

# Dementia patient suffers permanent injuries as a result of assisted living facility's failure to supervise

Catherine Smith (name has been changed for confidentiality) was a dementia patient who resided in a memory care center at an assisted living facility (the facility will not be identified for confidentiality). She was a fall risk resident due to dementia and impaired safety-awareness. On January 29, 2023, Cathy broke her left hip and underwent open reduction internal fixation surgery the following day. She never walked again.

Cathy, of course, was unable to state what had occurred due to her advanced dementia. When the family asked the facility what had happened, they kept getting different versions from the various care providers. First, Cathy's daughter received a call from the head nurse of the memory unit. The nurse stated her mother had fallen in the bathroom. When asked what happened, the nurse advised that Cathy tripped on the bathroom rug and was found by an aide. On the following day the facility's Administrator called the daughter and stated there was liquid on the bathroom floor and that Cathy slipped on that. The aide had left Cathy alone for four or five minutes to give her privacy. When she came back to check on Cathy, she found her on the floor.

Cathy's son, John, went to the facility to gather his mom's belongings while she was in the hospital. While at the facility, he was approached by another aide who told John that Cathy slipped and fell while showering when the assigned aide was not paying attention. The aide was instructed by the facility to lie about the circumstances causing the fall. As a result of the aide's statement to the family, they contacted Searcy Denney attorney **Matt Schwencke** and requested his help in investigating a claim.

Mr. Schwencke first obtained the medical records from the facility and the treating health care provider. Notably, the first-responder's record from the 911 call indicated that the facility's staff told the paramedics that Cathy slipped and fell:

## Narrative

R16 responded to the above address for a medical call. **Upon arrival we were met by facility staff who state pt slipped and fell in the bathroom.** They directed us to pt's room where she was found lying supine on the floor. Pt was conscious and alert and appears in mild distress.

Pt states her name and that she fell to the floor and is having left hip pain. Per staff on scene she has a history as noted above. They state has no prior history of hip injuries or deformity. They stated she has dementia.

Pt assessment showed shortening and outward rotation to the left leg. Pt had positive PMS to the extremity. She states the pain to her left hip is 10/10 on a pain scale. Pt denies any head, neck or back pain and denies any LOC from the fall. Vitals obtained as noted above.

Pt IV was established and administered fentanyl for pain. Pt was placed onto scoop stretcher and lifted onto stretcher. She was transported on scoop stretcher and vitals monitored en route to the hospital. Pt states pain had subsided after medication administration. Upon arrival at hospital pt was transferred to hospital stretcher and removed from scoop stretcher. Pt was turned over to nursing staff, full turnover given.

The EMS record contradicted the facility's charting on the date of the fall. The head nurse entered a notation into the chart at 5:01pm that same day (two hours after the fall), which states:

**Note Text: Staff reported that resident fell.** Upon observation resident noted lying supine on floor in bathroom. Resident reports pain to left hip and lower back. No bleeding noted upon observation. **Resident states, I was trying to get up off toilet and lost my footing I guess,** EMS came to assess and resident was transported to \*\*\*\*\*. Resident alert, conscious and breathing. Daughter, \*\*\*\* notified via phone and states that she's on her way to meet resident at hospital.

Upon reviewing these records, Mr. Schwencke filed a complaint alleging a violation of Cathy's assisted facility resident rights. The claim was compelled to arbitration as a result of an arbitration agreement signed by the daughter as power of attorney. Depositions ensued. **(Continued on next page.)**

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The deposition of the head nurse confirmed that the floor was wet, and Cathy was being prepared for a shower. The nurse was confronted with her charting that failed to mention the wet floor. She had no explanation for the omission. The deposition of the aide gave yet another version of the events that transpired on the day of Cathy's fall. The aide testified that she was pulled from her normal shift in the ALF portion of the facility because nobody showed up to take care of the patients in the memory care center where Cathy resided. The aide testified that she knew she should not have left Cathy unsupervised on the toilet. However, she did go check on other residents because she was so concerned about the other residents being unsupervised at that time. The aide also confirmed that the memory care center was a dangerous place for its residents because of how woefully understaffed it was that day.

Despite the testimony of the care providers, the assisted living facility denied any wrongdoing regarding the claim. Prior to the start of the arbitration proceeding, Mr. Schwencke demanded that the insurance company tender the assisted living facility's policy limits of \$1,000,000. The insurer refused. As such, the claim proceeded to a two-day binding arbitration with Mr. Schwencke and Searcy Denney attorney **Guy Murphy**. The Claimant's nursing expert identified several breaches in the standard of care, regardless of the different versions of the events that transpired in the bathroom. In contrast, the Defendant's nursing expert contended that the standard of care was met regardless of what the assisted living facility's employees testified. The expert also claimed that Cathy did not require supervision in the bathroom. The Defendant also hired a medical doctor to claim that the development of Cathy's post-surgery bed sores were unrelated to her loss of mobility status.

At the conclusion of arbitration, the arbitrator awarded the full value of Cathy's medical bills paid by Medicare, as well as significant pain and suffering damages in the past and in the future. The total arbitration award was just shy of \$1.1 million, an amount in excess of the assisted living facility's policy limits. ♦

## Botched surgery adds years of efforts to resolve back pain

Veronica suffered with excruciating back pain for years and began treating with a chiropractor. Many therapies were attempted but none seemed to work. The chiropractor referred her to an orthopedic surgeon to see what else could be done to help her. On the first visit, the surgeon advised her to get minimally invasive surgery to fuse her spine. She agreed.

Unbeknownst to her, the surgeon chose the wrong type surgery to fix her pain. Even worse, the surgical hardware was put in the wrong space such that it was impinging on the spinal cord.

When she awakened after surgery, she could no longer feel or move her legs. Postoperative films confirmed that the hardware was NOT where it should have been placed by the surgeon. Her spinal cord had been traumatically and permanently injured. Her prognosis was grim.

She went to a rehabilitation facility to try to improve. For one year, she endured daily physical therapy and occupational therapy just to try to be able to feel and move her legs. She fought so hard for her independence. All she wanted was her legs to work. Unfortunately, her condition did not improve after discharge from the facility.

Veronica then sought an evaluation with another surgeon approximately one year later. He vowed to try to fix her and performed another surgery to try to decompress her spine. She had minimal improvement as it was too little too late.

After using a wheelchair and walker for years, she did finally graduate to being able to "walk" with special devices on her legs. She cannot be on her feet long and cannot yet drive or do simple activities of daily living herself. Her independent life as she knew it, had been destroyed.

Veronica reached out to Searcy Denney attorneys **Karen Terry** and **Sia Baker Barnes** for help and justice. The case was resolved for a significant confidential amount on the eve of trial. ♦

