

JURY AWARDS \$12.5 MILLION VERDICT

By Joel Goldman
Hanson Bridgett, LLP

Over the years, we have stressed repeatedly how vital it is for communities to follow legal requirements pertaining to criminal background checks and to otherwise appropriately screen potential employees. This point was underscored recently when on March 1st, a California jury awarded \$12.5 million in damages to a resident. The resident, who had dementia, was sexually assaulted in her room by an employee who turned out to be an illegal immigrant. The employee was subsequently convicted of attempted rape pursuant to a plea bargain, and was sentenced to an eight year prison sentence. The award included \$6 million in general damages and \$6.5 in punitive damages and is purported to be one of the largest verdicts ever awarded for emotional trauma where there was no evidence of physical injury.

The jury determined, among other things, that the community had purposefully falsified employment documents at the time of his hiring as a dietary aid. The employee apparently had been given a master key to all resident rooms. There were also allegations (apparently accepted by the jury) of inadequate training, understaffing and the like.

There are obvious lessons to be learned from this case. First and foremost, it is absolutely imperative to follow legal requirements pertaining to criminal background checks. No employee can begin employment in a CCLD licensed facility until they have received clearance. Under no circumstance, not even a staffing shortage, should you to allow someone to start work without proper clearance. It is simply not worth the risk. It is also important to comply with the law pertaining to verifying eligibility to work. If obvious discrepancies appear in someone's application documents, you need to follow up. Another lesson from this case pertains to security issues. The distribution of master keys should be restricted. Particular care should be taken to protect residents with dementia who may not be able to articulate incidents of abuse.

It is also important to document employee training, including the special training requirements that pertain to those caring for residents with dementia. Even if, after the fact, you can demonstrate that appropriate training has been provided, you could still be cited for not having properly documented the training.

Finally, allegations of inadequate staffing seemingly arise (from both plaintiffs in lawsuits and from DSS in deficiency citations) anytime there is an unfortunate incident in a community. Providers are then left to scramble to try to demonstrate that staffing was adequate. Providers that utilize software systems that document the amount of care required by each resident and the amount of time that it takes staff to provide such care may be in a better position to be able to defend themselves in response to allegations of insufficient staffing.