

# Nursing home chain indicted

■ **Grand jury:** DA cites 'cesspool' of neglect involving six patients at sites in San Jose and Los Gatos.

BY SANDRA GONZALES  
AND ED POPE  
Mercury News Staff Writers

In the first such case in the county and possibly the state, a Santa Clara County criminal grand jury has indicted Guardian Post Acute Services Inc., of Northern California, on six felony counts of neglecting elder and dependent adults.

The company was charged over substandard

care given six patients, ranging in age from 37 to 82, at three of Guardian's facilities in Los Gatos and San Jose in cases that go back to 1996.

"We're not talking about complicated medical procedures but changing Band-Aids, cleaning patients and moving patients — which, if not done right, could result in patient deaths," said Deputy District Attorney Randy Hey, who prosecutes elder abuse for the county. "We found a cesspool; I

have never ever seen anything like it."

The case is unique because criminal charges were brought directly against the health-care corporation.

"We are shocked. It just feels like this is a Draconian, exaggerated response," said Robert Peirce, president and chief executive officer of Guardian Health Group. "We have not violated any criminal laws, and I am confident that will be proven."

While industry experts say the indictment could have a chilling effect on nursing home care, advocates for nursing home reform applauded the action, saying it holds corporate operators account-

able.

"It's incredible," said Pat McGinnis, executive director of the California Advocates for Nursing Home Reform. "We have long thought that owners and operators that provide substandard care should be found criminally negligent."

But Gary Macomber, president of the California Association for Health Facilities, which represents 1,600 long-term care facilities including Guardian, said the indictment could put nursing-care home operators out of business.

"This is potentially double and triple jeopardy," See *GRAND JURY*, Page 4B

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said Macomber, pointing out that nursing care providers already are subjected to several-thousand-dollar fines for violations under federal and state standards. "If you're going to be subjected to criminal charges, too, you've got to question the wisdom of what you're doing."

Hey said he understood that concern, so officials investigated Guardian at every standpoint. "We made sure it was something that was not isolated but endemic to the facility," Hey said, adding that they found at least 60 serious health care violations.

The corporation operates 16 skilled nursing homes in eight Northern California counties, including four facilities in Santa Clara County and one in Salinas with 1,600 patients. Corporate officials say the district attorney's action could threaten the entire chain.

If the corporation is convicted of the charges, it probably would lose its ability to collect reimbursement under the state's Medi-Cal program because it has a single license for all its homes, said Albert Quintero, district manager of the San Jose district office for licensing and certification.

Guardian also could be subject to penalties of up to \$20,000 for each felony count. The firm also could be prohibited from participating in the federal Medicare program for up to five years.

While the Alta Bates medical group in Berkeley owned it, the chain was a non-profit operation. It converted to for-profit status under the current ownership. Peirce said the corporation has invested more than \$10 million in improvements throughout the chain since 1994, including a \$1.8 million renovation of Guardian Los Gatos.

It was there that the district attorney's office launched its probe in March after personnel at an acute-care hospital allegedly found maggots around the feeding tube of a woman who had been transferred to the hospital by the nursing home.

Investigations that led to the indictment were then conducted by San Jose police, the attorney general's office and the licensing and certification department.

Peirce said the home had treated the patient, who had a number of health concerns, twice before. He said her family was attentive and often took her outdoors, including on the day the maggots were found. He also said it was the nursing facility that sent her to the hospital that day.

In some of the instances the patients developed severe bedsores or were left to lie in their feces and urine, for hours at a time, prosecutors assert. One patient was allegedly sexually assaulted by a member of the staff, and three patients died after they were removed from Guardian, authorities said.

"I found a hellhole," said Arlene Myers, who said she had found her 82-year-old mother lying in feces, or writhing in pain because she had not received her medication at the Los Gatos facility on Samaritan Drive. "I would have to go in there and demand that she be cared for. I think she would have died if she would have stayed there."

Peirce defended the care given in

the chain's facilities, saying: "We have very high standards, and we feel badly anytime a patient feels he or she did not receive the best possible care."

In each of the instances being prosecuted, the health department had cited and fined Guardian several thousand dollars and set a procedure for compliance. But Quintero said the pattern of neglect had not been sufficient enough to trigger the revocation of Guardian's license.

Guardian has been in business since 1975, "and we've never experienced anything like this before," Peirce said.

Since 1994, a combination of private investors and employees of Guardian have owned the chain. The former owner of most of the homes, Alta Bates, also retains a small interest.

Contact Sandra Gonzales at [sgonzales@sjmercury.com](mailto:sgonzales@sjmercury.com) or (408) 295-3983. Contact Ed Pope at [epope@sjmercury.com](mailto:epope@sjmercury.com) or (408) 920-5641.