

**TESTIMONY OF DENNIS SHORT**  
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Dear Committee members, on behalf of myself and the 20,000 members of SEIU Healthcare Pennsylvania, I want to thank you for the opportunity to share with you our concerns about the declining quality of care at Carlyle/ManorCare nursing homes. Our organization represents nursing home workers across the state and we know that poor care at these homes not only hurts the residents and the workers there, but reinforces low standards that can hurt seniors in all nursing homes. We thank you for holding this important hearing.

**Promises, promises.**

As you recall, when Carlyle came to buy ManorCare, this committee pressed them to make a strong commitment to improving resident care. In response, Carlyle issued two documents—a national statement called their “Patients First Pledge” and a more secretive, Pennsylvania-only section of their supplemental license application called “assurances and commitments.” They promised to “continue to provide quality health care services for our patients and residents,” and they extended that promise in their license application to include providing the state with weekly staffing schedules and notifying the state of any staffing reductions.

The question we raise is whether Carlyle/ManorCare has made the promised improvements. Despite repeated attempts, including working with House Democratic Leadership to collect this sort of data, we have been unable to find any evidence that Carlyle/ManorCare has complied with its own promises to Pennsylvania, and we have collected data that shows that they could be failing to live up to their “patients first” pledge. Considering the fact that the state weighed these two promises heavily when considering the license transfer application, this is indeed bad news.

Today, we should be looking at a pattern of improvements, as promised. Instead, we found more of the same below-average staffing and dangerous violations of patient care standards. Alleged violations of workers rights and fraud make the picture even more grim.

**The same below-standard staffing.**

Our analysis of the data Carlyle/ManorCare reported to the state shows that 46 percent of the company’s facilities surveyed since the buyout in the state have had fewer hours of care since Carlyle took over.

Before the buyout, ManorCare’s Pennsylvania homes were already staffed below levels recommended by experts to keep seniors safe. The chain reported 3.31 hours of patient

care per day – 19 percent below the recommended levels.<sup>1</sup> There has been no improvement. Recent staffing data from facilities surveyed indicate that the staffing level continues at 3.30 hours per patient day.

Most of their facilities that have been surveyed in Pennsylvania are below the statewide and nationwide average of 3.6 hours per patient day. Nineteen out of their 24 facilities were below the 3.6 state and national average and each and every one of them staffs below the 4.07 hours of care per resident per day recommended by experts to keep seniors safe.

Carlyle/ManorCare pledged they would notify the state when staffing levels went down. But did they do this for the 11 facilities with reduced hours of staffing? And they pledged they would “staff based on patients’ clinical need.” At 19 percent below recommended thresholds, it seems they may be failing to fulfill this pledge.

### **Continued care problems.**

None of the Manor Care nursing homes surveyed since the buyout in Pennsylvania were in full compliance with federal care standards on their most recent health inspection after the buyout.

Survey inspections at Pennsylvania facilities since the buyout have found a total of 230 health and fire safety violations—an 18 percent increase over the number of violations found in those facilities’ last surveys before the buyout. Investigations of complaints substantiated another 40 deficiencies. Health deficiencies increased 7% from 125 to 134. Fire Safety deficiencies increased 37% from 70 to 96. Despite Carlyle/ManorCare’s promises to provide adequate care, residents are still being harmed.

Among the incidents that inspectors cited:

- ManorCare Health Services - York South was cited in January and May 2008 for two separate incidents involving a failure to timely notify a physician of a resident’s change in condition, resulting in resident death. In January, a resident with a known risk for falling fell and died several days later as a result of blunt force head trauma sustained in the fall. Incomplete information was faxed to a physician’s closed office, but a physician was not called for more than 17 hours after the fall, during which time the resident exhibited symptoms of increased confusion and vomiting.<sup>2</sup> In May, the facility again failed to timely notify a physician after a resident, whose medication carried a known risk of side effects including heart attacks, complained of head and chest pain and had an elevated blood pressure. The resident went into fatal cardiac arrest late that night.<sup>3</sup>

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<sup>1</sup> Schnelle, et al. Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes: Phase II final report. Centers for Medicare and Medicaid Services, December 2001.

<sup>2</sup> MANORCARE HEALTH SERVICES-YORK SOUTH, Incident investigation and a State monitoring visit, 01/09/2008, F-0309.

<sup>3</sup> MANORCARE HEALTH SERVICES-YORK SOUTH, Medicare/Medicaid Recertification,

- ManorCare Health Services at Mercy Fitzgerald was cited for failing to provide timely assistance to a resident who had amputations of both legs, whose repeated requests for assistance in using the bathroom went unanswered over the course of half an hour.<sup>4</sup>
- Donahoe Manor was cited for failure to follow state law and its own policies requiring an FBI criminal background check for an employee who had been hired more than 9 months earlier, and for hiring a dietary aide who worked on the tray line and delivering carts before his tuberculosis skin test was completed.<sup>5</sup>

These are just the care problems that inspectors have witnessed. Caregivers have reported that the problems could run much deeper.

### **The National Labor Relations Board alleges illegal violations of workers' rights.**

Starting in October of 2007, workers at ManorCare Easton began participating in activities to improve conditions at the facility, including contacting SEIU Healthcare PA. Union organizers conducted house visits with service and maintenance employees including CNAs and workers held union meetings in October and November. Prior to Thanksgiving, a union leaflet was handed out near the facility. The employer was aware of these visible union activities.

In response, ManorCare spent significant resources on a campaign to coerce and intimidate workers and stop them from joining a union. The company required CNAs to attend captive audience meetings, where they expressed their opposition to the union. They sent letters to workers decrying the union. They then met with groups of workers to solicit grievances and explain that they would solve them best without 'outside influence' (of the union). Management on one occasion searched the belongings of one CNA and confiscated union literature in her purse and threatened, harassed, and discriminated against that CNA for her involvement in the union.

The CNA filed charges based on these activities with the National Labor Relations Board, which chose to file against ManorCare. Despite repeated attempts by the judge to settle the case, ManorCare refused to settle and a 4-day court case, costing assumedly tens of thousands of taxpayer dollars, proceeded. The case has not yet been decided.

This case isn't the only evidence of Carlyle/ManorCare's anti-union activities. In Michigan, workers filed similar charges that resulted in the National Labor Relations Board taking the company to court and "praying" that the company cease and desist from anti-union activities including interfering, restraining, and coercing employees.

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<sup>4</sup> State Licensure, Civil Rights Compliance and Incident investigation survey, 05/22/2008, F-0309.  
MANORCARE HEALTH SERVICES AT MERCY FITZGERALD, Medicare/Medicaid Recertification, State Licensure and Civil Rights Compliance Survey, 01/08/2008, F-0309.

<sup>5</sup> DONAHOE MANOR, Medicare/Medicaid Recertification Survey and State Licensure Survey, 01/07/08, F-0226, F-0630.

According to the complaint, ManorCare failed to bargain in good faith and enacted a strategy to oust the union. Talking with workers involved in these two cases, it seems Carlyle/ManorCare has a corporate anti-union strategy that involves strong-arm tactics that may be blatant violations of the law.

ManorCare's anti-union activities cost the company staff time and funding that should have gone to front-line care, and ostensibly some of those funds are federal taxpayer dollars. Compounding this is the tens of thousands of dollars the court case cost taxpayers. This is no way to put "patients first."

### **Workers report managers hiding dangerous short staffing from the state.**

#### *Inspections*

The State of Pennsylvania is required conduct yearly state inspections and the testimony of caregivers suggests that ManorCare may be preparing for inspections by cleaning up their act temporarily before returning to sub-standard operations.

Caregivers report that 4-5 days before an inspection, there is more staffing - "staff are tripping over each other." Per diem RNs, LPNs, and CNAs are brought on to fill out the staff. Per Diem housekeeping are in the building and housekeeping is asked to work overtime. Floors are stripped and waxed, curtains are cleaned, bathrooms are sanitized, and there are enough linens.

After the inspection, caregivers say, everything goes back to normal - short staffing, unwashed bathrooms.

Management instructs staff during inspections to wear back braces, use gait belts (belts used to help residents walk), always have two staff to lift residents, wear name tags, chart, answer bells within 2-3 minutes, and take gloves off before entering hallways. After the inspection, these requirements are no longer in effect.

#### *Short staffing*

Because of routine short staffing, CNAs on 3-11 PM shift at one facility report that they are rarely able to complete their third round of care (changing, toileting, turning). When this does not happen, normal procedure is to alert staff on the 11-7 shift so they can begin their rounds early to make up for care not provided on 3-11. However, staff on 11-7 complained when this procedure happened. The result is that residents are routinely saturated in urine and feces for at least 3 hours (residents are supposed to be changed every 1.5 to 2 hours).

According to caregivers, ManorCare facilities engage in this sort of activity again and again because they are not meeting standards but do not want to get caught and risk losing funding.

## **Protecting seniors in ManorCare facilities**

It's clear that Carlyle/ManorCare failed to make the investments and improvements in front-line care that they promised. This is a valuable lesson for our state—that promises can't take the place of a strong track record when considering whether a company is fit to care for our fragile seniors. Still, seniors are relying on Carlyle/ManorCare right now to take care of them, and we must not disturb the continuity of that care.

The state must fully enforce all rules and regulations at ManorCare homes and patrol them particularly for fraud:

- Require that ManorCare submit the disclosures as promised in their supplemental license application and allow the public to access these disclosures.
- Ban ManorCare from using federal Medicare or Medicaid funding to pay for anti-union activities and require the company to submit accounting reports to prove compliance.
- Do not announce coming inspections in ManorCare homes and fully investigate allegations of inspection-related fraud.
- Create a Blue Ribbon panel including government, industry, and caregivers to audit post-buyout quality issues.
- In examining future license transfer applicants, weigh reputation and ability to care for seniors only and disregard promises.

I again thank this Committee for the opportunity to share our concerns, and look forward to working with you to improve these nursing homes and protect Pennsylvania's seniors.