$111 million. Meanwhile, Emeritus' stock price has jumped from from \$7.61 in November 2008 to its close Wednesday at \$28.33.

Emeritus has been the subject of payouts, lawsuits and state legal actions in such places as Ridgeland, Miss.; Canton, Ohio; and Orlando, Fla. A San Antonio jury hit Emeritus with a \$19.5 million negligence verdict in 2005. Emeritus appealed the verdict, but settled with a payout of \$5 million, according to the company's filings with the Securities and Exchange Commission.

A check of state Department of Social Services records on Emerald Hills in recent years showed minor violations that the facility quickly corrected. One involved the reporting of a resident's fractured hip to the state. Another came for a failure to provide full blood pressure medication records to a resident's legal representative and for not administering them properly. State inspectors also found that the facility once improperly stored toxic cleansing materials and failed to lock away a resident's medications.

In the Sacramento case, it was Joan Boice's son, Eric, who told the jury about her life as a hardworking woman who raised a family and was married more than half a century before Alzheimer's took her down.

When his mother and his late father, Myron, moved into Emerald Hills in September 2008, she was still moving around OK, although with a walker, Boice said, and she certainly didn't have any bedsores, or she wouldn't have been admitted in the first place.

Within a couple of weeks after moving into Emerald Hills, Joan Boice fell down and injured her head, confining her to a wheelchair and her bed.

A former San Leandro police officer who now lives in Weimar, in Placer County, Eric Boice testified that it wasn't until his mother left Emerald Hills that her family learned of the dangerous, life-threatening extent of her pressure sores.

"I should have done more, to speak up for her, to defend her, when she couldn't do that herself," Boice said in tearful testimony in front of the jury.

Ex-VP testifies on profit motive

While Eric Boice described the emotional toll of his mother's death, it was a former vice president of Emeritus' operation in California who testified for the plaintiffs about what she viewed as a corporate bedside manner where the drive for profits governed care.

Susan Rotella held the vice president's job briefly – only five months. But it was still long enough, she testified, to hear Emeritus Chief Executive Officer Dan Baty refer to the company's California operation as "a s---hole." Rotella also said during her tenure from October 2009 through March 2010 that she met with executive directors of Emeritus facilities in California who complained about high turnover, "dramatic" vacancy rates and inadequate training. She said an "edict" had been put in place by corporate officials to cut labor costs by 10 percent.

Rotella testified that she had expressed concerns to upper management in Seattle, only to be told by Emeritus' vice president of operations, Chris Hyatt, she was a "troublemaker" who "was riling up the troops." Hyatt later asked her to resign, Rotella testified, with a veiled threat, saying: "This is a small industry. You know a lot of people in it. You have a good reputation, and I have never given a bad reference to anybody who has resigned."

She refused, and he fired her.

The defense countered with testimony from the former director of the memory care unit at Emerald Hills when Joan Boice lived there. Alicia Parga said she was never concerned about lack of staffing and that nobody who worked under her ever complained to her that there was too much to do.

"I never saw any signs of stress or anything unusual," Parga, told the jury, even when she paid surprise visits in the middle of the night.

The key issues at the trial are whether Emerald Hills ever should have accepted Joan Boice and if it was able to accommodate her deteriorating condition. Even more critical is when she contracted the pressure sores, which would have required Emerald Hills to move her out as soon as possible to a skilled nursing facility.

Plaintiffs lawyers say someone from Emeritus documented a pressure ulcer to her foot as early as Sept. 30, 2008. The defense maintains it wasn't until Nov. 14 that a physical therapist saw a pressure ulcer and alerted Boice's doctor, who ordered further treatment and an assessment leading to her move out of Emerald Hills.

Kaiser Home Health nurses, dispatched by Boice's treating physician, treated the wound six times before Emerald Hills officials and the woman's family found her a spot at Foothill Oaks in Auburn, where she died three months later.

Testimony in the case is expected to continue through next week.

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Sharon Jones

Emeritus at Emerald Hills is a wonderful community who deeply cares for its residents.

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iimki

I only read a few paragraphs of this article. Just could not take reading any more of how this poor woman was abused and ultimately passed away at the hands of people who did not care at all. There are just awful people in this world who treat people like crap. I hope these people reside with the devil when they leave this earth for all time and eternity.

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bworthington

I read the article and dont see any real signs of abuse - maybe not the best possible care they could have provided - some laziness - but NOT abuse documented here. When we get old - we can and usually do deteriorate fast. IT is very hard work to help and MAKE somebody move and fight bed sores; its one of the hardest things about taking care of someone who cannot get up and walk/that's bedridden. I have watched my elders pass and at some point its a never ending battle. Our bodies give up. We die. I am not callous and want the best treatment for me and my relatives - certainly not any abuse. But this is not really abuse in my eyes. Some negligence that perhaps the facility should be held accountable for, but bottom line is older people die and there's nothing that can be done to stop it. You cant blame someone for an old age death... its inevitable. In fact, from my view - we need to figure out a better way to end our lives - why should we lay around and die, using up resources, money, emotions for a bedridden life??! Dr. Kervorkian was right, just maybe went about it the wrong way= we need to find a way to honorably end life.

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trebelle

Negligence is abuse, and so is taking in residents you can't properly care for.

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