

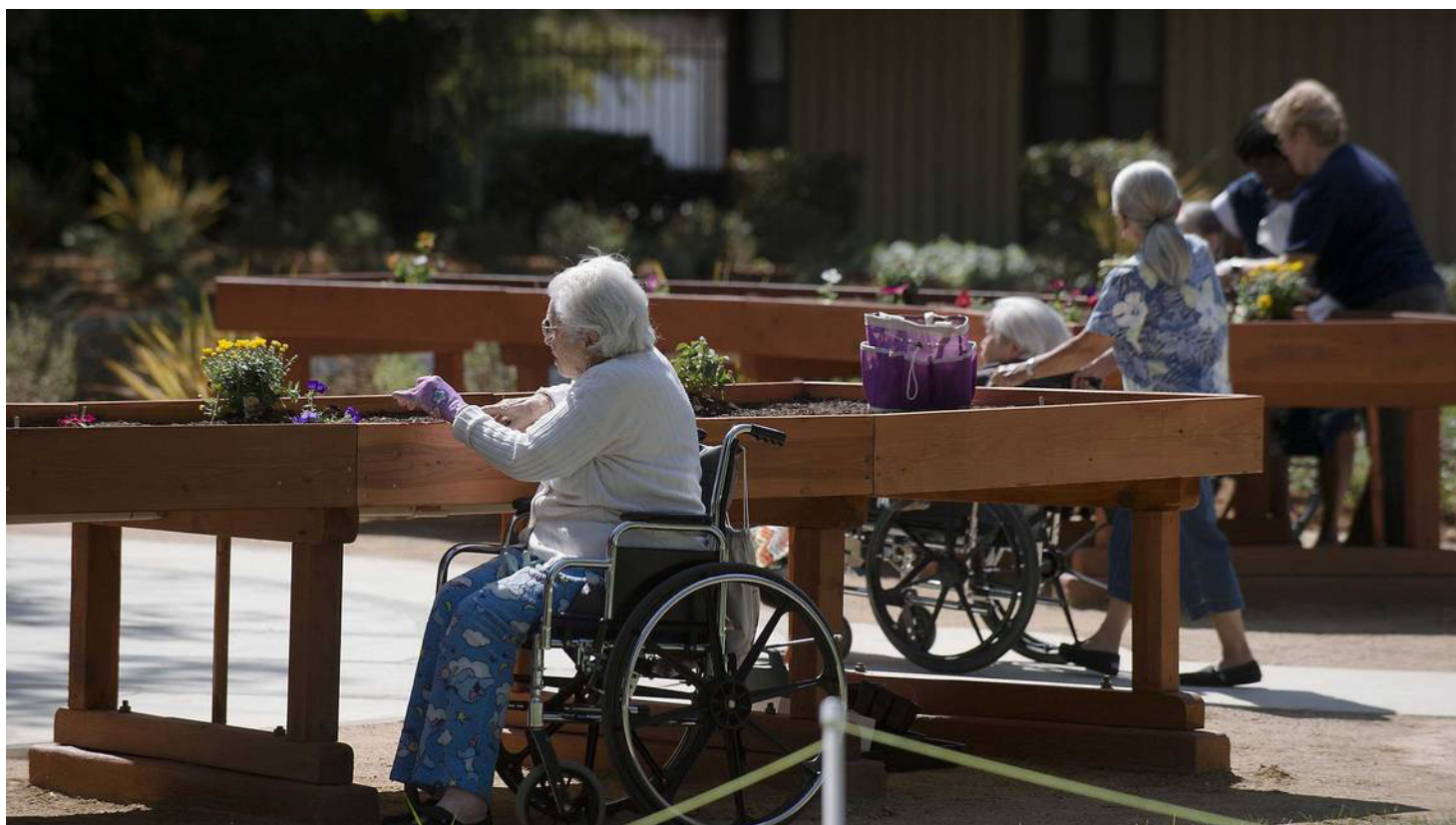


LOCAL

# Elder care giant's CEO on \$42.5 million verdict in elder abuse lawsuit: 'Eskaton will survive'

BY SAM STANTON

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Residents at an Eskaton Care Center in Sacramento in 2015. A Sacramento jury awarded \$42.5 million to the family of a woman who died after a brief stay at Eskaton's Orangevale assisted living facility. A lawsuit claimed the woman was given the sedative Ativan. RANDALL BENTON BEE FILE

In what one elder abuse advocate says is the largest verdict of its kind in Sacramento history, a jury has awarded \$42.5 million in punitive and compensatory damages to the family of a woman who died after being sent to live in Eskaton's assisted living facility in Orangevale.

The verdict – \$35 million in punitive damages awarded late Thursday on top of \$7 million in compensatory damages awarded last week – comes seven years after 77-year-old Barbara Lovenstein died because of what her family attorneys say was routine drugging of the woman with the prescription drug Ativan without her consent.

“Every morning she was given Ativan, which is a black box drug that you need informed consent to give, and after 26 doses she was so zonked out she choked (on chicken nuggets),” said Carole Herman, president of the Foundation Aiding The Elderly, who filed a complaint with the state in April 2012 against the Eskaton FountainWood Lodge.

The state Department of Social Services found the complaint that “resident medication not given as prescribed” was “substantiated,” and Sacramento elder abuse attorney Ed Dudensing began a long legal fight in Sacramento Superior Court that culminated with the jury awards.

Reached late Thursday, Dudensing declined to comment.

Eskaton CEO Todd Murch confirmed the company had been hit with a huge verdict and said “we certainly acknowledge there was a medication error.”

Murch said the verdict was “very discouraging and upsetting.”

“We’ve never had an experience like this,” he said.

But, he added, the 50-year-old Sacramento non-profit will survive.

“We’re very proud of our reputation over 50 years in the Sacramento area and proud of our employees and services,” Murch said Friday. “We do accept responsibility for our mistakes and we will need to work through this.

“My message to employees is we need to be open and transparent about what’s occurring, but we should all be proud of what we do. Eskaton will survive and continue to provide services for a long time to come in the Sacramento area.”

Herman said she believed the verdict was the largest ever in the county in an elder abuse case.

According to the original complaint filed by Dudensing in November 2012, Lovenstein was admitted to the facility on Feb. 24, 2012 “for short-term rehabilitation.”

Herman said Lovenstein had dementia and had been living at home with her sister. Lovenstein had previously been diagnosed with epilepsy and had a prescription for the sedative Ativan “that was only to be given for seizure-like activity,” the lawsuit said.

Four days into her stay, Lovenstein began refusing medications and within days staffers began administering Ativan “for her agitation.”

On March 5, 2012, staff asked Lovenstein’s primary care doctor for a routine dosage of Ativan for her, but the doctor denied the request, the lawsuit said.

“Even after Ms. Lovenstein’s physician denied the request for routine Ativan, FountainWood staff continued to administer Ativan every day at 6 a.m. for ‘agitation,’” the suit said.

By March 20, 2012, Lovenstein's sister, Jean Charles became so concerned that she took her sister to see the primary care doctor, the suit said.

"When Ms. Charles picked up Ms. Lovenstein for her appointment she was limp, unable to walk and had to be assisted into her vehicle," the suit said. "Ms. Lovenstein did even not recognize Jean or her physician."

Two days later, the sister went to the home to pack up Lovenstein's belongings and take her home, the suit says. But before everything could be packed, Lovenstein was given lunch, began to choke and was taken to the emergency room at Sutter Roseville, the suit said.

She was found to have aspiration pneumonia, was coughing up her lunch and could not swallow water, the suit said. She was discharged March 28, 2012, and died April 11, 2012.

Eskaton runs care facilities and residential communities throughout Northern California, and Herman said the problems with the Orangevale facility came down to one frequently seen in care homes: understaffing.

"The basic problem was that Eskaton FountainWood was insufficiently staffed and could not meet the needs of the residents," she wrote in an email. "Drugs are then used which is considered chemical restraints to control the residents so that staff does not have to deal with them."

The state's conclusion following its 2012 investigation was succinct: "Primary care physician medication orders and communication were not followed."