## Beverly history. But Beverly is not the lone ranger in the industry!

June 1, 2006. By Evelyn Pringle

Nowhere in the nursing home industry is the corruption, patient neglect and abuse and Medicare and Medicaid fraud more blatant than within the giant nursing home chain of Beverly Enterprises. Based in Fort Smith, it reportedly operates more than 400 nursing facilities, assisted living centers and hospices in 23 states and the District of Columbia.

The chain was supposedly sold a few months back, but a little digging under the layers of the conglomerate would probably find Beverly in there somewhere.

As far back as October 18, 1986, the New York Times reported a Beverly settlement with the State Department of Health Services, with an agreement to pay more than $600,000 in civil penalties as the result of an investigation of several of the company's California facilities. The agreement stated that no new licenses would be issued to Beverly for a 14-month period.

However, this comment by Beverly CEO, Robert Van Tuyle, at the time is comforting. He told the Times, "the state allegations of deaths related to patient care had not been proved," and that "the incidents were isolated cases."

Jumping forward to February 2001, the US Justice Department's San Francisco office and the Inspector General of the Department of Health and Human Services, announced the largest settlement ever for fraud in a nursing home case.

It said Beverly Enterprises Inc., the parent company of Beverly Healthcare, the nation's largest nursing home chain, has agreed to pay a civil settlement fine of $170 million and to relinquish control of 10 nursing homes in California. Their subsidiary, Beverly-California, will pay a $5 million criminal fine settlement.

Beverly-California pleaded guilty to one criminal count of fraud and 10 counts of making false statements to Medicare.

A point should be made that the settlement included a corporate integrity agreement that provided for a reporting and compliance program to be overseen by the Office of Inspector General. As part of the agreement, Beverly agreed to insure that its nursing homes complied with all federal regulations including the regulations under the Omnibus Budget Reconciliation Act of 1987 (OBRA)

These OBRA regulations impose numerous requirements on Beverly in its resident care including requirements regarding the following:
(a) Reporting resident injuries of unknown origin to state authorities;
(b) Resident assessment and care planning;
(c) Food services and nutrition;
(d) Diabetes and wound care;
(e) Infection control;
(f) Abuse and neglect policies and reporting procedures; (g) Staffing;
(h) Appropriate drug therapies;
(I) Appropriate mental health services;
(j) Provision of basic care needs;
(k) Incontinence care;
(l) Resident rights and restraint use;
(m) Activities of daily living care;
(n) Therapy services;
(o) Quality of life, including accommodation of needs and activities; and
(p) Assessment of patient competence to make treatment decisions.

A review of the continuous train of charges against Beverly in the years following the signing of the integrity agreement proves that the document was a complete waste of tax dollar funded clerical resources.

Five months after it was signed, in July 2001, the Associated Press reported that the nation's largest operator of nursing homes will pay $1.2 million to settle a racial discrimination lawsuit. Nine former workers claimed that black employees were harassed and subjected to discrimination and racial slurs at the Bridgeton Nursing Center in north St. Louis County, which Beverly owned at the time.

About a year after that, on August 1, 2002, in California's Santa Barbara County Superior Court, Deputy District Attorney Tracy Grossman filed a two-count felony criminal complaint against Beverly.

The two felony counts involved former patients, Laura Simmons, a 102-year-old woman who died in July 2000, and William Marthai, an 86-year-old man who died a year later.

In addition to the two criminal complaints, a civil complaint was filed alleging more than two dozen violations of state and federal codes involving patient care.

Although Ms. Simmons's death certificate said she died from congestive heart failure and extremely high blood pressure, the investigation found that at the time of her death, she suffered from malnutrition, anorexia, bed sores, body tremors, open wounds and a maggot infestation of her foot.

Mr. Marthai died after a feeding tube was improperly inserted into his stomach by a vocational nurse and by the time he was finally taken to the hospital, the report stated, his stomach had swelled to the size of someone seven or eight months' pregnant and was as hard as a rock.

Mr. Marthai's death certificate listed peritonitis with septic shock, infection of the abdominal cavity with blood poisoning, and gastrostomy tube dysfunction as the causes of death.

The California Department of Health Services determined that the Beverly staff failed to check whether the feeding tube was inserted and working properly and issued Beverly an AA citation, the harshest penalty a nursing home can get.

California Attorney General Bill Lockyer and Santa Barbara District Attorney Thomas Sneddon announced that the civil and criminal enforcement actions against Beverly and its subsidiaries would result in "court-enforceable improvements in the quality of care for elderly Californians at 60 facilities statewide."

Mr. Lockyer said: "The settlement takes direct aim at the criminally negligent care found at the Beverly La Cumbre nursing home in Santa Barbara that led to the deaths of two frail and elderly residents."

In the criminal enforcement action, Beverly entered a "no contest" plea to the felony elder abuse of Ms. Simmons and Mr. Marthai and agreed to pay the statutory maximum $54,000 in fines and penalties; reimburse investigation costs of $532,927; and allow victims to seek restitution from the court.

In the civil action, Beverly agreed to chain-wide improvements to ensure quality care and paid $2 million in civil penalties. A court-ordered permanent injunction was issued to "cover all sixty California facilities owned or operated by Beverly Enterprises, Inc."

The injunction stemmed from more than 90 citations and deficiencies found in Beverly facilities statewide in the previous three and a half years. Among the citations were patients suffering from major bed sores, dehydration, malnutrition, poor personal hygiene and improper medication.

And here is the great news. Beverly also agreed to notify the Attorney General's Office of any injury, death or accident that may have been caused by inadequate care.

In reading about Beverly's failed inspection, keep in mind that nursing home administrators usually know when surveyors are coming.

In addition, Indianapolis Attorney George Gray says that in many of the cases handled by his firm, former staff members say that the nurses and administrative staff are trained to race into the hallways and into the patients' rooms to provide care whenever the state surveyors are in the building.

"This way it appears that there is plenty of staff to meet the needs of the patients," he explained.

"In one case," he said, "the nursing home had a code to alert all of the staff that the surveyors were in the building. It was announced over the intercom for all of the staff to hear."

"In another case," he noted, "even the bookkeeper would put on a white nurse's smock and would look like she was helping with patient care when the surveyors were in the building."

Some nursing homes will pad their staffing schedules to fool the state surveyors into thinking they have more staff by scheduling nursing staff when they are on vacation, or in one case, he said, with staff who have quit, to look as if the nursing home has plenty of staff.

Following right along on Beverly's path of nursing home abuse and neglect, on December 12, 2003, LTC Daily Analysis Briefs reported on a Honolulu investigation of Beverly's Hawaii operations that led to a $1.2-million settlement against "the state's largest long-term care provider."

Here the state's attorney general investigated Beverly for a "number of questionable practices, including falsification of records, problematic prescription practices and kickbacks involving medication and pharmacy services," LTC said.

According to Irvine California Attorney James Daily, just as in this case, nursing home abuse can include over-sedation, poor medical care, or wrong medication.

"Prescribing drugs unnecessarily is a great example of a profit motive in many forms for all sorts of reasons," he says.

"Let's say a drug makes people lazy, lethargic and "comfortable," he says. "What a great drug that would be for a nursing home - without people complaining, they are calm as Hindu cows - easy to take care of and unlikely to complain."

"Thus they are like an annuity check for the nursing home," he explains, "because the people are less active, you can cut staffing - you don't need so many people planning activities when they are all in their rooms."

"The checks just keep on flowing," he adds.

"The nursing home benefits, the drug companies benefit and the doctors," he said, "the doctors who only have to visit like once a month - they can have 9,000 patients."

Attorney Daily said, "I have a defendant right now who has 9,000 patients."

"I wonder how much time you can spend with someone if you have 9,000 patients?" he pointed out.

In the Hawaii settlement, Beverly was required to pay $619,000 to the state and $250,000 to be shared by two former employees who helped with the investigation and to bring its operations into compliance or pay another $500,000 penalty.

On July 23, 2005, Northwest Arkansas New.com reported that a Saline County Arkansas judge ordered Beverly to post a $20 million bond after the company intentionally delayed releasing discovery documents to plaintiffs in a nursing-home care case.

But that's nothing. The month before, Judge Phillips threatened Beverly executives with jail when he found the company in contempt of court for failing to release e-mails and other electronic data.

The new order filed was based on a status hearing "as a sequel" to the contempt order, Judge Phillips said in the ruling.

The lawsuit was filed on behalf of former residents and alleges that Beverly executives maximized profits by failing to provide enough staff to properly care for residents.

The litigation that Rapid City, South Dakota Attorney Mike Abourezk handles involves the cost-cutting incentive programs that nursing home companies often implement, which predictably results in shoddy care of the elderly residents.

"For instance," he says, "companies like Beverly Enterprises typically put an administrator in charge of each home."

That administrator is paid based on a formula. The formula includes a number of factors, but one of the critical factors is always keeping costs as low as possible. If the administrator is successful in doing that, the administrator is paid more in salary.

"With these incentives," Mr Abourezk says, "it goes without saying that the administrator is encouraged to reduce staff and payroll as much as possible, and to pay the remaining staff as little as possible."

When fewer, less well-trained staff members are forced to care for the same number of elderly residents, he says, their ability to do so becomes difficult. However, he notes, that job gets easier if residents sleep a lot and don't ask for much.

"Noisy, demanding residents make it hard for these already struggling staff members," Mr Abourezk said. "Medication helps tremendously."

According to the Northwest article, Beverly was already facing its "first class-action lawsuit after another Arkansas judge grew impatient last month with the company's release of documents and issued a default judgment in favor of the plaintiffs."

Bradley County Circuit Judge Robert Bynum Gibson granted the class-action status and the default judgment after he said Beverly had practiced a shell game throughout the discovery process in a lawsuit involving the company's Warren nursing home.

The lawsuit, filed on behalf of former residents, also alleges that Beverly executives gained profits by not providing enough staff.

On January 28, 2005, Judge Robert Bynum Gibson ordered Beverly to provide plaintiffs with a list of residents in the Warren nursing home from August 1999 to when the facility closed in September 2003.

Although Beverly provided 171 names, at a March 7, 2005 hearing, plaintiffs' attorneys reported that they found six more names by searching obituary listings and the total number had grown to more than 240.

On October 4, 2005, the Attorney General of Arkansas, Mike Beebe, announced that Beverly had agreed to pay $1.5 million to settle 26 investigations involving 12 of its Arkansas nursing homes.

In this deal, Beverly paid $1 million to the state Medicaid Program and $500,000 to better train nursing home staff at the facilities. But this settlement agreement is really a joke considering we're talking about one of the largest nursing home chains in the country. The settlement required Beverly to establish programs to recognize, treat and prevent pressure sores and other patient-care injuries, to reduce falls, and to prevent narcotics abuse by staff members, according to a press release issued by the attorney general's office.

Does this mean 20 years after its first known arrest in 1986, it still does not know what a bed sore is?

Attorney Philip Thomas is a lawyer practicing civil litigation in Mississippi. He and attorneys John Giddens and

Pieter Teeuwissen recently filed two lawsuits against Beverly Enterprises and its related companies in federal court Mississippi.

One is a breach-of-contract class-action on behalf of residents who were not provided adequate care in compliance with federal and state regulations and their contracts with the Beverly facilities. And the second involves severe abuse and neglect where a woman suffered bed sores, scabies (lice) and had a feces-covered bandage rot into her skin because it was not changed.

Mr. Thomas says he believes that understaffing is the root of all evil in nursing homes. "The number one priority of the corporation," he said, "is to increase profits."

"The biggest expense in running a nursing home is labor," he explains, "so the easiest way to lower expenses and increase profits is to cut labor."

Not having enough caregivers, he says, is tragic for the residents. "Nearly everyone living in a nursing home is there because they require assisted living."

"Many have had strokes and have to be fed their meals," Mr. Thomas said. "When there aren't enough caregivers some residents may not be fed until their food is cold and inedible."

"In addition," he said, "food is another expense for the nursing home that is sometimes cut to increase profit."

Mr. Thomas says it is not unusual to see a resident lose 60 pounds or more in just a few months while they are in a bad nursing home. "Some residents are literally starving," he said. "When moved to a better nursing home these people regain their lost weight."

This corporation has no doubt cut a lot of corners to pay the salaries of the company big-wigs. Chairman, CEO, and President, William Floyd's annual salary is $2.23 million, according to court filings. In addition, Mr. Floyd is the individual owning the most shares of company stock with approximately 803,972 shares at a market value of about $9,326,075.20.

David Devereaux is the Chief Operating Officer of Nursing Facilities and Executive Vice President. His annual pay is approximately $854,000 and he is the individual owning the second most shares of BEI stock with approximately 255,204 shares at a value of approximately $2,960,366.40.

Indianapolis Attorney George Gray agrees that it boils down to profits. "Most neglect and abuse that we see in our law practice," he said, "can be traced to the corporate owners and management companies understaffing their nursing homes, in other words, putting their profits over the proper care of the elderly patients who have been entrusted to them."

However, according to Mr. Gray, the top dogs in a company rarely face consequences. "The corporations that run nursing homes are faceless, money-making machines," he said, "and it is hard for prosecutors to prove and trace the criminal culpability of nursing home abuse up the chain of command to the managers and owners."

According to Attorney Thomas, another understaffing concern at Beverly relates to residents who require assistance going to the toilet who become incontinent because there is not enough staff to always assist them. "Obviously," he notes, "it is humiliating to these residents to soil themselves."

One of the lawsuit complaints alleges that understaffing "in Beverly facilities causes the facilities to be dirty, constantly smell of urine and feces, serve as breeding grounds for lice and other problems caused by unsanitary conditions, and to generally deprive residents of a dignified existence."

"I have yet to find a Beverly facility that does not always smell like urine and feces," Mr. Thomas said. "The reason is that there are not enough caregivers to keep the residents clean."

He recently deposed a doctor treating patients in a Beverly facility, he said, who testified that the facility always smelled like a men's urinal at a park, and at 3:00 a.m. there would be many patients screaming. "The doctor (who was retired military) compared the nursing home to Auschwitz," Mr. Thomas said.

Pressure sores are a painful skin condition also referred to as ulcers and bed sores and are most often caused or made worse by individuals having to lie in urine and feces for long periods of time and not being turned over often enough.

As a result of the understaffing at Beverly, the plaintiff in this case was not kept cleaned and turned enough and developed pressure sores so severe that they required hospital treatment. On one occasion, the doctor at the hospital treated the sores, applied bandages, and dated the bandages.

Despite the doctor's orders and multiple requests by the plaintiff's children, the staff did not change the bandages for over a week following the hospitalization, and the bandages had rotted into her body with the date written by the hospital doctor still visible.

Scabies is a contagious skin disorder caused by a very small wingless insect that burrows into the skin and lays one to three eggs daily. It is a form of lice, and infestation can spread by skin to skin contact or by sharing of clothing, towels and bedding and causes intense itching and is painful.

The plaintiff in this case also contracted a severe infestation of scabies that was neglected and not treated or diagnosed for over a month while she endured severe physical pain.

Her condition was worse than it otherwise would have been because her paralysis prevented her from scratching when she itched, and she was permanently scarred from the scabies infestation.

During the last six months of her residency at Beverly, the plaintiff lost more than 60 pounds because the facility was understaffed and did not feed her and also because the facility ran out of food and medical supplies on one occasion.

As hard as it is to believe, this kind of neglect and abuse is actually happening to our elderly citizens in 2006.

On March 15, 2006, Northwest Arkansas News reported that Beverly closed on a deal to sell itself to a subsidiary of Fillmore Capital Partners LLC on March 14, 2006.

Beverly operates 342 nursing homes across the country, including 16 in Arkansas, according to NAN.

Fillmore President Ron Silva apparently has given a lot of thought to solving Beverly's financial woes. To start off on the right foot, NWN reports that he said, "Arkansas needs a specific tort reform for nursing homes to limit the number of lawsuits filed."

According to court documents filed in December 22, 2005, as part of the sale, Mr. Floyd, Mr. Devereaux and other executives and board members will personally receive payments totaling $109 million. Mr. Floyd's severance package will be $40 million.

But on May 16, 2006, in a 10-year-old case, McKnight's Long-Term Care News reported a decision representing a win for organized labor, when the National Labor Relations Board ruled that Beverly violated federal labor law when it retaliated against employees following a three-day strike in the mid-1990s at some of its Pennsylvania facilities.

The board ordered Beverly to post notice of its violations at all of its nursing homes and to reinstate eight employees with back pay and benefits, and ordered the company to recognize the Service Employees International Union at two of its Pennsylvania facilities.
Citing previous rulings against the company, the NLRB said Beverly's actions indicate it "continues to have a proclivity to violate the act and that its widespread misconduct demonstrates a general disregard for its employees' Section 7 rights."

In a previous decision in 2001, the NLRB found the company committed numerous unfair labor practices during contract talks with SEIU locals that resulted in a three-day strike at 15 of the 20 homes operated by two subsidiaries in Pennsylvania.

Whatever happened to the corporate integrity agreement? This next case involving a resident's death took place on March 2, 2002.

On May 4, 2006, the Lexington Herald Ledger reported that a jury awarded $20 million to the estate of Loren Richards, 84, who died on March 2, 2002, at Beverly Health and Rehabilitation of Frankfort.

Mr. Richards' daughter sued the home, claiming that nurses had ignored her father's repeated calls for help with abdominal pain. With an impacted bowel," the Ledger said, "he later died of a heart attack."

The attorney for the estate told the jury the 100-bed facility was severely understaffed due to a companywide effort to cut expenses and raise the stock price.

"They are building profitability on the backs of people like Loren Richards," he said.

But a May 26, 2006 article by Northwest Arkansas News beats all. Beverly has hatched a scheme that will send injured nursing home residents on a wild goose chase.

NAN reported that nursing homes owned by Golden Gate National Senior Care Holdings LLC, formerly Beverly, have been reorganized as separate foreign limited liability companies, including 13 facilities in Arkansas.

"As part of the corporate restructuring, the nursing homes have been split up into separate companies," Golden Gate spokesman Blair Jackson said. "The LLC process is completed."

"The move limits the liability of the parent company," NAN noted.

And Beverly is not completely out of the picture. "While Golden Gate is still based in Fort Smith," NAN said, "the headquarters of Beverly Enterprises, which now controls only leased facilities, moved to Folsom, Calif."

"The 80 nursing homes we lease will retain the name Beverly Healthcare, and the other nursing homes are operating under the new name of Golden Gate National Senior Care," Jackson said.

It would no doubt take top-notch attorney to figure out this next part of the scheme.
"As part of that process," Jackson told NAN, "a new separate company was created to own the real estate, Geary Property Holdings."

"That company now owns the buildings and the land of those 262 [facilities]," he said, "and Golden Gate National Senior Care is the operating company that runs the nursing homes."

Bottom line: with this maze in place, how many layers will plaintiffs have to weave through to hold the company accountable and reach Beverly's billions?