

**SEYFARTH  
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**LeadingAge Maine & New Hampshire's  
2011 Senior Housing Conference**

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**Dealing with Good People in Bad Situations...  
Helping the Family Members**

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*"All happy families are happy alike, all unhappy families are unhappy in their own way."*

- L. Tolstoy, Anna Karenina

Is this true in the long term care context?

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**The Triple "D"**



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### The Angry Phone Call

**Transcript of 2 actual phones call:**

"Yes, Hi [administrator], this is [angry relative]. I just got your stupid a\*\* letter in the mail and I would like you to call me back and let me know exactly what I did to be escorted out of that f#\$%&# nursing home of yours you b\$@%\$! Call me back at 867-5309 and have a f%^!\$@! nice day you \$@#!!

You know what [administrator], you b!#less jerk! You don't have the \$!%@s to call me back, do you? Now that you killed my dad you son of a b%\$#@! Call me back you \$#&\*\$!

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### Difficult Family Members

*When Difficult Families Happen to Good Facilities;*

- *Jalowy v. Friendly Home*, 818 A.2d 698 (R.I. 2003)
- *People v. Marino*, 515 N.Y.S.2d 162 (N.Y. J. Ct. 1986)

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### *Jalowy v. Friendly Home*

**The Background**

- Plaintiff John's mother moved into the facility in 1992.
- Plaintiff John's brother, Joe, is mom's legal guardian.
- Joe and other relatives, except Plaintiff John, decided to move their mom into the home without telling Plaintiff John.
- Plaintiff John wanted mom living with him and he told all his relatives that and challenged his brother's accounting of mom's assets. Did not go over well and relatives stopped inviting Plaintiff John to family gatherings.

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*Jalowy v. Friendly Home*

**The Conflict**

- Shortly after moving in, Plaintiff John goes on a letter writing campaign.
  - ▶ Writes to administrator that two nurses took very long smoking breaks and neglected residents' calls for help.
  - ▶ Writes one state agency about concerns over resident safety and notes that he had to help a resident who had fallen out of bed.
  - ▶ Calls another agency with more complaints.
- State performs an unannounced visit and concludes that the complaints are unsubstantiated.

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*Jalowy v. Friendly Home*

**The Conflict (Continued)**

- Staff complains to administrator that they are afraid of Plaintiff John and he is calling them offensive and obscene names and threatening them with violence.
- On new year's eve, he had a fit and really caused a scene and the next day, Plaintiff John came back to the facility and was denied entry because the administrator felt that it was not safe and without a court order, he would be barred from the facility.
- Plaintiff John filed suit against the facility and administrator.

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*Jalowy v. Friendly Home*

**The Lawsuit**

- Retaliation – Plaintiff John says he was banned because he complained about their bad care.
- Plaintiff John sought an injunction to stop the facility from banning him. The judge allowed scheduled visits in the lobby four times a week for one hour per visit at the mother's discretion.
- Parties agreed to increase visits as mother's condition deteriorated.
- 2.5 years after her death, he amended the complaint and sued for unlawful retaliation and intentional and negligent infliction of emotional distress.

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*Jalowy v. Friendly Home*

**The Outcome**

- Facility found guilty of causing emotional distress.
- Plaintiff John was awarded \$50,000 in punitive damages.
- Plaintiff John wanted compensatory damages as well and sought a new trial.

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*Jalowy v. Friendly Home*

**The Outcome (Continued)**

- As a matter of law, this judge concluded that the facility's conduct was not so outrageous and extreme to warrant damages for emotional stress.
- Judge said that monitoring and limiting visits may have been inconvenient and offensive, but atrocious and utterly intolerable.
- Judge also said that it didn't meet the standard for punitive damages and took back the \$50,000.

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*Jalowy v. Friendly Home*

**The Outcome (Continued)**

- Went to the state supreme court, and found for the facility.
- Facility may have legitimate reasons for restricting or preventing unfettered access to residents especially if continued visits might cause the environment at the home to become more disruptive or unsafe.
- No right of access for visitors.

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*People v. Marino*

**The Background**

- Salvatore the Son, together with dad, the conservator, puts Mrs. Brunetti in a home. Mrs. Brunetti was senile and could not communicate.
- Daughter finds out about the move and tries to bring mom home with her. When this request was denied, daughter complained about the care to administrator and mom's doctor.
- Complaints could not be substantiated.

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*People v. Marino*

**The Conflict**

- During visits, daughter was disruptive. She dumped food on the floor; fed her mom sweets before dinner; claimed the food was poisoned; made racist comments to staff; pinched and pushed a nurse.
- Father and son instructed daughter could visit 2 days per week for 2 hours at a time and couldn't bring food from home. Request put in form of physician order by medical director.

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*People v. Marino*

**The Conflict (Continued)**

- Daughter was told about this limit but came for a third visit one week in July and was told that she was violating the doctor's order and had to leave.
- Daughter refused to leave and police were called.
- Daughter was arrested for trespass.

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*People v. Marino*

**The Lawsuit**

- Daughter argued that the order limiting her visitation was not legal because it violated her due process rights.
- Judge stated that "...a private nursing home has broad...authority to act upon the advice ...of medical personnel in...restricting the visitation privileges of a patient's family members, both for the well-being of the patient and the proper and orderly functioning of the institution."
- Judge also stated that "...defendant's desire to have unrestricted visitation...does not rise to the level of a fundamental constitutional right...."

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*People v. Marino*

**The Lawsuit (Continued)**

- "The nursing home's actions were not arbitrary but...were based upon ...physician's advice aimed at securing the welfare of a patient and securing the objectives of the nursing home institution for a benefit of other patients."

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**Lessons from Marino and Jalowy**

- Be wary when:
  - ▶ there is not a family consensus decision regarding the home;
  - ▶ there is a family history of extreme disputes or refusal to communicate;
  - ▶ The resident may not have been adjudicated incompetent, but his or her ability to understand and communicate is sometimes in doubt.
- Know who can speak for the resident.
- What do the cases tell us:
  - ▶ Court ultimately sided with the facilities;
  - ▶ Important to document behavior of disruptive relative and show how it impacts care and endangers everyone;
  - ▶ Can limit access, but not recommend terminating it entirely.

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**Techniques**

Know who to talk to:

- Family member priority
- Guardianships, conservator
- Power of Attorney
- Injunctions

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**Techniques**

- Manage expectations
  - ▶ With respect to care – Make sure families and residents understand what services can and cannot be provided;
  - ▶ With respect to fees – Make sure families and residents understand what the fees are at the start and how they may increase as resident requires more care.
  - ▶ Reduce risk by disclosing at admission what to expect.
  - ▶ Ensure admission agreement and handbook is clear and covers these issues.

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**Techniques**

- Don't shy away from Disruptive Family
- Document all incidents and communicate effectively with family members (especially the difficult ones) to make sure there is a record of communication.
- Don't let situation fester.

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**Techniques**

- Identify the triggering behavior and try to remedy it
  - ▶ If Resident is having trouble, check for infection, medication, boredom issues.
  - ▶ Consider changing staff around. Replace males with females or females with males.
  - ▶ Educate staff – if a resident often pulls the fire alarm, don't put them near it.
  - ▶ Make sure staff is getting enough rest and their frustrations are not causing resident problems.
  - ▶ Consider psychiatric evaluation/intervention of the people you are dealing with.
  - ▶ Educate the family.
  - ▶ Any changes that you make should be put into the care plan.

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**Techniques**

- If communication with relatives becomes difficult, consider a neutral third-party like clergy or ombudsman.
  - ▶ Create tools to monitor successes and failures to identify patterns.
  - ▶ Involve family in care. Do you e-mail relatives? Call them with good news?
- Make sure that you manage communication effectively.
- Work with Resident Council/Family Council to institute rules.

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**Techniques**

- Final options:
  - ▶ Send a "no confidence letter"
- Eviction
  - ▶ If you choose to evict, you need to be sure that you terminate the agreement in compliance with applicable laws. State law allows for eviction in only certain cases. Assisted Living facilities cannot terminate an admission agreement for no reason.
  - ▶ Also, must be sure to comply with all notice requirements.

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**Conclusion**

Questions or Comments?

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