



MARYLAND'S BUSINESS & LEGAL NEWS SINCE 1888

The nursing aide's tale

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Luzviminda Malacas may have been forgiven for thinking someone was playing a prank on April Fools' Day last year when she was sentenced to two years in prison.

For starters, she maintains she didn't even know she was on trial when she took an hour off work to put in an appearance at Harford County District Court.

Malacas, who worked as a certified medicine aide at the Mariner Health of Bel Air nursing home, had already faced down an administrative hearing into allegations that she had physically assaulted a patient; she says she had no idea she faced criminal charges as well.

She was wrong, as she realized when she was convicted of second degree assault and abuse of a vulnerable adult.

But this is only the beginning of a convoluted tale — featuring, among other things, a good Samaritan who came to Malacas' aid — that raises questions about the role of many people involved in that trial, including her lawyer and the assistant attorney general who prosecuted her.

Ultimately, the tale has a happy ending for Malacas. The day before a *de novo* trial at Harford County Circuit Court last month, the attorney general's office dropped the charges against Malacas, claiming that new evidence



A lawyer for Luzviminda Malacas, shown here after her license suspension was lifted last week, says he agrees that allegations of abuse at nursing homes have to be taken seriously — but that in his client's case, prosecutors ignored several 'red flags' pointing to her innocence. Malacas was convicted in district court and sentenced to two years in prison, but prosecutors dropped the case against her shortly before her trial *de novo* in circuit court. Flanking Malacas are her son Hadji, left, and attorney Martin H. Schreiber II.

had come to light.

"We didn't feel we could prevail beyond reasonable doubt," David P. Lunden, director of the attorney general's Medicaid Fraud Control Unit, told *The Daily Record* after dropping the charges in January.

A week later, Malacas, who moved to the United States from her native Philippines in 1988, fought back the tears as she recounted how the 18-month ordeal affected her family.

"I was saying 'God, why did you do this to me? Is it a punishment for me doing good things for people?'" Malacas recalled.

After the first trial, Malacas lost her medicine-aide license and, while waiting for the re-trial, she worked nights in a factory while also finding time to perform 250 hours of community service.

These events shook her entire family — her husband Romulo and her

three children — to the extent that her daughter's wedding was postponed.

"It was a nightmare," said Malacas, whose suspension was lifted by the Maryland Board of Nursing this week. "I'm so upset just going through it again."

In another sense, though, Malacas is lucky to have the luxury of talking about it in the past tense.

According to Martin H. Schreiber II, who became Malacas' lawyer when she decided to fight the conviction, both the state and her own lawyer let Malacas down.

With her accuser as the sole eyewitness, the accusations against Malacas — essentially, that she slapped a patient and tried to force a drink down his throat — are the sort that turn on issues of credibility and character.

But Malacas' first lawyer "just told her to turn up at the courthouse," Schreiber said. "It's undisputed that she didn't understand it was a trial, much less that she could go to jail."

In Schreiber's opinion, the first lawyer also failed to adequately prepare a witness testifying in Malacas' defense, which allowed the prosecutor to take advantage.

As for the way Mariner Health dealt with the incident, Schreiber does not fault the home, saying senior staff went "strictly by the book" when they were told of the allegation. (Amy B. Heinrich, a lawyer for Mariner Health, refused to comment about any aspect of case.)

And, while Schreiber has high regard for the attorney general's campaign against nursing home abuse (see story, page 3C), he says that prosecutors in this case failed to heed "several red flags" that should have stopped the case from going to trial.

The nursing home's own records show no medical evidence that Gerard Lamastra, an Alzheimer's sufferer who has since passed away, suffered any injuries, according to Schreiber.

Nor did the prosecutor, Cathy Schuster Pascale, interview Malacas or co-workers who supported her, he says. Schreiber claims that most of the other staff at the home told him they

would have spoken in support of Malacas' character.

Instead, Malacas was convicted based on the testimony of one co-worker — Beth Boblitz, whom Malacas fears may have had a "grudge" against her for ordering her around that day.

According to a statement issued by the attorney general's office after the first trial, Boblitz alleged that on the night of August 23, 2001, Malacas became angry when Lamastra refused a drink Malacas was trying to pour into his mouth.

Malacas "yelled at the victim to stop acting like a two-year old, slapped his hand, pushed his head back, and again tried to force him to drink the mixture, thereby creating a choking hazard," the statement said.

A Maryland law grants nursing home staff immunity from civil suits if they report a colleague whom they believe has maltreated a patient, Schreiber noted.

Lamastra's son, Gary, could not be reached for comment, and Pascale, the prosecutor, said she was not authorized to speak to the media.

Speaking on Pascale's behalf, the attorney general's Lunden stressed that the case was investigated along the same lines as other nursing home abuse cases.

"You can't interview everyone in a nursing home," he said.

Paying it forward

It was after Malacas' conviction that the tide began to turn in her favor.

In a chain of events that seem to echo a New Testament parable, an anonymous donor, who felt a debt of gratitude to Malacas after she had cared for his ailing mother, came forward to help in her time of need.

It was this man who advised her to get a new lawyer and — even more crucially — offered to pay the bills.

"He felt he could do something for the woman who had been so wonderful to his mother," said Schreiber.

This act of good will certainly seems to have paid off, and could well have saved Malacas from spending a minimum of six months in jail on the two-year term. Schreiber, though, is

reluctant to say whether prosecutors backed off after new evidence was uncovered by a private investigator he hired.

Whatever the reason for the charges being dropped, Schreiber believes lessons need to be learned at the attorney general's office.

"They need to understand that disgruntled employees sometimes make false accusations," he said. "This is especially the case in nursing homes, where everyone knows that the slightest allegation will create havoc for the accused."

In defending his team, Lunden stressed the difficulties inherent in such cases.

"Often, if there are two people present you have one person who said it happened and one who said it didn't," he said.

He also noted that in most of the cases his office prosecutes, the defendants plead guilty.

Donna Dorsey, executive director of the Maryland Board of Nursing, which registers and disciplines nurses statewide, agreed that ruling on alleged abuse is always difficult, even when it's not a criminal matter.

She said that many allegations are dismissed because no evidence is found, but claimed that whistleblowers are usually motivated by over-zealous concern for patients rather than malicious intent.

"We listen to our witness, we listen to whatever physical evidence there is, and then we make a decision," she added.

It's a tough position for both the nursing board and the attorney general's office to be in, and mistakes are bound to be made.

Having experienced all of this firsthand, Malacas, for one, would agree with that assessment.

But, despite all she has lived through in the last 18 months, she has not been deterred from her plan to return to nursing.

Her ordeal is over.