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Patient and Caregiver Advocacy in California

Introduction

My name is Timothy B. Cassidy, and my solely owned company operated the largest for-profit nursing home in the San Francisco Bay Area from 2001 into 2003. When the "opportunity" was introduced to me, the nursing home was extremely troubled and threatened with closure by the Department of Health Services (DHS) because of problems with patient care by the prior operator. Medicare cuts, rising liability and health insurance costs, and reduced Medicaid reimbursement rocked the industry, and this company was the largest nursing home operator among many to file for bankruptcy. Moreover, this chain and its top executives were being pursued by the Attorney General's office for statewide patient care issues and this facility was their focal point.

In mid-2001, my company took responsibility for the facility licensed for 281 patients with 300+ full and part-time employees after signing a long-term lease. My company borrowed over $2,000,000 based on my personal guarantees to obtain the required operating capital.

A Synopsis of Patient Advocacy Efforts that Resulted in Caregiver Advocacy as Well

After we assumed operations, we became aware of many issues and obstacles, very much summarized to follow:

- The year before my company took over operations there was a once-in-a-century heat wave in the Bay Area. The building did not have fans or air conditioning to handle indoor temperatures that reached as high as 103 degrees. Over 30 residents were hospitalized, and three died. Thereafter the prior operator installed over 250 fans. I negotiated with the landlord to have air conditioning installed, which required complicated state approvals that would take 18-24 months or more. Even installing portable window air conditioning units would take six to nine months to be approved by the state.
- Three disclosed litigations from the heat wave and poor care by the prior operator became more than ten settled litigations nine months after I assumed operations. This made the business uninsurable since there was a two-year history that included the prior operator. As a result, our insurance was not renewed.
- Patient care issues were ten times worse than disclosed by the prior operator and not part of the DHS public record. Over 80% of the nurses we inherited collaborated to hide shortfalls in care or applied warped definitions for patient care not found in any textbook. Staff routinely redefined or did not report patient abuse, wounds, infections, and falls. As a result, a substantial majority of nurses and managers were fired. Improving resident care was hampered by the union being slow to agree to such extensive staff removal, even in light of the patient abuse.
- Employee theft and dishonesty were rampant on all levels. Prior departmental managers endorsed this, and supplies disappeared out the back door. Since several managers also owned group homes, they surely never needed to purchase items like food, diapers or other supplies. When we tried correcting the behavior with different departments, the Director of

Medical Supplies who established new policies had her tires slashed in the parking garage...twice.

- We were legally and ethically obligated to report patient abuse and other issues to DHS, which was a double-edged sword since they looked the other way in their survey completed only weeks prior to my company assuming operations. They knew that if these issues were disclosed, my company and I wouldn't have signed the financial guarantees for operating capital for this facility, the largest provider in the area.
- The regional DHS office was very close to the nursing home, with many of the DHS inspectors being former employees and friends of the nurses we fired for incompetence. I was faced with a war I seemingly couldn't win with the DHS. Reporting the undisclosed issues meant admitting their failure when performing inspections and not doing their job. They were the only agency to go to, and we went back and forth on repeated inspections and reported issues to those who had looked the other way on the same issue months and years before.

With this inauspicious beginning, a fight then began to keep this facility open and serve its residents with care and dignity, further summarized as follows:

- My primary lender stopped funding our $1.5M revolving credit line. After getting the news that a $550K draw on that credit line was not being paid, we filed for corporate bankruptcy. I notified the DHS they would have to cover the $375K payroll in two days. The DHS, through a then $1M fund, was forced to quickly step in and cover all expenses.
- Appearances in bankruptcy court and maneuvering by adversaries thereafter was constant. In all of the hearings, the adversaries wanted the building closed. They proposed relocating the 200+ residents out of the Bay Area, away from their families and current healthcare providers. They were collectively the largest and most medically complex group of Medi-Cal patients in a nursing home in the region.
- Other nursing homes routinely declined admission for patients needing this level of care, as housing them was more costly. Hence, there was literally nowhere locally for these frail patients to relocate to and facilities wouldn't accept so many medically complex Medicaid (Medi-Cal) patients that were a "financial loss," so options were 90 minutes or more away, far from friends and family.
- We eventually found a solution. Ownership could be transferred to a hospital and be eligible for Medi-Cal reimbursement of over $320 per day per patient versus the $140 (2003 dollars) we received to care for sicker than average patients and pay well-deserved employee wages. Initially there was limited hospital interest. The best-suited hospital wasn't interested, but resident families picketed and lobbied them for months.
- When trying to secure closure of the building in court, the DHS kept claiming hospitals were not eligible for the program. Based on their regulations, the DHS wasn't technically wrong. We found case law on patient rights over creditors in bankruptcy court filings, however, and the very fair judge gave us time, hearing after hearing and motion after motion, on behalf of the residents despite the laws, regulations, and so many deep pockets stacked against us.
- Fortunately, the local Congresswoman stepped up, as did the CEO of one of the two state associations for nursing homes and the daughter of a resident receiving complex care who rallied families. That resident's daughter (who worked for a law firm that gave her paid time off) fought full time, even after the passing of her mother, with advocacy work that included organizing resident's families to picket the hospital almost daily for many months.

After nearly a year of fighting in court, and in the court of public opinion, <u>various precedents were set</u> when the largest hospital-owned nursing facility was established. All this occurred as

negotiations dragged on with the hospital that didn't want to operate a nursing home, but public pressure won out. Precedents were set on many levels, including the state funding the facility to stay open while this transpired to the tune of over $3M, a claim for payment that we were told was four times the highest ever in bankruptcy court for a nursing home in the state.

There was then over $10M a year added to the state budget based on the care now available for high-acuity, long-term care patients in this much-needed new kind of facility. Thereafter, low-income residents with a variety of complex care needs were admitted to a facility with higher reimbursement that translated to better higher-level care.

Postscript

My company's in-house attorney, Gene, and I prepared all the bankruptcy filings on extremely short notice and were fortunate to find a local attorney to accept a $5,000 retainer for what ended up being a very complicated case. At the conclusion of the case, we found out that the adversaries, which included two law firms of 500-1,000 attorneys or more, had spent 100 times more in legal fees, but with the Lord's support and perseverance, we prevailed on behalf of residents. I never received a dime in expense reimbursement or otherwise for this battle, including ten cross-country trips to primarily represent the facility in the courts after our counsel's intro.

The union stepped up, lobbied on our behalf. Both state associations for nursing homes stepped up, and one got extensive access to newspapers and major TV stations. As mentioned, the daughter of a patient led the picketing and protests of resident families. There were several others, and without any of these individuals or entities, my efforts would have likely been for naught.

State policy was changed based on the precedents set and other facilities with low reimbursement for Medi-Cal patients in challenging high-cost-of-living areas were able to become hospital subsidiaries and provide much needed high acuity resident care. From 2003 to 2006 my company worked as an advisor with other hospitals that created similar types of high-acuity units

While my solely owned facility was at the initial forefront, efforts of associations and unions played key roles in publicizing inequities in the Medi-Cal system, particularly the low wages for most employees and nurse's aides in particular. In 2006, that momentum resulted in a revamped Medicaid reimbursement system and the state increased expense reimbursement by 16% in Medi-Cal rates in one year as long as the majority was "passed through" for employee wages and benefits.

The momentum that started at this single facility generated increasing advocacy and publicity that led to changes in Medi-Cal reimbursement that resulted in improved wages and patient care for nearly 20 years and have likely benefited millions by now. Equal to my children and now grandchildren, being in a place that was so painful and challenging at the time and even thereafter is my greatest blessing in the Lord…maybe to date.