

## My Mother's Nursing Home Nightmare

The following article is written by Laurie Kash, a private citizen who reported this issue to LTCCC and agreed to tell her mother's story, in her own words, once her case was resolved. The views and opinions expressed in this article are those of the author and do not necessarily reflect those of LTCCC.

My mother's story is one of a beloved and active 87 year old woman who walked into the Jewish Home of Rochester on February 13, 2006 and within a short time, became paralyzed from the chest down, while those entrusted with her care failed to take basic medical and nursing actions.

My mother, once an active and highly functioning woman, suffered a blow to her head in late 2005. Shortly after that fall, she suffered a loss of balance. On the recommendation of her physician she was admitted to the Jewish Home for rehabilitation so that she could regain the balance she had lost after her fall and return to living at home.



She did well for the first three weeks of her rehabilitation and was close to the point of being discharged. One night, the nurse caring for my mother failed to perform an ordered catheterization. My mother had to get out of bed in the middle of the night to empty her over-full bladder. She was unable to make it and was found on the floor by the nursing staff after slipping in her own urine. She complained immediately of back pain. No bed alarm was in place at the time, even though one

had been ordered.

For the next six days her complaints of pain increased, in spite of taking pain medications, and obvious signs of spinal cord involvement. She was evaluated by Dr. Larsson, the doctor in charge of her medical care at the Jewish Home, but no diagnosis was made. Pain medications were all that was provided to her.

She continued to decline. A week later, she was *continued on page 4*

## Improving Dementia Care *continued from page 2*

As of this writing, we are finalizing our report, which will include an overview of every state's informed consent laws and their relevancy if the Improving Dementia Care in Older Adults Act is passed.

This report, which will be available on [www.nursinghome411.org](http://www.nursinghome411.org), should be helpful to nursing home residents, their representatives and other stakeholders across the United States.



LTCCC is supporting the campaign by the National Consumer Voice for Quality Long-Term Care to pass S. 3604. To support S. 3604 as an individual, please go to [http://wfc2.wiredforchange.com/o/8641/p/dia/action/public/?action\\_KEY=8917](http://wfc2.wiredforchange.com/o/8641/p/dia/action/public/?action_KEY=8917). To support S. 3604 as a group, sign on to the Consumer Voice support letter [[http://wfc2.wiredforchange.com/o/8641/p/dia/action/public/?action\\_KEY=8918](http://wfc2.wiredforchange.com/o/8641/p/dia/action/public/?action_KEY=8918)]. □

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again found on the floor in her room by the nursing staff. Again, there was no bed alarm in place. She was again evaluated by Dr. Larsson. He sent her for a CT scan, which showed a fracture of one of her vertebrae. She returned to the Jewish Home after the CT scan but no treatment of her fracture and declining neurological condition was offered other than increased pain medication for her steadily increasing pain.

She was never evaluated again by Dr. Larsson or any other physician or nurse practitioner after the CT scan showed that she had the fractured vertebrae. In the next few days my mother's decline continued to the point that she could no longer bear weight on her legs at all. Since repeated pleas from her children to have her sent to a hospital and for more medical intervention went unheeded, the family asked an out of town relative who is also a doctor to come to see her.

This individual determined that my mother was paralyzed from the chest down. It had now been two weeks since the first fall. She was rushed to the hospital where it was determined that the damage to her spinal cord caused by the fracture, swelling and bleeding was now irreversible. She lived for an additional three years confined to a wheelchair paralyzed from the chest down.

### DOH Investigations

We complained to the New York State Department of Health (DOH) but after six investigations conducted by three offices into the handling of my mother's injury, most concerns were dismissed. The neglect was blatant, but DOH identified only one deficiency and rated that as causing no actual harm. It was apparent to outside expert physicians that there were repeated violations from the standard of care that is outlined in New York State. Nursing home staff repeatedly violat-

ed their own care plans. How could the three arms of the DOH fail so blatantly in their findings when violation after violation is staring them in the face?

### Pursuing Legal Action Under Article 2801-d

In 2008, after the sixth and final investigation came



to its unacceptable conclusion, I filed a Freedom of Information Act (FOIA) request to seek information from DOH on the basis for their conclusions. I was told that this information could not be released. At this point the family brought a legal action against the Jewish Home and Dr. Larsson in New York State Supreme Court in Monroe County which alleged negligence, medical malpractice and violation of §2801-d of the New York Public Health Law, a section added by the legislature in the 1980s to protect nursing home patients from abuse. The statutory claim was initially dismissed by the trial court but the Appellate Division, Fourth Department, determined on appeal that Mrs.

Kash was indeed entitled to make such a claim in addition to her other common law negligence and malpractice claims. The action was resolved after a jury was selected in New York State Supreme Court in October 2010. The details of the resolution of the case were to be kept confidential.

The family continued the suit after my mother's death for two reasons: first, to seek justice for my mother's physical and emotional pain and suffering; second, to see that this type of tragedy never happens again. We are dedicated to meaningful change in the laws on institutional oversight and meaningful implementation of the existing laws. Clearly, the DOH does not enforce existing minimal standards.

In light of the failures of the DOH it is my belief that families of loved ones should pursue legal action under 2801-d for nursing home neglect. It may, in many instances, be the only recourse to force nursing

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# Quarterly Enforcement Actions Against Nursing Homes

## Special Focus Facilities (SFF)

The federal Centers for Medicare and Medicaid Services (CMS) initiated the Special Focus Facility (SFF) program to address the widespread problem of nursing homes that have persistent, serious problems. Often these facilities exhibit “yo-yo” compliance: they correct problems found during a survey (inspection) but then are unable or unwilling to maintain standards and fall out of compliance again, repeatedly. From a consumer perspective, the SFF program can be a valuable tool to crack down on nursing homes that are persistently failing their residents and, by identifying and fixing (or removing) a state’s worst nursing homes on an on-going basis, eventually improve nursing home care overall.

Once a facility is selected for inclusion in the SFF program it receives special attention from the state, including a federally mandated requirement that the state conduct at least twice as many surveys as normal (approximately two per year). The goal is that within 18-24 months of being in the program a facility will either: (1) develop long term solutions to its persistent problems or (2) be terminated from participation in the Medicare and Medicaid programs. Termination usually means that a facility is sold to a new operator or closed. Due to resource limitations, only 136 nursing homes across the country are selected for participation in the SFF program at any given time. On average, states have about two SFFs; since New York is one of the largest states in the country it is supposed to have at least five.

Since CMS started to make the names of SFFs public, this program is an important tool that consumers can use to learn about facilities in their communities with persistent problems. The federal nursing home information website, Nursing Home Compare ([www.medicare.gov/nhcompare](http://www.medicare.gov/nhcompare)) now includes information on whether or not a facility is an SFF. CMS updates a list of all SFFs in the country quarterly. See <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/sfflist.pdf>.

Following is the latest information on SFFs in New York State.

### SPECIAL FOCUS FACILITIES IN NEW YORK STATE – As of December 31, 2012

The numbers in parenthesis indicate the number of months the home has been on the list and identified as an SFF.

Facilities Newly Identified as a SFF	Facilities That Have Shown Improvement <sup>1</sup>	Facilities That Have Not Improved <sup>2</sup>	Facilities That Have Recently Graduated from the SFF Program <sup>3</sup>	Facilities No Longer Participating in the Medicare & Medicaid Program <sup>4</sup>
None	Marcus Garvey Nursing Home (11)* Pleasant Valley (9) Van Duyn Home And Hospital (14)	Blossom South Nursing And Rehabilitation Center (19)* Rosewood Heights Health Center (9)*	None	Countryside Care Center (22)

<sup>1</sup>Nursing homes that have shown significant improvement, as indicated by the most recent survey. If the improvement continues for about 12 months (through two standard surveys), these nursing homes will graduate from the SFF list.

<sup>2</sup>Nursing homes that have failed to show significant improvement.

<sup>3</sup>These nursing homes have had sustained significant improvement for about 12 months (through two standard surveys). “Graduation” does not mean that there may not be problems in quality of care, but does generally indicate an upward trend in quality improvement compared to the nursing home’s prior history of care.

<sup>4</sup>These are nursing homes that were either terminated by CMS from participation in Medicare and Medicaid within the past few months or voluntarily chose to leave the program.

\*On the SFF list for the second time.

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homes to operate at a meaningful standard of care. I will always be grateful to our attorney, Stephen Schwarz of Faraci Lange for his diligent pursuit of justice, shining a light on the whole tragedy of what happened to our mother.

I promised my mother that we would continue to pursue her case even if she was not alive to see the case to its end. I hope that nothing like this can ever happen to a resident of a nursing home again.

My mother was a wonderful and courageous woman who deserved much better than living the

way she did for the final three years of her life. By winning the appeal on the Public Health Law claim she has also left a positive legacy to help others injured by nursing home neglect in the future to seek justice. I know she would have been very proud of that.

To see the YouTube interview about this case with WHEC TV News please go to this link: <http://www.youtube.com/watch?v=ifl4ZqOHQXI>.

For more information about my mother and her case search the Internet for “Gertrude Kash.” □

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