

Reducing Liability Associated With Law Enforcement Engagement With Elderly Dementia Patients

OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss resulting from a claim involving use-of-force by law enforcement.
- Discuss CIRMA's and other resources on reducing liability associated law enforcement engagement with elderly dementia patients.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

INCIDENT BACKGROUND

On the date of the incident, the claimant, a 72-year-old woman with dementia, entered a local retail store. After walking around the store and selecting a few small items, the women proceeded to the front of the store and exited the store without paying for the items in her hand. Once outside, she was approached by store loss prevention staff, and after a few moments, the women turned and walked away from the loss prevention staff. As a result, the loss prevention staff contacted the local police department. Upon arriving at the store, the police officers observed the woman walking through the parking lot. After a brief interaction with the woman, the officer goes "hands on" with the 72-year-old woman and brings her to the ground, at which point the woman began screaming. The woman is subsequently taken into custody, and after several hours of being left in a cell handcuffed and screaming, the woman is released to her daughter. Upon release, the woman complained about her arm and shoulder. She was immediately taken to the hospital by her daughter, where she was ultimately diagnosed with a broken arm and dislocated shoulder.

INVESTIGATION

- The claimant is a 72-year-old woman with diagnosed advanced dementia.
- Store surveillance systems recorded the woman entering the store and wondering around the store.
- The claimant is observed picking up small items at various locations throughout the store and holding them item in her hand.
- Total value of the items equaled \$14.88.
- After several minutes, the claimant is observed walking toward the front of the store, where she subsequently exits the store with the items in her hands.
- Once outside, the claimant is approached by the stores Loss Prevention staff.
- After several minutes of what appears to be the woman and Loss Prevention staff talking, the woman turns and walks away from them.
- The store Loss Prevention Staff calls the police department and informs them that a woman has shoplifted items from the store and is refusing to cooperate and return to the store with the items.
- Upon arrival at the store, the police officers observe the claimant walking around the parking lot.
- As the police officers approach the claimant, they begin yelling commands for her to stop, which she does. However, the claimant appears to be scared and confused.
- The officers begin asking multiple questions and are observed through the body worn cameras to be become increasingly frustrated with the claimant when she could not answer her questions.
- After several minutes of the officer continuing to escalate the situation, the woman turns to walk away.
- The officer then "goes hands on" and pushed the claimant to the ground.
- Once on the ground, the officer continues to use physical force and yanks on the claimant's arms while pushing her into the dirt. Eventually, the claimant's arms are behind her back and she is handcuffed.
- The claimant is pushed into the back of the police car and transported to the police department.
- While screaming, the claimant is placed in a cell, handcuffed, for several hours, before she is released to her daughter.
- The claimant tells her daughter that her right arm hurts and is taken to the hospital, where she is diagnosed with a broken right arm and dislocated right shoulder requiring manual reduction.

INTERNAL AFFAIRS INVESTIGATION

- The claimant's daughter filed a complaint with the Internal Affairs (AI) department, specifically expressing concern over the excessive use of force used on her mother.
- The IA investigation found that there were significant failures on the officer's part to recognize the claimant was cognitively impaired and used excessive force when the claimant was on the ground.
- Further investigation showed that the officers engaged in behavior unbecoming of an officer when the body camera video revealed comments and jokes being made about the claimant:
 - One officer is heard telling the other officer to get ready to hear the “pop” when the claimant's arm is broken. Again, the officer asked one of the other police officers “did you hear it?”
 - Another angle from another officer's body camera shows the officer watching the video and fist bumping as the woman is “taken down”
- The officers never called for medical assistance or assessed the claimant to determine if she was injured during the use of force
- The IA investigation determined that the officers did not act according to police and engaged in an excessive use of force.
- Two (2) officers were subsequently charged under Sec. 53a-59a. with assault of an elderly, blind, disabled or pregnant person or a person with intellectual disability in the first degree, a Class B felony

Sec. 53a-59a. Assault of an elderly, blind, disabled or pregnant person or a person with intellectual disability in the first degree: Class B felony: Five years not suspendable. (a) A person is guilty of assault of an elderly, blind, disabled or pregnant person or a person with intellectual disability in the first degree, when such person commits assault in the first degree under section 53a-59(a)(2), 53a-59(a)(3) or 53a-59(a)(5) and (1) the victim of such assault has attained at least sixty years of age, is blind or physically disabled, as defined in section 1-1f, or is pregnant, or (2) the victim of such assault is a person with intellectual disability, as defined in section 1-1g, and the actor is not a person with intellectual disability.

INJURY AND DAMAGES

As a result of this incident, the claimant suffered the following injuries:

- Broken right arm
- Dislocated right shoulder
- Emotional distress

The plaintiff's daughter filed a notice of intent to sue, with an initial demand of damages for \$1,000,000 and medical and legal expenses.

CONCLUSION

Dementia is a general term for loss of memory, language, problem-solving and other thinking abilities that are severe enough to interfere with daily life. Alzheimer's is the most common cause of dementia.

Dementia is not a single disease. It's an overall term to describe a collection of symptoms that one may experience if they are living with a variety of diseases, including Alzheimer's disease. Diseases grouped under the general term “dementia” are caused by abnormal brain changes. Dementia symptoms trigger a decline in thinking skills, also known as cognitive abilities, severe enough to impair daily life and independent function. They also affect behavior, feelings and relationships.¹

Memory impairment can hinder the ability to remember to pay for items. People with dementia may walk out of stores without paying, unaware of any wrongdoing. Confronting the person is not recommended. Instead, ease the person out of the situation, and try to resolve the matter with the store manager and caregiver.²

If you encounter someone showing signs of Alzheimer's disease, the person may seem uncooperative with no memory of what happened, despite easily verifiable events. Because Alzheimer's disease affects the part of the brain where memory is stored, the individual may be unable to answer your questions or understand the seriousness of the incident.²

¹ <https://www.alz.org/alzheimers-dementia/what-is-dementia>

² https://www.alz.org/national/documents/safereturn_lawenforcement.pdf

KEY RECOMMENDATIONS/ACTION ITEMS

CIRMA Risk Management is seeking feedback from the Law Enforcement Advisory Committee on the following recommended best practices to prevent these incidents from occurring:

- Provide ongoing and regular training regarding interacting with at risk populations; those with cognitive disease; specifically recognizing dementia.
- Identify yourself as a law enforcement officer, and explain why you've approached the person.
- Maintain good eye contact.
- Speak slowly in a non-threatening, low-pitched voice.
- Ask one question at a time, allowing plenty of time for response.
- Ask "yes" and "no" questions.
- If safe to do so, avoid immediately using restraints; confinement may trigger agitation, which may compound confusion and disorientation. Restraints should be used only as a last resort for the safety of the individual or others.

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.