NURSING HOMES JANUARY 9, 2017 4:00 AM

'All they got was a slap on the hand.' Is California low-balling penalties in nursing home death investigations?

Controversy shadows South Pasadena nursing home 7:05




BY MARJIE LUNDSTROM
mlundstrom@sacbee.com

Armando Reagan was 30 when he bled to death, rushed from a Southern California nursing home as blood soaked his sheets, pooled on the floor and as he pleaded with staff: "Help! Help! I do not want to die!" according to state public health records.

Paralyzed 11 years earlier in a drive-by shooting, Reagan, who was taking blood thinners, died later that day at a nearby hospital, where the emergency room documented profuse bleeding from bedsores in his groin.

Marleen Aparicio, a relative, assumed that the nursing home – Verdugo Valley Skilled Nursing & Wellness Centre in suburban Los Angeles – would receive the maximum punishment from the state: a Type AA citation and $100,000 fine, a penalty reserved by the California Department of Public Health for the most egregious deaths of nursing home residents.

Aparicio was mistaken. Instead, the department issued the facility a milder A citation and $20,000 fine over Reagan's death in July 2010, concluding that nursing home staff did not adequately monitor the young man for adverse drug reactions.

"To know he was crying out like that," said Aparicio, 61, a second cousin of Reagan, who had always called her "auntie." "All they got was a slap on the hand: 'Don't do it again.'

"They made a mistake and, oops, that's it?" she asked. "This is a mistake we know about. What about all the ones we don't?"

Controversy over how the state penalizes facilities over suspicious patient deaths has been simmering for years, with elder-care advocates pushing for tougher oversight and harsher fines. The nursing home industry, meanwhile, has maintained that inspectors for the Department of Public Health have been uneven in their approaches, depending on which district office is in charge of an investigation.

UNMASKED: SEE WHO OWNS EVERY CALIFORNIA NURSING HOME - AND HOW THOSE HOMES STACK UP

A critical new report from Disability Rights California, scheduled for release Monday, concludes that the state lacks consistent standards for issuing citations in residents' deaths, engaging in what Disability Rights attorney Leslie Morrison calls the "low-balling" of penalties.

Reagan's case was one of hundreds of nursing home deaths examined by the group, which says it identified a pattern within the department of issuing lower-level citations in death investigations.

The group, which also consulted with three medical experts in an in-depth investigation of seven deaths, including Reagan's, ultimately reviewed more than 2,000 citations dating back to 2000.

"We can't make heads or tails out of why this is getting an A, and then we looked at other ones that were getting double-A's. … It didn't make sense to us," said Morrison, director of investigations at Disability Rights California.

"I've been calling it low-balling, because that's what it feels like to me," she said. "They're low-balling the citation."

The result, the report contends, is that the public is being misled about the safety records inside certain facilities. Minimizing penalties allows substandard facilities to continue operating, the report states, while also depriving the state of potentially millions in lost revenue by reduced fines.

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

Ali Bay, a department spokeswoman, said the state could not comment on a report that has not been publicly released. But in an emailed statement, she said that "each investigation is unique," and in cases where citations may be issued, "additional review is conducted."

"Outcomes are determined on a case-by-case basis depending upon the set of facts gathered during the investigation," the department's statement read.

In California, a Class AA citation is issued if the state determines that conditions at the facility or staff misconduct were "a direct proximate cause" of a resident's death. Financial penalties range from $25,000 to $100,000 and, if a facility receives more than one Class AA citation within a 24-month period, licensing will move to suspend or revoke its license.

Class A citations are issued when the state identifies violations that pose "an imminent danger" to patients or a "substantial probability" that death or serious harm could occur. Penalties range from $2,000 to $20,000.

> **"IF SOMEBODY DIED BECAUSE OF STAFF CONDUCT – WHETHER IT WAS A DIRECT PROXIMATE CAUSE OR NOT – A DEATH IS WORTH SOMETHING. SOMEBODY DIED … SHOULDN'T THAT HAVE A HIGHER PENALTY?**
>
> Leslie Morrison, director of investigations, Disability Rights California

In its study, Disability Rights California reviewed all 2,033 Class A and Class AA citations issued to long-term health care facilities between 2000 and 2014. The vast majority, or 1,774 cases, were issued the milder Class A citations, even though 287 of them – or about 1 in 6 – involved a patient death.

During that period, more deaths were given a lower Class A citation than a Class AA, the report concluded.

"I don't understand, as a lawyer, how they're making these distinctions," said Pamila Lew, a staff attorney for Disability Rights California who worked on the report.

In a side-by-side presentation, the study lists 11 instances in which two citations appear to have strikingly similar circumstances – but different outcomes. Among them:

▪ A Riverside facility was given a Class A citation and $10,000 fine in 2014 after an 82-year-old resident strangled himself falling from bed while wearing a waist restraint. In 2002, a Sacramento nursing home was socked with an AA citation and $90,000 fine after a 90-year-old resident in a waist restraint died when her head got stuck in her bed's side rail. The facility eventually paid $55,000.

▪ Reagan's death resulted in a Class A citation and $20,000 fine in 2012 in the blood loss case at Verdugo Valley in suburban Montrose. Four years earlier, a Bakersfield nursing home was fined $100,000 and issued an AA citation when a resident, also on blood thinners, bled out from her gastrointestinal tract.

▪ A Carmichael facility got a Class A citation and $16,000 fine in 2004 after a resident became severely dehydrated and died. Two years later, a San Jose facility was slammed with a $100,000 fine and AA penalty after a resident there developed severe dehydration and died.

The report by Disability Rights California gives a nod to the state, saying the department already has implemented some of the group's early recommendations after the two sides met during the report's drafting. The state now gives the public immediate online access to citation information and the accompanying narrative. (Go to hfcis.cdph.ca.gov, scroll to "Public Inquiry/Reports," and select "Long-Term Care Facility Citations.")

But representatives of the group want more. Among other things, Disability Rights California is recommending that the state ensure it has consistent standards for issuing citations and "uniformly hold facilities accountable where staff conduct was a direct proximate cause of residents' death."

The report notes that Verdugo Valley was hit with two AA citations in connection with patient deaths in 2009 and 2014. Had Reagan's death in 2010 also received an AA citation, the state legally would have had to move to revoke or suspend the facility's license. Instead, the residents of the nursing home were left "at grave risk" and a third patient later died, the report stated.

Disability Rights also is recommending that California increase the penalty amount for all citations involving resident deaths, creating an additional citation level for those incidents where staff misconduct results in a death but there is insufficient evidence to say it was a direct cause.

"If somebody died because of staff conduct – whether it was a direct proximate cause or not – a death is worth something," Morrison said. "Somebody died … Shouldn't that have a higher penalty?"

That recommendation troubles the California Association of Health Facilities, the industry trade group. The group had not read the report last week but expressed concern in a written statement from president and CEO Jim Gomez that a new citation level for conduct resulting in a resident's death – but lacking sufficient evidence it was the direct cause – "is an unconstitutional proposition."

Lynne Hartman wants more accountability for nursing homes. In May 2010, her 82-year-old father died of strangulation at a Riverside nursing home, where he was in hospice care. Robert Francis Gorman, a retired building inspector who was at high risk of falls, died at Magnolia Rehabilitation & Nursing Center after he became entangled in a waist restraint and hanged himself falling from bed.

The facility was given an A citation and $10,000 fine. The Disability Rights' expert who dug into the case disagreed, saying "his death fits the absolute definition of an AA because of the way they used the restraints."

Hartman says the public needs a more rigorous citation system in California, particularly around patient deaths.

"If they're not classifying them (violations) correctly, when people go online to look up places, it gives them a false impression that the place is better than it is," said Hartman, a former compliance officer for a hospital.

"If you're going to have a rating system, it needs to be consistent, it needs to be well-designed and it needs to be followed to the letter."

Casey Cargill: 'She was basically treating herself'

Casey Cargill's sister killed herself while under the care of a South Pasadena nursing home. The Cargill family is suing the home, alleging she was not properly treated for her many mental health diagnoses.

Randy Pench - The Sacramento Bee

Marjie Lundstrom: 916-321-1055, @MarjieLundstrom

RELATED CONTENT

- Controversy shadows South Pasadena nursing home
- Nursing home magnate rocks Humboldt County with plans to close three of the area's six facilities
- Shifting population in California nursing homes creates 'dangerous mix'
- 7 case studies show nursing home lapses
- FBI raids Riverside nursing home
- Death of a patient: State blames nursing home
- Charges filed in south state nursing home death
- Troubled nursing home gets new ownership
- California's largest nursing home owner sued
- California's largest nursing home owner under fire from government regulators
- Nine stories from Rechnitz's California nursing homes
- Shlomo Rechnitz vs. California: Key documents
- Unmasked: See who owns every California nursing home - and how those homes stack up

PoliticsChatter

Inside Ivanka Trump's New D.C. Mansion
PoliticsChatter

COMMENTS

Sign In Using The Social Network of Your Choice to Comment

To learn more about comments, please see the Comments FAQ.

Terms Privacy Policy Social by Gigya

We thank you for respecting the community's complete guidelines.

3 Comments Subscribe · RSS

Marisa Conover 16 hours ago

Thank you Marjie Lundstrom for continuing to expose the disgraceful conduct of the California Department Of Public Health, whose history of their dismal failure to properly investigate serious abuse of patients in nursing homes continues to be a very serious threat to public safety. Thank you for also continuing to expose Shlomo Rechnitz, who also owns Roseville Point Health and Wellness Center where my Mother was egregiously forcibly injected with the powerful and dangerous antipsychotic drug Haldol, against her will and against my orders as her Durable and Medical Durable Power Of Attorney by an unscrupulous Nurse! She died just days later in an irreversible vegetative state. The National Union Of Healthcare Workers (NUHW) has a dedicated website, exposing the despicable allegations of neglect, abuse and death within Shlomo Rechnitz's nursing home chain. As a matter of public awareness, here is the website listing the facilities Mr. Rechnitz owns and the multiple news stories regarding his various facilities. How many more grieving families is it going to take?.....http://briuswatch.org

Reply · Share 0 0

Chris Hickman 23 hours ago

Further proof of the power of state unions.

You can kill people and still not get fired.