

# Falsified patient records are untold story of California nursing home care

mlundstrom@sacbee.com

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## THE SERIES

**Today:** *The practice of nursing homes altering patients' medical records masks serious conditions and covers up care not given. A Bee review of nearly 150 cases of alleged chart falsification in California reveals how the practice puts patients at risk and sometimes leads to death.*

**Monday:** *Don Esco sought skilled nursing care at a Placerville facility for Johnnie, his wife of nearly 61 years, when she was recuperating from a bout with pneumonia. She died 13 days later. Esco sued, alleging that the medical charts lied about Johnnie's treatment.*

A supervisor at a Carmichael nursing home admitted under oath that she was ordered to alter the medical records of a 92-year-old patient, who died after developing massive, rotting bedsores at the facility.

In Santa Monica, a nursing home was fined \$2,500 by the state for falsifying a resident's medical chart, which claimed that the patient was given physical therapy five days a week. The catch? At least 28 of those sessions were documented by nurse assistants who were not at work on those days.

In Los Angeles, lawyers for a woman severely re-injured at a convalescent home discovered a string of false entries – several written by nonexistent nurses.

Phantom nurses. Suspicious entries in medical charts. Phony paperwork, hurriedly produced after an injury or death.

It is the untold story of nursing home care: falsification of patient records.

While regulators have dogged facilities for years over fraudulent Medicare documentation, the issue of bogus records is more than a money matter. In California and elsewhere, nursing homes have been caught altering entries and outright lying on residents' medical charts – sometimes with disastrous human consequences, according to a Bee investigation.

Medications and treatments are documented as being given when they are not. Inaccurate entries have masked serious conditions in some patients, who ultimately died after not receiving proper care, The Bee found.

Fear of costly lawsuits has driven some nursing home administrators to re-create medical records to hide neglectful care.

"The idea that they chart things before they happen or make things up way after the fact if something hits the fan – those are things that we're familiar with," said Mark Zahner, chief of prosecutions for the attorney general's Bureau of Medi-Cal Fraud and Elder Abuse.

"And we see (this) with regularity."

Some of California's most experienced elder abuse attorneys, who sue nursing homes for civil damages, say that suspicious or sloppy record-keeping is so common they encounter some aspect of it in virtually every case they investigate.

While some states have aggressively pursued nursing homes that falsify records – imposing hefty fines and charging workers with felonies – California's enforcement efforts have steadily waned, or been short-circuited by the courts.

Falsifying a medical record is a misdemeanor in California, but nursing home workers are rarely charged criminally for the offense.

For state licensing workers, detecting phony records is time-consuming and difficult to prove, officials say. Records falsification is the least common citation issued to nursing homes by the California Department of Public Health, despite claims by attorneys and elder-care advocates that paperwork fraud runs deep.

"It's extremely prevalent," said Sacramento attorney Ed Dudensing, a former prosecutor who won a record \$29.1 million jury verdict last year against an Auburn nursing home.

"The thing that's so insidious about it is that it's become a part of the culture."

A Bee review of nearly 150 falsification cases – described over two decades in state-issued citations or in lawsuits – reveals that patients and their families often are the victims of records fraud in California nursing homes.

The most common patterns include:

- Covering up bad outcomes. A patient dies or is injured, and the nursing home staff or administrators rewrite the records to minimize blame or liability.
- Fill-in-the-blank charting. Overworked or lazy staff members take massive shortcuts, filling out charts en masse, not knowing whether treatments took place or if the information is accurate.
- Missing medicines. Medications are checked off as being given, but investigators later find unopened boxes or discrepancies with pharmacy records.

Less common, but appearing in civil suits, are accusations that staff falsify consent forms to sedate patients, or backdate forged documents agreeing to settle disputes through arbitration.

Representatives of the nursing home industry dispute the contention that falsification of medical records is widespread, or even a matter of concern.

"That's not even on our radar," said Deborah Pacyna, spokeswoman for the California Association of Health Facilities, whose members include more than 1,250 long-term care facilities. "I've been here two years, and I've never even heard of that as an issue."

In California, the vast majority of long-term care is done in skilled nursing facilities, or what are traditionally thought of as nursing homes.

The association's San Francisco-based attorney, Mark Reagan, who has represented numerous nursing homes in lawsuits, said that the organization "doesn't condone" sloppy or fraudulent record-keeping.

"But it's never been my experience that there's a pervasive problem with it," he said.

## **Human toll in false records**

Attorneys on both sides agree that a medical chart is an integral aspect of patient care – a changing, living record of big events and small.

The chart follows a patient, sometimes for decades. Other providers rely on its accuracy to determine care or revise treatment. An accurate chart leads to care. An inaccurate one can cover up the lack of care. Or even harm.

In long-term care facilities, a chart can become voluminous as staff members are required to chronicle everything from breakfast consumption to bowel movements to bumps and bruises and falls.

"The reality is, mistakes are going to happen when you have that much documentation you have to do," said Michael J. LeVangie, a Sacramento attorney who has represented the Horizon West Healthcare Inc. chain in numerous lawsuits.

"The bottom line is – and should be – was appropriate care given?" said LeVangie, who believes that records falsification is an "exaggerated issue" cooked up by lawyers who sue nursing homes.

Elder abuse attorneys contend that accuracy of the medical record strikes at the heart of patient care. For some of California's most vulnerable populations, they say, falsifying medical records has proved deadly.

A 77-year-old Cameron Park woman, Johnnie Esco, died in 2008 after suffering a fecal impaction so severe her rectum had dilated to 10 centimeters, or about 4 inches. The condition, in which the stool hardens and backs up in the body, is common in elderly or bedridden people and is known to be potentially fatal.

The woman's chart at the El Dorado Care Center in Placerville reflected that she had been having bowel movements in the days before her death – an assertion that medical professionals later said would be extremely unlikely, given the severity of her condition. Don Esco, her husband of nearly 61 years, and his three grown children sued, accusing the facility of falsifying, altering and improperly handling the woman's medical charts. The facility settled the lawsuit last year for a confidential amount. **(Story to be detailed in Monday's Bee.)**

"If anybody looked at her – and clearly, nobody did – they would've seen what was wrong with her," said Sacramento attorney Lesley Ann Clement, who represented the woman's husband of nearly 61 years in the lawsuit. "They could have saved her."

The nursing home, which since has been sold and renamed, argued in court papers that Esco arrived with numerous, underlying health problems and had been "regularly monitored and assessed" during her 13-day stay.

The death of a nursing home patient in Carmichael also led to a lawsuit, which attorney Dudensing described as a web of alleged deceit and collusion.

Calling it an "unparalleled case of elder abuse," Dudensing said Benno Ritter, 92, entered Rosewood Terrace Care and Rehabilitation in December 2005 to recover after a brief hospitalization for shortness of breath. Ritter was to recuperate at the nursing home on Fair Oaks Boulevard, then rejoin his wife at a nearby assisted-living facility.

Ritter's niece, Darlene Hoff of Sacramento, remembers how her uncle was moving around well with his walker when he checked in. His skin was intact, the lawsuit states, and the retired insurance company worker had never before had a pressure sore.

Eight days after being admitted, Ritter was found with gaping, blackened ulcers on both of his heels, indicating he had not been consistently repositioned, the suit states.

His condition worsened.

On Jan. 31, 2006, doctors at Sutter Memorial Hospital amputated his legs to save him from the raging bone infection. He died four days later.

"It was horrendous, absolutely horrendous," said Hoff. "He went through a lot of pain he wouldn't

have had to, had he been properly attended."

In a recorded deposition for the lawsuit, the director of nursing at Rosewood Terrace testified that she had been ordered by the facility's administrator – along with a corporate representative – to alter the medical records to indicate that Ritter had arrived at the facility with "softened heels." In reality, the nurse admitted, she had not seen Ritter upon admission and had "no memory of him ever having softened heels."

The corporate representative told the nurse "to falsify the medical records because the current records did not 'look good' and he was worried about a lawsuit," according to court papers.

Dudensing's lawsuit described numerous suspicious and "downright fraudulent" chart entries involving at least seven different employees.

The lawsuit was settled in 2007 for a confidential sum. Rosewood Terrace administrator Kyle Dahl did not return phone calls. In court papers, the nursing home denied any wrongdoing.

### **Were medicines given?**

Most patients do not die as a direct result of paperwork errors, though experts note that sloppy record-keeping with medications can be hazardous.

Last year, the state fined a Sylmar nursing home \$800 for making 12 false entries in a patient's medication record because none of the medications was available in the facility at that time, according to the state-issued citation. The woman missed multiple doses of four drugs used to treat high blood pressure and a psychiatric disorder.

In the last 10 years, the state has accused nursing homes of failing to give patients critical medications for Parkinson's disease, glaucoma, thyroid disorders and severe bedsores – despite charts indicating that they did, according to a summary of state falsification citations, collected by California Advocates for Nursing Home Reform.

"Instead of providing the care, they're creating records – creating an illusion that care was there," said Michael Connors, a long-term care advocate for San Francisco-based CANHR.

Connors and other elder abuse experts agree that fraudulent charting often can be traced to understaffing. Public documents reveal tales of chaotic shifts on which certified nurse assistants are scrambling to provide care.

The resulting medical records sometimes border on the absurd.

The Bee found several falsification cases in which nursing staff continued filling in the "activities of daily living" on charts of patients who were already dead.

In the Ritter case, a nursing supervisor documented that she performed a 35-minute treatment on the elderly man on the day he was hospitalized eight miles away, according to a lawsuit document.

"People die, people get the wrong medication, people don't get their medication for hours at a time – and they'll put in that they did," said Patricia L. McGinnis, executive director of CANHR. "These are very serious issues."

### **Falsification hard to detect**

State licensing officials and private attorneys agree that detecting falsified records – then proving fraud – can be difficult and time-consuming.

In the Ritter case with the lethal bedsores, attorney Dudensing hired a forensic computer expert to ferret out the paperwork sequence.

In Los Angeles, a team of attorneys that sued a Santa Barbara nursing home eventually uncovered five different versions of their client's chart.

But one piece of the puzzle grabbed their attention.

Attorneys Jody Moore and Russell Balisok represented Sylvia Saucedo, a retired housekeeper who had been recuperating from pneumonia at Mission Terrace Convalescent Hospital in Santa Barbara. Four days after being admitted in January 2009, she fell, suffering a permanent brain injury.

Moore and Balisok said they felt sure Saucedo had been assessed as being at risk for falls when she arrived, but the facility failed to take appropriate precautions.

The attorneys said they suspected that the director of nursing had rewritten the assessment to say Saucedo was, in fact, at low or no risk of falling when she checked in. If so, that would potentially diminish the facility's liability.

Shortly before trial, the attorneys said they suddenly realized that their copy of the director's assessment did not have enough holes punched in the margin to fit in the original binder.

"It was such an 'aha' moment," said Moore. "We thought, 'These records were never part of her chart.' "

A jury awarded the Saucedo family more than \$2 million in damages, which a judge later reduced.

"We trusted them with her care," said daughter Silvia Gutierrez of Santa Barbara. "The whole thing was just mind-boggling to me."

## **Enforcement is mixed**

The Department of Public Health's licensing and certification division is responsible for ensuring that nursing homes comply with both federal and state regulations.

Scott Vivona, chief of field operations for the division, said that the state provides some training in records fraud to its surveyors, most of whom are registered nurses.

The training has not translated into more citations for records falsification.

"Our people aren't handwriting experts," said Vivona.

Between 1990 and 1999, the state issued 180 citations against long-term care facilities for "willful material falsification," or doctoring records.

The next decade showed a dramatic decline in citations for fraudulent records. Between 2000 and 2010, the state issued only 29 citations for willful material falsification.

Trial attorneys and advocates for the elderly contend this dip in citations does not reflect better behavior by nursing homes.

"If you talk to a (Department of Public Health) manager of a district office, they would tell you: 'We see it, we suspect it a lot, but it's got to be black and white,' " said Michael F. Moran, an elder-abuse attorney in Anaheim.

Vivona said he isn't sure why nursing home citations for willful material falsification declined so steeply, while the total number of complaints and on-site inspections rose in the last decade.

"We don't certainly go out looking for them (falsifications)," Vivona said. "We're not auditors.

"When we do any kind of review, we're not looking at each and every record to see if there are falsifications. If we see it, then we go down that pathway."

The priority for surveyors, he said, is to respond to a complaint quickly with an on-site investigation – and to focus specifically on the nature of that complaint.

If falsification is discovered, he said, it often is a byproduct of a more common complaint investigation, such as nursing care or patient dignity.

Other states, though, do not rely on licensing workers to pursue falsification cases. The New York attorney general's office used hidden cameras inside nursing homes to expose abuses – and ultimately filed criminal charges against four workers for falsifying records to conceal neglect.

In California, however, a court ruling may have put a damper on similar efforts.

In 2004, the California attorney general's office relied on hidden-camera footage in an Escondido nursing home to charge 12 employees with felony elder abuse. Ten of the workers also were accused of the misdemeanor offense of falsifying medical records.

A year later, though, an appeals court found the employees had been improperly charged because the regulations applied to the facility's owners, not its workers.

Besides the chilling court ruling, another reason prosecutions are rare for falsifying records is that the statute of limitations often has expired by the time the attorney general's office gets involved, said Zahner of its Bureau of Medi-Cal Fraud and Elder Abuse. Even so, evidence of falsification can be used to buttress other criminal cases against nursing homes, he said.

### **Some families file lawsuits**

Absent many criminal prosecutions or vigorous licensing enforcement, some family members say they feel their only avenue is to sue the nursing home.

"If it hits them in the pocketbook, that's the only way they understand," said Marian Hollingsworth of La Mesa, in San Diego County, whose 86-year-old father was given high dosages of Ambien in a local nursing home.

In her lawsuit, Hollingsworth claims that the facility forged a consent form to administer the drug to her dad, Dr. Keith Blair. The form was "signed" by her brother, who denies doing so and did not have power of attorney, said Hollingsworth, who did have legal power of attorney.

A retired dentist, Blair was first admitted to Arbor Hills Nursing Center in July 2009 with dementia and then rapidly declined, becoming increasingly disoriented and confused, his daughter said. He died in September 2009 of renal failure after being severely dehydrated, according to the lawsuit.

After Hollingsworth complained to licensing officials about her father's care, the state determined that there was "no documentation to show the necessity for administering a dosage of Ambien ... which was two times the recommended dose for an elderly patient." According to the citation, the state found that the facility "failed to ensure that a signature was not falsified."

Part of the lawsuit has gone to arbitration, while the rest is headed for trial.

Kevin Eng, a Los Angeles attorney representing Arbor Hills, disputes the family's claim and said, "We have very credible evidence that the signature does belong to that family member." He noted that the state has not finalized its decision in the matter, and that Arbor Hills "continues to provide quality nursing care to all of its residents."

In March this year, the state licensing division cited Arbor Hills for willful material falsification and imposed a \$350 fine. The fine remains unpaid while the facility appeals.

It is the smallest falsification fine the state has levied in the past decade.

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*Call The Bee's Marjie Lundstrom, (916) 321-1055.*

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