

Ms. Tonja E. Bivins
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February 28, 2023

Dear Senator Ron Latz and Representative Sandra Feist:

Good day.

I am submitting a written testimony to support a bill proposed at the Minnesota Legislature (SF997/HF1019), allowing claims of injury and death to survive the death of the decedent. My mother, Evangeline Cecilia Bivins (DOB February 26th, 1940 - DOD January 13th, 2021) was effected by not allowing her pain and suffering to survive her death.

Evangeline experienced pain and suffering, but her case could only recover limited damages for injury and death and not damages for pain and suffering because such claims do not survive.

The current law disadvantages our elder population greatly and does not provide incentive to promote quality care at the end of life.

Evangeline died due to negligence sustained in a Hennepin County LTCF (Long-Term Care Facility), resulting in severe pain from pressure injuries. Her claim did not survive, and under current law, her pain and her suffering could not be compensated. Based on the law, there is no incentive to provide treatment and to resolve claims but rather the law operates as the opposite incentive to potentially limit treatment unnecessarily and to wait out claims. Minnesota is the only state in the United States of America to not have claims survive the death of the individual.

As one of Evangeline's three children, I visited with and spoke to my mother on a weekly basis, if not more frequently than that during her time in assisted and long-term care. I attended all of her care conferences and advocated for occupational and physical therapies that could help. I was her Power of Medical Attorney, Medical Advocate and attended all of her doctor appointments, monitored her medication administration record and dosages. It was both of our wishes to have her return home as soon as I could arrange proper accommodation. I give the following account of the events that transpired over four months where Evangeline suffered neglect in care, neglect of her dignity and denial of her significance to those who her life mattered, which ultimately led to her death on January 13th, 2021.

History of Residences/Admissions:

Evangeline had several admission into Long Term Care Facilities, Transitional Care/ SNF, Assisted Living and Hospitals. Here is a list of her final admissions:

1. Evangeline was a resident of a long-term care facility (LTCF) from 10/1/2018 to 11/13/2020.
2. At my instruction, Evangeline was taken to the ED at a local Hennepin County hospital and admitted for care from 11/12/21 to 11/27/20
3. Evangeline was a patient at a second Hennepin County SNF where she was in TCU from 11/27/20 to 12/7/20.
4. I contacted and instructed EMS to have Evangeline removed from the second Hennepin County SNF and taken to the same Hennepin County hospital ED where she was readmitted on 12/7/20 to 12/30/20.
5. Evangeline was admitted to a private hospice on 12/30/20 through 1/13/21, where she passed away.

Bed Sore/Pressure Wound and Bone Infection:

In February 2020, while living in a LTCF, Evangeline started a light exercise program I set up for her. She was working with friends and a personal therapist to improve her strength and transfers. She was able to raise herself out of her wheelchair, lift dumbbells and seated pedal cycle machine.

During the week leading up to the COVID-19 lockout, I was told by the LTCF therapy department that Evangeline would be switched to a hooyer lift and stop using the EZ Stand. I objected because I knew this would further weaken her. They did not honor my request and proceeded with the change. Due to COVID lock out, her private exercise workouts stopped and I couldn't get any access to continue helping my mom and to ensure her needs were getting met. On the dates of October 20th and November 9th, 2020, she stated to me upon returning to the LTCF from doctor appointments, "Do not leave me here." At the time, I was in the process of building ADA compliant accommodations for her and trying to get my house safe for her return.

To take a step back, in July 2020 I was told by the LTCF staff that Evangeline had a moisture wound which they had been treating and got it under control. The LTCF staff chose not to correctly identify it a bed ulcer or pressure wound, Evangeline was kept either seated or in bed 24-hrs a day. They tried to heal the wound and in August asked to put her on an internal catheter. I requested that they use the Purwick external urinary collection system that I purchased to decrease the chances of infection. It took a month for the LTCF administration to approve using this device; she started using it in September.

In November 2020, I was told that the Purwick wasn't working and she needed a foley catheter. This started a conversation about the state of the wound, during which I requested a visual phone conference to see it. The wound was horrific and the outsourced wound doctor diagnosed it as a Stage 4 Decubitus Ulcer with bone

exposure, but no detectable infection from the administered x-ray test. Over the course of that week, my sister and I grew concerned that the LTCF didn't appear to be able to properly care for Evangeline. I went to the LTCF and called for an ambulance on November 19th to take her to a local hospital.

Evangeline was diagnosed with a coccyx bed ulcer and wounds on her feet, severe dehydration, malnutrition, infection and severe cognitive decline. The hospital would not test the wound, despite my numerous requests, and stated that the wound was unstageable. On November 26th I was contacted by the hospital LSW that they were discharging her to a SNF. I objected their decision by filing an appeal with Medicare which was denied. She was admitted to the new SNF from November 27th through December 7th, at which point I intervened, removing her from the SNF after I observed her through an outside window unwashed, uncared for and laying on a regular foam mattress. Discharge orders were for an air mattress. She was then admitted back into the same local Hennepin hospital.

From that point, through December 11th, Evangeline had been making improvements of food intake, talking, awareness, etc. The attending physician had provided me and our family information on tests that would help determine if bone infection. The first preferred method, bone biopsy, Evangeline declined. The second, an MRI, seemed risky given Evangeline's multiple implants and health issues. We were considering the third test, a CT scan, and wanted to discuss this further. I had a call with the next attending physician during the weekend of December 12th to 13th and again on December 14th, during which I informed the physician that if Evangeline approved to take an MRI, with her familiarity with such exams, I would approve as well.

On Monday, December 14th, I was contacted by the hospital LSW (Licensed Social Worker) to discuss her case and to determine our wishes for where she would be discharged. I explained that I would not send Evangeline to another SNF or TCU due to her condition caused by the neglect over the past 8 months of COVID lock-down, and that our wishes were for her to come home. The LSW emailed me a list of 3 options for care, including TCU locations and Private Care agencies.

On Tuesday, December 15th, a new, senior hospital LSW called and informed me that the doctor was planning to discharge Evangeline that day. I was taken aback because I wanted to discuss the bone infection test and had no opportunity to do so. Additionally, I had no information on how to receive and care for her in my home. She asked about my ability to provide 24 hours of care, and to that, I was clear that I couldn't provide private pay for 24-hours of care. I knew there were approximately 7 hours of CNA care available, and was planning on hiring 13 hours of daily care, while I covered the remaining 4 hours. I explained that I purchased a high quality hospital bed, rented an electric lift but had no other required equipment or supplies. I asked that I receive a care plan that outlines what is required for her case in durable equipment and consumable care products. I requested a checklist and the LSW stated she would talk with the bedside nurse to obtain this information. In working in Healthcare Information Systems,

I understand, by Policies & Procedures, a care plan has to be created and the patient and family/caregiver are to receive education on how to execute this plan.

The next call I received from the hospital LSW was at 3:11pm on Tuesday, December 15th, stating that Hennepin County Department of Adult Protection contacted the hospital and said that Evangeline would not be discharged as they were asserting legal guardianship over her to determine if she could be sent to a SNF. This removed me from my advocacy and any say in my mother's care or rights to her as my mother. I was told no additional information could be shared and that I was to wait to hear from Hennepin County within 24 hours. On Friday, December 18th, a Hennepin County Sr. Psychiatric Social Worker contacted me regarding a Civil Commitment and asked questions about my mother's dementia, socialization, and plans for her care. My mother was clearly unable to take care of herself and has been this way for years. I had a team of caregivers ready to receive my mother as soon as she was discharged. However, as I stated above, there had been NO CARE PLAN provided to me in order to know what this entailed. There had never been any prognosis that she could take care of herself, so I was confused as to why a Civil Commitment was in the hands of the court which sought to place her into a 24 hour care SNF, -the very same type of facility that had contributed to her bed ulcers and wounds. The Psychiatric Social Worker pushed the case to the county court.

On December 20th, I was contacted by the third attending physician, the doctor, who informed me that Evangeline was not eating and was not communicating. He stated that the pain she appeared to be in called for strong medication, to which I consented. Evangeline lost all of the gains she made up to Thursday, December 10th. She was not opening her mouth for food, medication or water. I was permitted as an exception to the COVID 44visitor policy restrictions. I later found out that someone removed me from her chart as the designated exception. Having a compassionate caregiver/essential caregiver should have been her right. Her chances of recovery were rated poor due to the the wounds and scant nutrition intake. It was clear that she was not going to survive the infection, so I was perplexed as to why I was not allowed to visit her to possibly provide comfort and some relief.

In an effort to get help from any organization or to find one single person willing to listen and assist:

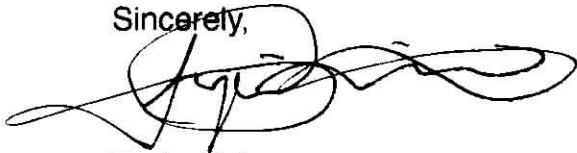
1. I called the MDH and learned that an investigation could be prolonged during the holidays and my mother could have been in the hospital up to 60 days as the investigation process moved on
2. I contacted the Minnesota Elder Justice Department for guidance and they referred me to the Senior Linkage line for assistance with drawing up a care plan and how to get additional assistance.
3. I contacted Evangeline's case manager from Medica, who was non-responsive. Initially she provided high-level estimate of services available to my mom, but then there was no contact. I also felt uncomfortable talking to her because I didn't know if she was part of the decision to call Adult Protective Services.

4. I contacted a legal firm as well to find out what levers exist in executing my mothers Healthcare Directive and also to determine what other remedy may be at our disposal.
5. I contacted news media for further help in obtaining any additional attention to this matter.

In conclusion, on December 29th, 2020, I was ultimately forced to agree to put my mother in a hospice and not remove her as a final action to resolve the unnecessary involvement of the court during the preliminary hearing. This condition was communicated to us by her uninterested court-appointed lawyer. Evangeline was moved to a private hospice on December 30th where she languished and succumbed to the coccyx bone infection seventeen days later on January 13th, 2021. As a result of Hennepin County's interference and over-reach, Evangeline was unable to have her final wishes honored by passing away at home with her family.

In a world where our capacity for compassion and humanity dissipates a little with the frequency of every tragedy, it is time that we stand against and prevent traumatic and chaotic events when possible. We must be moved to action to effect change. I am thankful for Minnesota's political leaders and their willingness and their commitment to fight for the debilitated and the elderly by passing this bill into law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tonja Bivins', with a large, stylized flourish extending to the right.

Tonja Bivins