

MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
TUESDAY, AUGUST 11, 2009
COMMISSIONERS HEARING ROOM, ROOM 112
FIRST FLOOR, COUNTY-CITY BUILDING
9:30 A.M.

Commissioners Present: Bernie Heier, Chair
Ray Stevens, Vice Chair
Larry Hudkins
Bob Workman

Commissioners Absent: Deb Schorr

Others present: Kerry Eagan, Chief Administrative Officer
Gwen Thorpe, Deputy Chief Administrative Officer and
Interim Lancaster Manor Administrator
Tom Fox, Deputy County Attorney
Dan Nolte, County Clerk
Cori Beattie, Deputy County Clerk
Angela Zocholl, County Clerk's Office

The location announcement of the Nebraska Open Meetings Act was given and the meeting was called to order at 9:30 a.m.

1) MINUTES: Approval of the Minutes of the Board of Commissioners meeting held on Tuesday, August 4, 2009.

MOTION: Stevens moved and Workman seconded approval of the minutes. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

2) CLAIMS: Approval of all claims processed through Tuesday, August 11, 2009.

MOTION: Hudkins moved and Stevens seconded approval of the claims. Hudkins, Workman, Stevens and Heier voted aye. Motion carried 4-0.

3) OLD BUSINESS:

- A. **A resolution in the matter of approving the 2009-2010 annual cost of living increase for unrepresented classified County employees in the amount of two percent (2%) for employees in the "C" and "E" classifications, and three and a quarter percent (3.25%) for employees in the "X" classification, effective the pay period beginning August 13, 2009. (R-09-0055)**

MOTION: Hudkins moved and Stevens seconded approval of the resolution.

3) **OLD BUSINESS CONTINUED:**

Heier said he received a letter from the County Sheriff urging the Board to reconsider. He said the increases were discussed in a Staff Meeting, and the Board agreed to review how much money would be saved in unfilled vacancies. Heier noted the contract previously negotiated with the union and said the different increases are not a reflection on the employees' performance.

Hudkins agreed with Heier and commented on budget constraints. He said many other counties are currently unable to give raises, so Lancaster County is fortunate to do so.

ROLL CALL: Workman, Stevens, Hudkins and Heier voted aye. Motion carried 4-0.

- B. **An agreement with Cynthia D. Petersen for professional services of a nurse practitioner to assist in the provision of psychiatric services at the Community Mental Health Center. Term of the agreement is July 1, 2009, through June 30, 2010. The County will pay \$60 per hour for no more than eight hours per week. A business associate agreement is also attached to the agreement to comply with Health Insurance Portability & Accountability Act (HIPAA) regulations. (C-09-0413)**

MOTION: Stevens moved and Workman seconded approval of the agreement. Stevens, Hudkins, Workman and Heier voted aye. Motion carried 4-0.

- C. **Acceptance of a grant award from the Nebraska Crime Commission on Law Enforcement and Criminal Justice for a Coordinated Response to Reducing Domestic Violence Grant. The County will receive \$165,001 with a County match share of \$80,308 for a total of \$245,309. Term of the grant award is June 1, 2009, to May 31, 2010.**

MOTION: Hudkins moved and Stevens seconded to accept the grant award. Stevens, Workman, Hudkins and Heier voted aye. Motion carried 4-0.

- D. **Acceptance of a grant award from the Nebraska Crime Commission on Law Enforcement and Criminal Justice for a Coordinated Response to Reducing Domestic Violence Grant. The County will receive \$24,393 with a County match share of \$8,131 for a total of \$32,524. Term of the grant award is June 1, 2009, to May 31, 2010.**

MOTION: Hudkins moved and Stevens seconded to accept the grant award. Workman, Hudkins, Stevens and Heier voted aye. Motion carried 4-0.

4) **NEW BUSINESS:**

- A. **An application for a Special Designated License from GJR, LLC, d/b/a Randys Grill & Chill, to provide liquor beverage service for a wedding reception at Country Pines, located at 6305 W. Adams Street, Lincoln, Lancaster County, Nebraska, from 6:30 p.m. to 1:00 a.m. on Friday, August 28, 2009.**

4) **NEW BUSINESS CONTINUED:**

MOTION: Stevens moved and Workman seconded approval of the Special Designated License application. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

- B. **An amendment to an agreement between Lancaster County and Gable Consulting, found at County Contract Number C-09-0080, for professional consulting services regarding the assessment of the current provision of information services to Lancaster County and recommendation regarding a County I/S Coordinator position. The amendment extends the completion date of the professional consulting services to December 1, 2009, and modifies the Contractor's scope of services to include the explanation and presentation of findings and recommendations found in the Consultant's evaluation report to various public officials. The addition of the new services increases the amount paid for the services to \$55,000, and increases the amount paid for reasonable travel expenses to \$5,500. (C-09-0420)**

MOTION: Stevens moved and Workman seconded approval of the amendment.

Hudkins explained he was going to vote against the amendment since Gable was asking for expense money beyond the original agreement. He felt County costs need to be controlled.

Stevens said the consulting company was asked to come back in September to review recommendations. There were questions that arose after the report was submitted, so they asked Gable to come back again.

Heier confirmed the City Council and Mayor were aware of this.

ROLL CALL: Stevens, Workman and Heier voted aye. Hudkins voted nay. Motion carried 3-1.

- C. **Agreement and acceptance of proposal with the Lincoln League of Women Voters to assist with voter registration sites in Lancaster County. The County shall pay up to \$1,100 for the services. The term of the agreement is September 1, 2009, to August 31, 2010. (C-09-0421)**

MOTION: Stevens moved and Hudkins seconded approval of the agreement. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

- D. **A group application and group participation agreement between Lancaster County on behalf of the Community Mental Health Center and LifeSynch. The contract allows the Community Mental Health Center to be a provider in LifeSynch's behavioral health services facilities network and allows the Mental Health Center to provide and be reimbursed for the behavioral health services provided to LifeSynch members. (C-09-0422)**

MOTION: Stevens moved and Workman seconded approval of the application and agreement. Hudkins, Workman, Stevens and Heier voted aye. Motion carried 4-0.

4) **NEW BUSINESS CONTINUED:**

- E. **An interlocal agreement with the State of Nebraska Probation Administration for electronic monitoring of up to 28 juveniles and two probation officers to supervise juveniles who are ordered by the separate Juvenile Court of Lancaster County to pre-adjudication or pre-disposition monitoring during home detention. Term of the agreement is July 1, 2009, to June 30, 2010. The County will pay up to \$149,000 for the services. (C-09-0423)**

MOTION: Workman moved and Stevens seconded approval of the amendment. Workman, Stevens, Hudkins and Heier voted aye. Motion carried 4-0.

- F. **An interlocal agreement with the Village of Denton for law enforcement services within the Village limits. The Lancaster County Sheriff will assign one deputy to duty in the Village limits and provide a cruiser. The Village will reimburse the County at the overtime rate of pay for the Deputy assigned. Term of the agreement will be from September 1, 2009, to August 31, 2010. (C-09-0424)**

MOTION: Stevens moved and Workman seconded approval of the agreement. Stevens, Hudkins, Workman and Heier voted aye. Motion carried 4-0.

- G. **An interlocal agreement between Lancaster County on behalf of the office of the Public Defender and the City of Lincoln for the purpose of providing legal representation to indigent defendants that have been charged by the City Attorney's office with offenses arising under the Lincoln Municipal Code and have been appointed legal counsel by the Lancaster County Court. The term of the agreement begins July 1, 2009, and ends June 30, 2010. The County shall be paid \$186,550 for the services. (C-09-0425)**

MOTION: Stevens moved and Workman seconded approval of the agreement.

Stevens asked if this agreement would replace an older version. Tom Fox, Deputy County Attorney, confirmed that it would.

ROLL CALL: Stevens, Workman, Hudkins and Heier voted aye. Motion carried 4-0.

- H. **A contract in which Lancaster County and the City of Lincoln are contracting with Electronic Disposal Technologies, Inc., using cooperative purchasing with the State of Nebraska (Contract No. 2321204), to provide and deliver recycling services for broken, end of life, or outdated electronic equipment to all Lancaster County and City of Lincoln departments. The term of the contract is from February 1, 2009, to January 31, 2010. Each County department using the services will be billed separately for the services they use according to the prices in State of Nebraska Contract No. 2321204. (C-09-0426)**

4) **NEW BUSINESS CONTINUED:**

MOTION: Stevens moved and Workman seconded approval of the contract. Workman, Hudkins, Stevens and Heier voted aye. Motion carried 4-0.

- I. **An agreement with the Lincoln Council on Alcoholism and Drugs, Inc., to provide substance use evaluation services for persons placed in the Adult Drug Program, beginning July 1, 2009, and ending June 30, 2010. The County will pay up to \$125 per participant should the participant not pay within 30 days. (C-09-0427)**

MOTION: Stevens moved and Hudkins seconded approval of the agreement.

Kim Etherton, Community Corrections, explained there had been a previous contract that was terminated. She said they are now trying to redevelop the partnership, providing evaluations that are done more quickly and at less cost.

ROLL CALL: Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

- J. **A labor agreement with the Fraternal Order of Police, Lodge 32, for a one-year period beginning August 13, 2009. (C-09-0428)**

MOTION: Stevens moved and Workman seconded approval of the agreement.

Stevens questioned the attachment of Appendix A to the document and wanted to be sure it was a part of the official record.

FRIENDLY AMENDMENT: Hudkins offered a friendly amendment to accept the document subject to final approval and review by the County Attorney's office.

The maker of the motion and the seconder accepted the friendly amendment.

ROLL CALL ON THE MOTION AS AMENDED: Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

- K. **An agreement between the State of Nebraska, Department of Roads and Lancaster County for Federal and State public transportation assistance for operation of the Lancaster County Rural Transit Program, Project No. RPT-C551(21), from July 1, 2009, until June 30, 2010. (C-09-0429)**

MOTION: Hudkins moved and Stevens seconded approval of the agreement.

Hudkins commented the agreement looked expensive, but the service would be worth it.

ROLL CALL: Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

4) **NEW BUSINESS CONTINUED:**

- L. **A supplemental agreement between the State of Nebraska, Department of Roads and Lancaster County to secure American Recovery and Reinvestment Act (ARRA) stimulus funding for Project No. BR-3340(7) on Fletcher Avenue between N. 162nd Street and N. 176th Street. (C-09-0430)**

MOTION: Stevens moved and Workman seconded approval of the agreement. Hudkins, Workman, Stevens and Heier voted aye. Motion carried 4-0.

- M. **A right-of-way contract for the East Bypass project between the City of Lincoln, Lancaster County and Waverly Development Co., L.L.C., located in the vicinity of 134th Street and Interstate 80. Total cost of the real estate is \$790,645 of which the County's share is \$395,322.50, pursuant to the interlocal agreement with the City found at County Contract No. C-08-0004. (C-09-0431)**

MOTION: Stevens moved and Hudkins seconded approval of the contract. Workman, Stevens, Hudkins and Heier voted aye. Motion carried 4-0.

- 5) **CONSENT ITEMS:** *These are items of business that are routine which are expected to be adopted without dissent. Any individual item may be removed for special discussion and consideration by a Commissioner or by any member of the public without prior notice. Unless there is an exception, these items will be approved as one with a single vote of the Board of Commissioners. These items are approval of:*

- A. **Receive and place on file the following:**
1. **County Clerk Monthly Report for July, 2009**
 2. **County Records & Information Management Monthly Report for July, 2009**
 3. **County Assessor/Register of Deeds Monthly Report for July, 2009**
 4. **County Engineer/GIS Quarterly Report for April, May and June, 2009**

MOTION: Stevens moved and Workman seconded approval of the consent items. Stevens, Hudkins, Workman and Heier voted aye. Motion carried 4-0.

6) **PENDING:**

- A. **A resolution in the matter of County Change of Zone No. 08050, requested by Michael and Judith Rosecrans, to change the zoning on 8.84 acres, more or less, from AG Agricultural to B Business on property generally located one-half mile south of the corner of Hickman Road and Homestead Expressway/Highway 77 in Lancaster County, Nebraska. (R-08-0093) (Item placed on pending on November 4, 2008.)**

7) **EMERGENCY ITEMS AND OTHER BUSINESS:**

Kim Kaspar, President of American Federation of State, County & Municipal Employees (AFSCME), discussed Hunter Management and their partnership with those involved in Medicare fraud (Exhibit A). Workman questioned the origin of the information and ratings on all the nursing homes run by Hunter Management.

Pam Ray, International Union Representative with American Federation of State, County & Municipal Employees (AFSCME), discussed the track record of Hunter Management and the financial situation of Lancaster Manor. Ray distributed a letter (Exhibit B).

Heier questioned who Ray consulted with on the financial information. Ray said she received information from Gary Young, AFSCME Attorney, and Gary Storrs, Labor Economist.

Hudkins thanked Ray for her involvement.

Workman explained that State law prohibits a nursing home run by a government entity to market in competition with privately owned nursing homes, which is why Lancaster Manor is not listed in the yellow pages. He further discussed the allegations against Hunter Management and the financial numbers mentioned by Ray.

Melvin Moore expressed his views on how Lancaster Manor is run. Workman explained that the Manor could not be run the same as a private entity due to government regulations.

Mark Vasina, Treasurer for Nebraskans for Peace, presented a request for public documents (Exhibit C).

Hudkins and Vasina discussed Vasina's financial background and why he was interested in Lancaster Manor.

Lela Shanks appealed to the Board not to sell Lancaster Manor. She distributed a letter (Exhibit D).

8) **ANNOUNCEMENTS:**

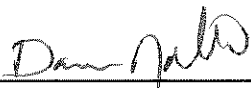
- A. **The Lancaster County Board of Commissioners will not hold a Staff Meeting on Thursday, August 13 or Thursday, August 20, 2009. Instead a Staff Meeting will be held on Tuesday, August 18, 2009, immediately following the County Board of Commissioners Meeting, in Room 113, on the first floor of the County City Building.**
- B. **A public hearing will be held on Tuesday, August 25, 2009, at 7:00 p.m., in the County Commissioners Hearing Room, Room 112, on the first floor of the County-City Building, regarding the following:**
 - 1. **Keno Fund Projects (A list of the projects may be obtained from the County Budget and Fiscal office.)**
 - 2. **Lancaster County's Proposed Budget for Fiscal Year 2009-2010**

8) **ANNOUNCEMENTS CONTINUED:**

- C. The Lancaster County Board of Commissioners meeting is broadcast live at 9:30 a.m., on Tuesdays and rebroadcast at 1:30 p.m., and 6:30 p.m., as well as on Saturday afternoon on 5 City-TV, Cable Channel 5. In addition, this meeting may be viewed on Nebraska On Demand Time Warner Channel 101 and is available on the Internet 24 hours a day at www.lancaster.ne.gov. Click on 5 City-TV Video On Demand.

9) **ADJOURNMENT**

MOTION: Stevens moved and Hudkins seconded to adjourn the Board of Commissioners meeting at 10:29 a.m. Stevens, Workman, Hudkins and Heier voted aye. Motion carried 4-0.



Dan Nolte
Lancaster County Clerk



MINUTES
LANCASTER COUNTY BOARD OF EQUALIZATION
TUESDAY, AUGUST 11, 2009
COMMISSIONERS HEARING ROOM, ROOM 112
FIRST FLOOR, COUNTY-CITY BUILDING
IMMEDIATELY FOLLOWING THE REGULAR BOARD OF COMMISSIONERS MEETING

Commissioners Present: Bernie Heier, Chair
Ray Stevens, Vice Chair
Larry Hudkins
Bob Workman

Commissioners Absent: Deb Schorr

Others present: Norm Agena, County Assessor/Register of Deeds
Scott Gaines, Deputy County Assessor/Register of Deeds
Kerry Eagan, Chief Administrative Officer
Gwen Thorpe, Deputy Chief Administrative Officer and
Interim Lancaster Manor Administrator
Tom Fox, Deputy County Attorney
Dan Nolte, County Clerk
Cori Beattie, Deputy County Clerk
Angela Zocholl, County Clerk's Office

The location announcement of the Nebraska Open Meetings Act was given and the meeting was called to order at 10:29 a.m.

- 1) **MINUTES: Approval of the Minutes of the Board of Equalization meeting held on Tuesday, August 4, 2009.**

MOTION: Hudkins moved and Stevens seconded approval of the minutes. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

- 2) **ADDITIONS AND DEDUCTIONS: Approval of six additions and deductions to the tax assessment rolls per Attachments "A" and "B".**

MOTION: Stevens moved and Hudkins seconded approval of the additions and deductions. Hudkins, Workman, Stevens and Heier voted aye. Motion carried 4-0.

- 3) **MOTOR VEHICLE TAX EXEMPTION APPLICATIONS:**

**Catholic Bishop of Lincoln
Grace Lutheran Church
Lincoln Action Program, Inc.**

MOTION: Stevens moved and Hudkins seconded approval of the motor vehicle tax exemptions. Workman, Stevens, Hudkins and Heier voted aye. Motion carried 4-0.

4) **2009 451 TAX EXEMPTION APPLICATIONS FOR THE FOLLOWING:**

CBOL, Inc.

Community Services Fund of Nebraska

Heritage Presbyterian Church

Horizons Community United Methodist Church

Life Tabernacle United Pentecostal Church

Matt Talbot Kitchen & Outreach, Inc.

Nebraska Annual Conference of the United Methodist Church

Nebraska Right to Life

Nebraska Wesleyan University

North Pointe Community Church

Redeemer PCA

Slavic Church of Evangelical Faith Christians

State Law Enforcement Bargaining Council/State Troopers Association NE

Scott Gaines, Deputy County Assessor/Register of Deeds, recommended approval of all the tax exemptions except for Horizons Community United Methodist Church and Nebraska Right to Life.

MOTION: Stevens moved and Workman seconded approval of the tax exemptions for CBOL, Inc., Community Services Fund of Nebraska, Heritage Presbyterian Church, Life Tabernacle United Pentecostal Church, Matt Talbot Kitchen & Outreach, Inc., Nebraska Annual Conference of the United Methodist Church, Nebraska Wesleyan University, North Pointe Community Church, Redeemer PCA, Slavic Church of Evangelical Faith Christians and State Law Enforcement Bargaining Council/State Troopers Association NE based on the Assessor's recommendation.

Gaines clarified there were two parcels for Nebraska Wesleyan University.

ROLL CALL: Stevens, Hudkins, Workman and Heier voted aye. Motion carried 4-0.

Gaines said historically the entire parcel of Horizons Community United Methodist Church was exempt. He explained that last year 50% of the property was taxable based on the excess land not being used for a religious purpose.

Karen Haase, member of Horizons Community United Methodist Church, discussed the layout of the property. She said a prayer path had been installed on the property and was used by the youth group and church staff. Last year the church commercially developed some of the land, and while it was being developed, part of the land was not being used for religious purposes. Since the development was finished, the prayer path was reinstalled, and the land has been used for recreation during vacation bible school. She said no more commercial development is planned.

Gaines said the Assessor's office evaluates the property based on how much of it is used for religious purposes that would preclude it from being developed for another use. He felt there was potential for further development on the north side. Hudkins urged the Assessor's office to not tax on the potential for development.

4) **2009 451 TAX EXEMPTION APPLICATIONS CONTINUED:**

MOTION: Hudkins moved and Workman seconded approval of the tax exemption for Horizons Community United Methodist Church. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

Gary Hoffman, president of the Board for Faith United Church of Christ, questioned the approved address for Redeemer PCA, who purchased the Faith United Church of Christ property. Gaines said the exemption is a transfer from Faith United Church of Christ to Redeemer PCA due to the sale of the property; the property will remain exempt under the new owner.

Gaines recommended denial of the application for Nebraska Right to Life since the property is not used exclusively for charitable purposes.

MOTION: Workman moved and Stevens seconded denial of the tax exemption for Nebraska Right to Life based on the Assessor's recommendation. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 4-0.

5) **REVIEW OF 2009 TAX EXEMPTION FOR THE FOLLOWING:**

**Faith United Church of Christ
Houses of Hope (two notices)
Ukrainian Orthodox Church
Congregation Tifereth Israel**

Gaines said this would transfer tax exemption status from the seller to the buyer in the case of Faith United Church of Christ, and it would remove tax exemption status for properties transferred to private owners.

MOTION: Hudkins moved and Workman seconded approval to remove the tax exemption status based on the Assessor's recommendations. Stevens, Workman, Hudkins and Heier voted aye. Motion carried 5-0.

6) **NOTICE OF TAXABLE STATUS:**

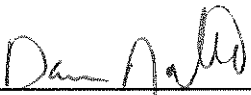
Lancaster County School District 0001

Gaines said this property was acquired by Lincoln Public Schools (LPS). He explained the school has no intention to use the house for any public purpose, so the recommendation is to place the school on the tax roll. Once the house is removed, the Assessor's office will recommend approval for tax exemption for use as a parking lot.

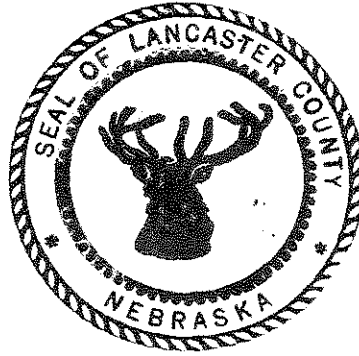
MOTION: Hudkins moved and Stevens seconded to send the notice. Workman, Hudkins, Stevens and Heier voted aye. Motion carried 5-0.

7) **ADJOURNMENT**

MOTION: Stevens moved and Hudkins seconded to adjourn the Board of Equalization meeting at 10:47 a.m. Hudkins, Stevens, Workman and Heier voted aye. Motion carried 5-0.



Dan Nolte
Lancaster County Clerk



FOR IMMEDIATE RELEASE

CONTACT: Kim Kaspar, 304-0140

HUNTER MANAGEMENT FAMILY ARE PARTNERS WITH FELONS WHO HAVE DEFRAUDED MEDICARE IN THEIR OPERATION OF NURSING HOMES.

The Save the Manor Coalition has learned that the parties that the County Board of Commissioners are trying to sell the Manor to are partners in the operation of several Illinois nursing homes with two men who have previously been convicted of using nursing homes to defraud Medicare and Medicaid.

The Hill.Com, a Capitol Hill news agency reports that in February of 2000, the two men, Bryan Barrish, and Michael Giannini, were indicted for mail and wire fraud, money laundering and conspiracy to violate Medicare's anti-kick back statute associated with their operation of nursing homes. Barrish and Giannini each pled guilty to one count of money laundering.

In testimony before the U.S. House Ways and Means Committee, a Department of Justice counsel testified that the two were involved in a scheme in which nursing homes Barrish and Giannini operated made false claims for incontinence supplies under Medicare Part B. Medicare improperly paid out more than \$1.5 Million as a result of false billings under the scheme.

In 2002, the two men and two others were assessed civil penalties of approximately \$2.05 Million dollars for Medicare fraud associated with the scheme. They were also banned from participation in Medicare and Medicaid reimbursements for 5 years.

In 2008, Barrish and Giannini sought pardons from President Bush for their convictions, but did not receive them.

Kim Kaspar, a ^{member} leader of the coalition said "[w]e knew that the family that owns Hunter Management group had a record of low quality operation of nursing homes. That is well documented."

"But we are very surprised to learn that they are also partners with people who have used nursing homes to defraud the federal government. This is really beyond anything we expected. We are very surprised that the County Board would be willing to negotiate with them in light of this record."

According to the Illinois Department of Health, members of the Rothner family are currently partners in corporations or LLCs with either Barrish and Giannini in the operation of 6 nursing homes, including the following:

Briar Place, Indian Head Park, IL
Elmwood Care, Elmwood Park, IL
Fairview Nursing Plaza, Rockford, IL
Maplewood Care, Elgin, IL
Neighbors Rehab Center, Byron, IL
Wilson Care, Chicago, IL

Greenwood Care, Evanston
Columbus Park + Rehab, Chicago

The Illinois Department of Health documents establishing these connections are provided herewith, along with the secondary articles and reports referred to in this release.

LLC
Health Management
S.I.R. Management
Buckhead Bank
Amex Co Corp
Extended Care
Xcel - medical supplies
Hammer Co - (Construction)
70 + Nursing Homes
Real Estate
more
Equip
Wholesale Med Equip

** IL Dept of Public Health*
** IL Sec of State*
** Medicare Gov*
** The Hill. Corp*
** U.S House + Mansfield*
** U.S Dist Court Records*

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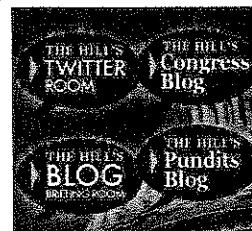
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Lobbyists offer help to those seeking pardons from departing White House

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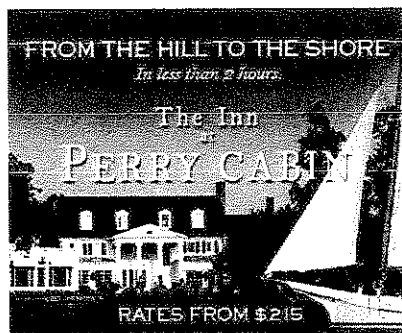
"I am basically trying to help her through the process. If you want to say 'lobby,' you can say that," said Anthony Cunningham.

Cunningham, a principal at Chamworks, is representing Deborah Griffin, a former municipal court judge from Philadelphia. Griffin was convicted of credit card fraud in 1984 and was put on three years' probation. Despite the conviction coming to light during her first campaign in 2001, Griffin was elected twice to the judgeship before being forced to step down this year.

Cunningham said he has met with congressional aides to Rep. Chaka Fattah (D-Pa.) and Sen. Arlen Specter (R-Pa.) in order to gain backing for Griffin.

"It is just making those in Congress aware of her case and the facts surrounding it," said Cunningham.

Former White House staffers are also working on pardons for clients. For example, Chris Bartolomucci, a past associate counsel to President Bush, is representing Bryan Barrish and Michael Giannini, in their request for a pardon. Bartolomucci is now a partner at Hogan & Hartson.



Barrish and Giannini were owners of a nursing home company. In 2002, they entered into a roughly \$2.2 million civil settlement with the Justice Department for Medicare fraud. In 2000, both pleaded guilty to money laundering.

The two businessmen were referred to the firm by John Porter, another firm partner and former Republican member of Congress from Illinois. One of Porter's ex-aides in Chicago passed Barrish and Giannini on to firm, saying they could use their help.

Porter said he and Bartolomucci registered to lobby as a precaution and have not headed to Capitol Hill yet.

"If someone calls from the White House with a question about the petition, we are already properly filed," Porter said.

The behind-the-scenes advocacy comes at a time when the Justice Department's Office of the U.S. Pardon Attorney is experiencing a historic backlog. More than 10,000 petitions for a pardon or a commutation are pending, about 2,500 more than the previous record at the end of the Clinton administration.

"The Pardon Attorney has a small staff, so the burden of hundreds of new cases must be overwhelming. I doubt that most of them can be processed before the end of this president's term, which will mean a large backlog awaiting President Obama," Love said.

Bush has not been the most generous with his pardon power. He has granted a small number of pardons compared to past presidents — 171 so far, and only eight commutations.

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Catholic Healthcare West



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Statement of William H. Jordan, Senior Counsel to the Assistant Attorney General, Civil Division, U.S. Department of Justice

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Testimony Before the Full Committee of the House Committee on Ways and Means

July 17, 2003

★ HOT TOPICS

Mr. Chairman, I appreciate the opportunity to appear before you to discuss some of the important issues which are the focus of today's hearing. We are grateful for this Committee's leadership on this important topic.

H.R. 3200, "America's Affordable Health Choices Act"

Health Care Reform

I have been asked to provide testimony today concerning the efforts of the Department of Justice to combat fraud and abuse in Federal and State health care programs arising from schemes implicating pharmaceutical and biologic products, as well as durable medical equipment ("DME"). Last September, President George W. Bush spoke to a group of prosecutors from across the nation regarding the Administration's commitment to root out and punish corporate wrongdoers. In the context of financial and accounting fraud, the President stated that: "a few dishonest individuals have hurt the reputations of many good and honest corporations and their executives. They've hurt workers who committed their lives to building the companies that hired them. They've hurt investors and retirees who placed their faith in the companies growth and integrity. For the sake of our free market, corporate criminals must pay."

H.R. 7327 "Pension Relief and Technical Corrections"

This statement applies equally to health care fraud committed against the taxpayers of this country. And that is why the Department of Justice, through the Civil and Criminal Divisions and through the U.S. Attorney's Offices, is fully committed to the fair and vigorous enforcement of the various laws at our disposal to deal with those companies and individuals that steal from the taxpayers. By no means, however, is the Department of Justice alone in the fight to combat fraud and preserve the integrity of the country's Medicare and Medicaid system. We work closely with our colleagues at the Department of Health and Human Services, including those at the Centers for Medicare and Medicaid Services, at the HHS Office of General Counsel, the Administration on Aging, the Food and Drug Administration's Office of Criminal Investigations, and at the HHS Office of Inspector General, and with our State law enforcement partners at the National Association of Attorneys General and the National Association of Medicaid Fraud Control Units.

"The American Recovery and Reinvestment Plan"

Request for Written Comments on Additional Miscellaneous Tariff and Duty Suspension Bills

Working with our colleagues, the Department last year obtained judgments or achieved settlements in health care fraud cases exceeding \$1.6 billion. The year before that, we obtained judgments or achieved settlements in health care fraud cases exceeding \$1.2 billion. Last year alone, Department prosecutors filed 361 criminal indictments in health care fraud cases and a total of 480 defendants were convicted for health care fraud-related crimes. Also last year, 1,529 civil health care fraud matters were pending and we filed 221 new civil cases.

H.R. 7050, "Renewable Energy and Job Creation Tax Act of 2008"

Tax Legislation in the 110th Congress

This Committee and the Congress now are considering ways to implement and make more affordable a Medicare prescription benefits program. It is clear from our experience that government healthcare programs continue to pay too much for prescription drugs. This is due to several factors, including flaws in the Medicare reimbursement system and to the illegal behavior of those who seek to manipulate the system. The Acting Principal Deputy Inspector General of the Department of Health and Human Services testified before the House Budget Committee last week that published wholesale prices of drugs used to establish Medicare payments often bear no resemblance to the actual wholesale prices available to physicians, suppliers, and other large government purchasers. Instead, the current system of reimbursement actually provides an incentive to manufacturers to exaggerate their wholesale prices and, in so doing, inflate the Medicare cost.

Information on Extending Unemployment Benefits

★ SPECIAL FEATURES

President Signs SCHIP Bill Into Law President Barack H. Obama signs H. R. 2, the Children's Health Insurance Program Reauthorization Act on February 4, 2009

It also is indisputable that Medicare now pays too much for durable medical equipment (DME) based on a reimbursement rates that were, in some cases, set in 1987. Recent HHS Inspector General reports have concluded that the Medicare program sometimes pays an amount for DME that is greater than market prices. The pricing of prescription drugs and DME has been at the heart of a number of the Department's fraud cases. The lessons learned from these cases about the pharmaceutical industry and how some in that industry have manipulated the pricing of their products may be helpful as you consider new legislation.

RECOVERY.GOV YOUR MONEY @ WORK The American Recovery and Reinvestment Act Your Money at Work

Bayer Corporation entered into two settlements with the Department to resolve allegations arising from its sale of pharmaceuticals and biological products to Federal health care programs. Allegations against Bayer initially came to the Department from a relator under the False Claims Act who alleged that Bayer improperly inflated its drug prices, causing Medicare and Medicaid to pay inflated reimbursement. Infusable and injectable drugs that cannot be purchased over the counter by the public at a retail pharmacy were at issue. These drugs are often used to treat life-threatening illnesses, such as AIDS, cancer, and hemophilia.

Health Care Reform Restoring Health Care is a Necessary Step in Rebuilding Our Economy

State Medicaid programs reimburse providers for the purchase of these drugs for covered beneficiaries and use either the Average Wholesale Price (AWP) or Wholesale Acquisition Cost (WAC) as a benchmark for their drug reimbursement rates. WAC is a State-created concept, generally defined as the price that a drug wholesaler pays to purchase the drug from a drug manufacturer for subsequent sale to a provider. The Government alleged that Bayer reported inflated WACs to First DataBank (FDB), a national drug pricing reporting service used by most States. The Government also alleged that Bayer falsely reported to FDB that certain products were not sold to wholesalers and, therefore, no WACs existed.

Internship Opportunities Committee on Ways and Means Internship Opportunities

We alleged that Bayer's WACs were inflated because its purported wholesale acquisition cost calculations did not take into account the price at which Bayer was selling its drugs to specialized wholesalers known in the industry as "distributors." Distributors function exactly as other wholesalers do. As stated above, Bayer either reported WACs without factoring in the distributor prices or did not report WACs at all - asserting that distributors are not wholesalers and, thus, no WACs existed. Bayer agreed to pay a total of \$14 million to settle the allegations that it had inflated the WAC of certain of its drugs.

In a second case, Bayer paid \$257,200,000 to settle allegations of "private labeling" of certain drugs for some of its HMO customers to evade Medicaid rebate liability, and derivative Public Health Service (PHS) liability. "Private labeling" is a method used by manufacturers to affix the customer's label and, more importantly, the customer's National Drug Code (NDC) to the drug to avoid the manufacturer's statutory reporting or payment obligations with respect to that drug. Although private labeling has legitimate uses in the industry, for example, where a chain pharmacy wants to offer a store brand in addition to a brand name product, the practice may run afoul of the Medicaid Rebate program, 42 U.S.C. §§1396r-8, where it is done to avoid the manufacturer's best price reporting or rebate obligations.

In a scheme commonly referred to as "lick and stick," Bayer private labeled two of its most popular drugs, Cipro and Adalat CC. The Department alleged that Bayer's private label arrangements were intended to provide deeply discounted prices on these drugs to the HMOs while evading its statutory and contractual obligations to provide the same favorable prices to the Medicaid program. In addition, Bayer submitted false statements to the Office of Audit of the Inspector General for the Department of Health and Human Services (HHS-OIG) and to the Food and Drug Administration (FDA) to further conceal its obligation to pay additional Medicaid rebates in connection with private labeling.

As part of the Medicaid rebate program, manufacturers such as Bayer enter into a rebate agreement with the Health Care Financing Administration, now known as the Centers for Medicare and Medicaid Services (CMS). Under the rebate program, manufacturers such as Bayer agree to report their best price to CMS on a quarterly basis. This best price is defined as the lowest price available from the manufacturer to any "wholesaler, retailer, provider, health maintenance organization, nonprofit entity or governmental entity within the United States" with certain specified exclusions. Bayer further agreed to determine best price "without regard to special packaging, labeling, or identifiers on the dosage form or product or package." 42 U.S.C. § 1396r-8(c)(1)(C)(ii)(II). In addition, Bayer agreed to pay rebates to each State Medicaid program each quarter, calculated as the product of (i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period, and (ii) the greater of either the difference between average manufacturer price and best price, or a minimum rebate percentage of the average manufacturer. §§ 42 U.S.C. 1396r-8(c)(1)(A) and (B). The purpose of the rebate program was to ensure that the nation's insurance program for the poor received the best price for drugs available in the marketplace.

The Government's investigation concluded that Bayer failed to pay rebates owed to the Medicaid program and overcharged certain Public Health Service entities at least \$9.4 million.

Bayer pled guilty in the District of Massachusetts to a one count criminal information of violating the Federal Food, Drug & Cosmetic Act, 21 U.S.C. §§ 331(p), 333(a)(2), and 360(j), and failing to list the private label product with the FDA, and it paid a criminal fine of \$5,590,800. Together with the agreed upon civil settlement amount of \$251,609,200, the global resolution in this second Bayer matter was \$257,200,000.

In a related investigation, GlaxoSmithKline (GSK) paid \$87,600,922 to settle similar charges based on its relationship with the HMO Kaiser Permanente Medical Care Program (Kaiser). As I indicated earlier, Federal law requires drug manufacturers participating in the Medicaid program to report their "best prices" to the Federal government, and to pay rebates to Medicaid to ensure that the nation's insurance program for the poor receives the same favorable drug prices offered to other large purchasers of drugs.

Kaiser provides care and treatment to more than 6 million persons and often purchased drugs directly from drug manufacturers to save on costs for its members. GSK (together with Bayer) provided discounted prices to Kaiser for its drugs and engaged in "private labeling" for Kaiser, affixing different labels to its drug products to avoid reporting the low prices to CMS. GSK also repackaged and privately labeled Paxil, an anti-depressant, and Flonase, a nasal spray for Kaiser at discounted prices and failed to report these lower prices as "best prices" to the Government.

GSK settled its civil False Claims Act liabilities and paid \$87,600,922 to the United States, 49 States, the District of Columbia, and Public Health Service entities as civil damages for losses suffered by the Medicaid programs and the Public Health Service entities. When added to the previous Bayer settlement, Bayer and GSK paid over \$344 million to resolve these related allegations. Like Bayer, GSK also executed a corporate integrity agreement with HHS-OIG, designed to ensure that GSK (like Bayer) will accurately report its "best price" information to the Government.

TAP Pharmaceutical Products Inc. (TAP), a joint venture between Abbot Laboratories and Takeda Chemical Industries, paid \$875,000,000 in 2002 to resolve criminal charges and civil liabilities in connection with its fraudulent pricing and marketing of the cancer drug, Lupron. Under an agreement with the Department, TAP pled guilty to a conspiracy to violate the Prescription Drug Marketing Act paid a \$290,000,000 criminal fine. To resolve its civil liability under the False Claims Act, TAP agreed to pay the United States \$559,483,560 for filing fraudulent claims with Medicare and Medicaid, and to pay the fifty States and the District of Columbia \$25,516,440 for filing fraudulent claims with the States. Thirteen individuals were indicted for their role in the scheme. In addition, four physicians and one individual pled guilty to related crimes. Additionally, TAP entered a sweeping corporate integrity agreement with the Inspector General of the Department of Health and Human Service which significantly changes the manner in which TAP supervises its marketing and sales staffs, and ensures that TAP will report to the Medicare and Medicaid programs the true average sale price for drugs reimbursed by those programs.

While Medicare does not pay for most drugs, Medicare does cover those, such as Lupron, that must be injected under the supervision of a physician. Medicare presently reimburses covered drugs at the lower of 95% of the average wholesale price (AWP) or the physician's actual charge. AWP is a list price set by manufacturers. The Government alleged that TAP set and controlled the price at which the Medicare program reimbursed physicians for the prescription of Lupron by misreporting its AWP as significantly higher than the average sales price TAP offered physicians and other customers for the drug. TAP allegedly "marketed the spread" between its discounted prices paid by physicians and the significantly higher Medicare reimbursement based on AWP as an inducement to physicians to obtain their Lupron business. The Government further alleged that TAP concealed from Medicare the true discounted prices paid by physicians, and falsely advised physicians to report the higher AWP rather than the real discounted price for the drug. The "marketing the spread" practice was recently addressed in the HHS-OIG's Compliance Guidance for Pharmaceutical Manufacturers.

AstraZeneca Pharmaceuticals LP (AstraZeneca), a major pharmaceutical manufacturer headquartered in Wilmington, Delaware, pled guilty last month in Federal district court in Wilmington, Delaware to a healthcare crime and agreed to pay \$355,000,000 to resolve criminal charges and civil liabilities in connection with its drug pricing and marketing practices arising from its sales of Zoiadex, a drug used primarily for the treatment of prostate cancer.

AstraZeneca pled guilty to conspiring to violate the Prescription Drug Marketing Act by causing to be submitted claims for payment for the prescription of Zoiadex which had been provided as free samples to urologists. This criminal conduct caused losses of

\$39,920,096 to Medicare, Medicaid and other federally funded insurance programs. As part of the plea agreement, AstraZeneca paid a \$63,872,156 in criminal fines, paid \$266,127,844 to resolve allegations that the company caused false and fraudulent claims to be filed with the Medicare, TriCare, Department of Defense and the Railroad Retirement Board Medicare programs, and paid \$24,900,000 to resolve allegations that its drug pricing and marketing misconduct resulted in false state Medicaid claims. Finally, AstraZeneca entered into a corporate integrity agreement with the Inspector General of the Department of Health and Human Services which ensures, among other things, that AstraZeneca will report to the Medicare and Medicaid programs the average sale price for drugs reimbursed by those programs and will promote, through internal training and other programs and policies, marketing and sales practices that are in full compliance with the law.

AstraZeneca marketed Zoladex primarily for the treatment of prostate cancer, as is the drug Lupron which is produced by TAP. The United States alleged that from January 1991 through December 31, 2002, employees of AstraZeneca provided thousands of free samples of Zoladex to physicians, knowing and expecting that certain of those physicians would prescribe and administer the free drug samples to their patients and thereafter bill those free samples to the patients and to Medicare, Medicaid, and other federally funded insurance programs. In order to induce certain physicians, physicians' practices, and others to purchase Zoladex, AstraZeneca offered and paid illegal remuneration in various forms including free Zoladex, unrestricted educational grants, business assistance grants and services, travel and entertainment, consulting services, and honoraria.

Also, to induce physicians to purchase Zoladex, the United States alleged that AstraZeneca marketed a "Return-to-Practice" program to physicians. This program consisted of inflating the Average Wholesale Price used by Medicare and others for drug reimbursement, deeply discounting the price paid by physicians to AstraZeneca for the drug ("the discounted price"), and marketing the spread between the AWP and the discounted price to physicians as additional profit to be returned to the physician's practice from Medicare reimbursements for Zoladex. AstraZeneca set the AWP for Zoladex at levels far higher than what the majority of its physician customers actually paid. As a result, AstraZeneca's customers received reimbursement from Medicare and State Medicaid programs and others at levels significantly higher than the physicians' actual costs or the wholesalers' average price.

Finally, the Government alleged that AstraZeneca misreported and underpaid its Medicaid rebates for Zoladex used for treatment of prostate cancer, under the Federal Medicaid Rebate Program. AstraZeneca was generally required on a quarterly basis to rebate to each State Medicaid program the difference between the Average Manufacturer Price and its "Best Price". AstraZeneca falsely reported the "Best Price" for Zoladex used for treatment of prostate cancer by failing to account for off-invoice price concessions provided to non-government customers in various forms, including cash discounts in the form of grants, services, and free goods contingent on any purchase requirement.

Three physicians also were charged in the Federal court in Delaware for their role in this scheme: two pled guilty to conspiring to bill for Zoladex samples. Dr. Saad Antoun, a urologist practicing in Holmdel, New Jersey, was charged on January 15, 2002, and pled guilty to conspiracy on September 18, 2002. Dr. Stanley Hopkins, a urologist practicing in Boca Raton, Florida, was charged on September 30, 2002, and pled guilty to conspiracy on December 17, 2002. Dr. Robert Berkman, a urologist practicing in Columbus, Ohio, was charged on May 19, 2003, and those charges remain pending.

As I mentioned earlier, in April of this year the Inspector General of the Department of Health and Human Services issued Compliance Program Guidance for Pharmaceutical Manufacturers that seeks to encourage companies that manufacture and market pharmaceutical drugs and biological products to adopt internal controls and procedures to avoid the risk areas I have outlined above. The IG did so after seeking our comments. This is but a first step in assuring protection from predatory pricing schemes that inflate costs to already cash-strapped Government healthcare programs. As these cases illustrate, the financial stakes are high as we seek to reform the reimbursement system.

The Department has also actively pursued schemes implicating durable medical equipment. We have devoted considerable resources and personnel to an undercover operation we refer to as "Operation Headwaters." This investigation targeted DME manufacturers across the United States in the area of enteral feeding, diabetic footwear, and wound care products. The Federal Bureau of Investigation held itself out as a national distributor of medical equipment having access to over 6,000 Medicare patients. Over 300 consensual recordings and video/audio tapes reflecting the criminal intent to commit health care fraud on the part of corporate officers and employees of several different national and multi-national DME manufacturers were captured.

On February 10, 2003, the United States Attorney for the Southern District of Illinois announced indictments against Augustine Medical Incorporated (AMI), charging numerous felony violations, including Conspiracy to Defraud the United States, Mail Fraud and Health Care Fraud, related to the fraudulent marketing of a wound care system known as "warm-up active wound therapy." In addition to AMI, Paul Johnson, Director of Reimbursement for AMI, Tim Henley, Vice President of the Wound Care Division, and Phillip Zarlengo, owner of Strategic Reimbursement, were indicted in the conspiracy. This investigation is ongoing and we expect to announce additional developments with respect to other manufacturers in the near future.

After investigating the billing practices of **Rotech Medical Corp. (Rotech)** and one of its subsidiaries, Community Home Oxygen, Inc., we learned that at least with respect to Region D, one of four DME regions in the United States, Rotech and CHO submitted false claims to the Medicare, Montana Medicaid, Veteran's Administration (VA) and Indian Health Services programs for services and supplies that were not provided, not properly documented or not medically necessary, or were provided to patients who were not properly qualified to receive such services. We recovered \$17.5 million in false claims in the context of a bankruptcy proceeding.

An Alabama-based nursing home operator, **Crowne Investments, Inc.**, and **Gericare Medical Supply, Inc.** paid the United States \$1,071,000 to settle allegations that they participated in a scheme to overbill the Medicare program. The settlement resolved allegations that from February 1993 to August 1993, the two Monroeville, Alabama-based companies caused the submission of false or fraudulent claims for Medicare reimbursement for enteral (intestinal) feeding supplies. The Government asserts that the supplies were duplicates of others already reimbursed by Medicare directly to Gericare for the same patients and that the overcharged supplies were not medically necessary.

Lincare, Inc., a medical supply company based in Clearwater, Florida, with offices in Redding, California, paid \$3,150,000 to settle allegations that it submitted false home oxygen therapy claims to Medicare for therapeutic ventilator claims and unit dose albuterol sulfate claims during the period January 1, 1995 through December 31, 1997, that did not comply with Medicare requirements governing reimbursement for those products.

Red Line Healthcare Corp. (Red Line), a Minnesota medical supply corporation, and its parent, **Medi Mart, Inc. (Medi Mart)**, paid \$5.6 million in 1999, to settle, among other things, allegations that their Medicare claims were not properly documented to support the need of Medicare patients for nutritional products, that they intentionally "shopped" their claims for urological supplies to the wrong Government contractor to maximize Medicare reimbursement, and that Medi Mart knowingly retained payments exceeding what Medicare should have paid for the product or supply.

in 2002, the Department entered into a civil settlement of \$2,286,752 with Salvatore Galioto, Bryan Barrish, Michael Giannini and Scott Sandler, based on allegations that they submitted false claims under Medicare Part B for incontinence supplies, including irrigation syringes and sterile saline irrigation solutions, that were neither medically necessary nor reimbursable under Medicare.

The incontinence supplies in question were provided to residents at Chicago area nursing homes by Specialized Healthcare Products, Inc. (SHP), a durable medical equipment supply business. The nursing homes were owned and operated by Barrish and Giannini. Galioto, through a company called Advanced Vital Med., Inc. (AVM), acted as sales agent for SHP. Various individuals at AVM and SHP completed false Certificates of Medical Necessity for Medicare beneficiaries. The Government alleged that, to gain access to the nursing homes to furnish the unnecessary incontinence supplies that were billed to Medicare, SHP supplied free of charge adult diapers and/or adult undergarments to the Medicare beneficiaries at the nursing homes. These adult diapers/adult undergarments are not reimbursable by Medicare under any circumstances. From December 1994 through May 1995, Medicare paid \$1,524,073.79 to SHP. A portion of the funds were then transferred from SHP to AVM. Galioto and others, through AVM, received a portion of the proceeds.

Galioto, Barrish, Giannini and Marc Siebzener were indicted on February 24, 2000 in the Eastern District of Missouri, for mail and wire fraud, money laundering and conspiracy to violate Medicare's anti-kickback statute. Barrish and Giannini each pled guilty on February 23, 2000, to one count of money laundering, in violation of 18 U.S.C. §§ 1341, 1957 and 2. Each was sentenced to three years probation and jointly ordered to pay \$46,573.04 in restitution and a fine of \$68,478.72.

Galioto pled guilty on May 16, 2000, to conspiring to violate the anti-kickback statute, 42 U.S.C. § 1320a-7b(b)(1) and (2). He was sentenced to ten months and ordered to pay restitution of \$120,000 and a fine of \$30,000. Siebzener pled guilty to one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, on July 10, 2000. He was sentenced to five years probation and ordered to pay \$100,000.00 in restitution. The Court found that Siebzener lacked the financial ability to pay a fine.

Medicare Secondary Payer Provisions: Finally, I would like to restate the Department's support for section 301 of H.R. 1, the "Medicare Prescription Drug and Modernization Act of 2003," which would protect the integrity of the Medicare Trust Fund by clarifying that Medicare must be reimbursed whenever another insurer's responsibility to pay has been established. The section is consistent with the litigation positions taken by this Department and the Department of Health and Human Services in numerous court cases.

Congress enacted the Medicare Secondary Payer ("MSP") statute in 1980 to protect the fiscal integrity of the Medicare program by making Medicare a secondary, rather than a primary, payer of health benefits. To ensure that Medicare would be secondary, Congress precluded it from making payment when a primary plan has already made payment or can reasonably be expected to pay promptly. Congress recognized, however, that in contested cases, payments under such plans would be delayed. To protect providers, suppliers, and beneficiaries, Congress authorized Medicare to make a "conditional" payment when prompt resolution of a claim cannot reasonably be expected. The Medicare Trust Fund must be reimbursed, however, once the primary insurer's obligation to pay is demonstrated.

Some recent court decisions have held, however, that Medicare has no right to reimbursement unless the primary insurer could reasonably have been expected to make prompt payment at the outset. See, e.g., *Thompson v. Goetzmann*, 315 F.3d 457 (5th Cir. 2002); *Fanning v. United States*, 202 F.R.D. 154 (E.D. Pa. 2001). These rulings make the statute's reimbursement mechanism inoperative in some jurisdictions. Section 301 of this legislation would end this costly litigation and provide clear legislative guidance regarding Medicare's status as a secondary payer of health benefits. The technical changes in Section 301 make clear that Medicare may make a conditional payment when the primary plan has not made or is not reasonably expected to make prompt payment.

On July 7, 2003, in response to the government's petition for rehearing, the *Goetzmann* court agreed to delete the "prompt payment" analysis from its decision. Although this amendment to the opinion provides temporary relief within the Fifth Circuit, the court's reasoning highlights the need for corrective legislative action. The court acknowledged that its reading of the statutory text arguably creates the "absurd result" described by the government, essentially nullifying the government's right to reimbursement whenever an insurance company disputes a claim, but explained that it "remained convinced" that its analysis of the plain language was correct. The court stressed that courts are not in the business of amending legislation to prevent absurd results, and urged the government to take its complaint to Congress, rather than to the courts.

The technical amendments of section 301 clarify other provisions of the MSP statute, as well. They make clear that a primary plan may not extinguish its obligations under the MSP statute by paying the wrong party (i.e., by paying the Medicare beneficiary or the provider instead of reimbursing the Medicare Trust Fund). The section clarifies that a primary plan's responsibility to make payment with respect to the same item or service paid for by Medicare may be demonstrated, among other ways, by a judgment, or a payment conditioned upon the recipient's compromise, waiver or release of items or services included in the claim against the primary plan or its insurer; no finding or admission of liability is required. In addition, section 301 makes clear that an entity will be deemed to have a "self-insured plan" if it carries its own risk, in whole or in part. Finally, the section makes clear that the Medicare program may seek reimbursement from a primary plan, from any or all of the entities responsible for or required to make payment under a primary plan, and additionally from any entity that has received payment from the proceeds of a primary plan's payment. These provisions of section 301 will resolve contentious litigation and are designed to protect the fiscal integrity of the Medicare program.

Conclusion

Again, I thank the Committee for seeking the views of the Department of Justice on these issues. The Committee can be assured that the Department will continue to play a lead role in policing the healthcare system for fraud and abuse, and will work with this Committee in addressing the myriad issues which I have briefly discussed this morning.

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THE HILL

BUSINESS & LOBBYING

Lobbyists offer help to those seeking pardons from departing White House

By Kevin Bogardus

Posted: 11/24/08 06:31 PM [ET]

A number of convicted criminals have turned to K Street for help in gaining a last-minute pardon from President Bush before he exits the White House in January.

Prominent law firms, think tanks and grassroots movements have gotten behind those who are seeking relief from the justice system. They have lobbied on legislation, put together petitions with thousands of signatures and rallied members of Congress to create a groundswell of support for those in need of clemency.

High-profile convicts such as junk bond trader Michael Milken, who is seeking a pardon, and former Rep. Randy "Duke" Cunningham (R-Calif.), who is seeking a commutation, have filed petitions with the Justice Department's Office of the Pardon Attorney.

But those with the most support may be Jose Compean and Ignacio Ramos, two U.S. Border Patrol agents imprisoned after shooting a Mexican drug smuggler during a routine border stop three years ago.

"We saw an obvious injustice when border security is a vital issue in this country," said Jeffrey Mazzella. "It deterred Border Patrol agents from fully doing their job."

Mazzella is president of the Center for Individual Freedom (CFIF), a nonprofit group that has taken a number of tough positions on illegal immigration. CFIF has become one of many organizations to build public support outside of Washington for pardoning Compean and Ramos, who are serving 11- and 12-year sentences, respectively.

Last year, when the CFIF lobbied for a congressional resolution that called for Bush to pardon the two agents, Mazzella and others gathered as many co-sponsors as possible for the bill and also asked lawmakers to write letters to the president supporting a pardon.

In addition, CFIF has sent more than a million faxes and letters to the White House calling for a presidential pardon. Mazzella said more than 200,000 letters in support of Compean and Ramos have yet to be delivered.

Other organizations, such as U.S. Border Control, another nonprofit group for tough reforms of U.S. immigration laws, have also campaigned for Compean and Ramos.

"They are poster boys for border patrol. The real crimes are that they did their job," said Edward Nelson, U.S. Border Control's chairman.

Nelson estimates his group has directed tens of thousands of e-mails on a monthly basis to the White House asking for pardons of Compean and Ramos. In addition, the organization has filed amicus briefs and appeals in court on the agents' behalf. Lawmakers such as Reps. Virgil Goode (R-Va.) and Ted Poe (R-Texas) have signed onto some of those court actions.

Despite Congress's assertiveness on the issue, Capitol Hill has little power when it comes to granting a pardon, which is solely the purview of the president.

"Congress cannot limit the president's power, but it can certainly express its views for whatever influence that may have," said Margaret Colgate Love, a former U.S. pardon attorney who now represents clients seeking pardons.

For other, less well-known clients, lobbyists have turned to lawmakers to garner support for their clients in seeking clemency from Bush.

"I am basically trying to help her through the process. If you want to say 'lobby,' you can say that," said Anthony Cunningham.

Cunningham, a principal at Chamworks, is representing Deborah Griffin, a former municipal court judge from Philadelphia. Griffin was convicted of credit card fraud in 1984 and was put on three years' probation. Despite the conviction coming to light during her first campaign in 2001, Griffin was elected twice to the judgeship before being forced to step down this year.

Cunningham said he has met with congressional aides to Rep. Chaka Fattah (D-Pa.) and Sen. Arlen Specter (R-Pa.) in order to gain backing for Griffin.

"It is just making those in Congress aware of her case and the facts surrounding it," said Cunningham.

Former White House staffers are also working on pardons for clients. For example, Chris Bartolomucci, a past associate counsel to President Bush, is representing Bryan Barrish and Michael Giannini, in their request for a pardon. Bartolomucci is now a partner at Hogan & Hartson.

Barrish and Giannini were owners of a nursing home company. In 2002, they entered into a roughly \$2.2 million civil settlement with the Justice Department for Medicare fraud. In 2000, both pleaded guilty to money laundering.

The two businessmen were referred to the firm by John Porter, another firm partner and former Republican member of Congress from Illinois. One of Porter's ex-aides in Chicago passed Barrish and Giannini on to firm, saying they could use their help.

Porter said he and Bartolomucci registered to lobby as a precaution and have not headed to Capitol Hill yet.

"If someone calls from the White House with a question about the petition, we are already properly filed,"

Porter said.

The behind-the-scenes advocacy comes at a time when the Justice Department's Office of the U.S. Pardon Attorney is experiencing a historic backlog. More than 10,000 petitions for a pardon or a commutation are pending, about 2,500 more than the previous record at the end of the Clinton administration.

"The Pardon Attorney has a small staff, so the burden of hundreds of new cases must be overwhelming. I doubt that most of them can be processed before the end of this president's term, which will mean a large backlog awaiting President Obama." Love said.

Bush has not been the most generous with his pardon power. He has granted a small number of pardons compared to past presidents — 171 so far, and only eight commutations.

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U.S. DISTRICT COURT RECORD

Record Current Through: 06/26/2003
Source Last Updated: 07-30-2009
Current Date: 07/30/2009
Source: U.S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI, MO

DEFENDANT INFORMATION

Name: **BRYAN G. BARRISH**

COURT & CASE INFORMATION

Court: U.S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI
(EASTERN)
Court State: MO
Judge: HONORABLE CATHERINE D. PERRY
Case Title: USA v. BARRISH
Case Number: 4:00CR00100
Charges Filed Date: 02/23/2000
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Attorney: MICHAEL L. SIEGEL
Attorney: ROBERT T. HAAR
HAAR AND WOODS, LLP
1010 MARKET STREET, SUITE 1620
ST. LOUIS, MO 63101
Prosecuting Agency: UNITED STATES OF AMERICA
Prosecutor: JAMES E. CROWE, JR.
U. S. ATTORNEYS
314-539-7695 FAX, 111 S. TENTH STREET, 20TH FLOOR, 314-539-2200

CURRENT CHARGE OR OFFENSE INFORMATION

Offense Committed: HEALTHCARE FRAUD (1)
Class of Offense: 4
Offense Disposition: ON PROBATION FOR A TERM OF 3 YEARS. THE DEFENDANT IS ORDERED TO PAY A \$50 SPECIAL ASSESSMENT, \$68,478.72 FINE AND RESTITUTION IN THE AMOUNT OF \$46,573.04. (1)

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For an updated version of this docket, click [UPDATE](#)

U.S. DISTRICT COURT RECORD

Record Current Through: 06/26/2003
Source Last Updated: 07-30-2009
Current Date: 07/30/2009
Source: U.S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI, MO

DEFENDANT INFORMATION

Name: **MICHAEL RAYMOND GIANNINI**

COURT & CASE INFORMATION

Court: U.S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI
(EASTERN)
Court State: MO
Judge: HONORABLE CATHERINE D. PERRY
Case Title: USA v. GIANNINI
Case Number: 4:00CR00099
Charges Filed Date: 02/23/2000
Attorney: JEFFREY E. ROGERS
ROSS AND HARDIES
150 N. MICHIGAN AVENUE, SUITE 2500
CHICAGO, IL 60601
Attorney: DAVID V. CAPES
CAPES AND SOKOL
7701 FORSYTH BOULEVARD, FOURTH FLOOR, SUITE 400
ST. LOUIS, MO 63105
Prosecuting Agency: UNITED STATES OF AMERICA
Prosecutor: JAMES E. CROWE, JR.
U. S. ATTORNEYS
314-539-7695 FAX, 111 S. TENTH STREET, 20TH FLOOR, 314-539-2200

CURRENT CHARGE OR OFFENSE INFORMATION

Offense Committed: **EMBEZZLEMENT/HEALTHCARE FRAUD (1)**

Class of Offense:

4

Offense Disposition:

ON PROBATION FOR A TERM OF 3 YEARS. THE DEFENDANT IS ORDERED TO PAY A SPECIAL ASSESSMENT OF \$50, A \$68,478.72 FINE, AND A SPECIAL ASSESSMENT OF \$46,573.04. (1)

The preceding record is for informational purposes only and is not the official record. This information is not warranted for accuracy or completeness. For copies of the official record (of conviction or incarceration), contact the agency or court.

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Ownership Information

BRIAR PLACE
6800 WEST JOLIET
INDIAN HEAD PARKIL60625
ADMINISTRATOR: LINDA PYFER
TELEPHONE: 708-246-8500

Name of Owner:	% of Ownership
MAKHOLOUF SUISSA	13.00
ERIC A ROTHNER	30.00
LORRAINE SUISSA	10.00
NOAH WOLFF	14.00
MARILYN WOLFF	14.00
Ownership Type:	
FOR-PROF CORPORATION	

Owners with less than 5 percent interest are not shown
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Ownership Information

ELMWOOD CARE
7733 WEST GRAND AVENUE
ELMWOOD PARKIL60707
ADMINISTRATOR: MAARLEEN SIAP
TELEPHONE: 708-452-9200

Licensee Name:	ELMWOOD CARE, INC.	
Name of Owner:		% of Ownership
JULIANNA R BARRISH		14.13
BRYAN G BARRISH		14.13
ERIC A ROTHNER		9.00
GALE F ROTHNER		9.39
MARIO GIANNINI		6.10
MICHAEL R GIANNINI		11.48
CELESTE GIANNINI		11.48
Ownership Type:	FOR-PROF CORPORATION	

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Ownership Information

FAIRVIEW NURSING PLAZA

321 ARNOLD AVENUE
ROCKFORD IL 61108

ADMINISTRATOR: MICHAEL TORAL
TELEPHONE: 815-397-5531

Licensee Name:
FAIRVIEW NURSING PLAZA, INC.

Name of Owner:	% of Ownership
JULIANNA R BARRISH	13.89
BRYAN G BARRISH	13.89
MICHAEL R GIANNINI	13.89
CELESTE GIANNINI	13.89
MARK D SOLOMON	6.58

Ownership Type:
FOR-PROF CORPORATION

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Ownership Information

MAPLEWOOD CARE

50 NORTH JANE
ELGIN IL 60123

ADMINISTRATOR: JAMIE LLOYD

TELEPHONE: 847-697-3750

Licensee Name:
MAPLEWOOD CARE, INC.

Name of Owner:	% of Ownership
JULIANNA R BARRISH	13.26
LOUISE BERGTHOLD	6.09
BRYAN G BARRISH	13.26
GALE F ROTHNER	7.61
MARIO GIANNINI	7.61
MICHAEL R GIANNINI	10.72
CELESTE GIANNINI	10.72

Ownership Type:
FOR-PROF CORPORATION

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Ownership Information

NEIGHBORS REHABILITATION CTR

811 WEST 2ND STREET
BYRON IL 61010

ADMINISTRATOR: PAWN THAMMARATH
TELEPHONE: 815-234-2511

Licensee Name: NEIGHBORS REHABILITATION CENTER, LLC	
Name of Owner: % of Ownership	
<u>WILLIAM ROTHNER</u>	9.00
<u>BRYAN G BARRISH</u>	11.83
<u>RALPH GESUALDO</u>	11.83
<u>MICHAEL R GIANNINI</u>	10.01
Ownership Type: LIMITED LIABILITY CO	

Owners with less than 5 percent interest are not shown.
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Ownership Information

WILSON CARE

4544 NORTH HAZEL STREET
CHICAGO IL 60640

ADMINISTRATOR: AUGUSTO BELEY

TELEPHONE: 773-561-7241

Licensee Name:
WILSON CARE, INC.

Name of Owner:	% of Ownership
STEVEN GELLER	5.55
BETH ALTER	5.55
BRYAN G BARRISH	11.11
MARC GELLER	5.55
ERIC A ROTHNER	20.00
RITA L GELLER	5.00
NOAH WOLFF	5.55
MARILYN WOLFF	5.55

Ownership Type:
FOR-PROF CORPORATION

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ILLINOIS DEPARTMENT OF PUBLIC HEALTH

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Ownership Information

COLUMBUS PARK N & REHAB CENTER

901 SOUTH AUSTIN
CHICAGO IL 60644

ADMINISTRATOR: MARTIN T LEE
TELEPHONE: 773-287-5959

Licensee Name:
COLUMBUS PARK NURSING & REHABILITATION CENTER, INC.

Name of Owner:	% of Ownership
LEO W FEIGENBAUM	6.90
JULIANNA R BARRISH	7.20
BRYAN G BARRISH	7.20
SYLVIA FEIGENBAUM	6.60
MICHAEL R GIANNINI	6.60
CELESTE GIANNINI	6.60

Ownership Type:
FOR-PROF CORPORATION

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 SECRETARY OF STATE

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CORPORATION FILE DETAIL REPORT

Entity Name	COLUMBUS PARK NURSING & REHABILITATION CENTER, INC.	File Number	56631135
Status	ACTIVE		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	12/05/1991	State	ILLINOIS
Agent Name	ERIC A ROTHNER	Agent Change Date	10/31/2003
Agent Street Address	2201 MAIN ST	President Name & Address	ERIC A ROTHNER 2201 MAIN ST EVANSTON 60712
Agent City	EVANSTON	Secretary Name & Address	NOAH A WOLFF SAME
Agent Zip	60202	Duration Date	PERPETUAL
Annual Report Filing Date	11/03/2008	For Year	2008

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CORPORATION FILE DETAIL REPORT

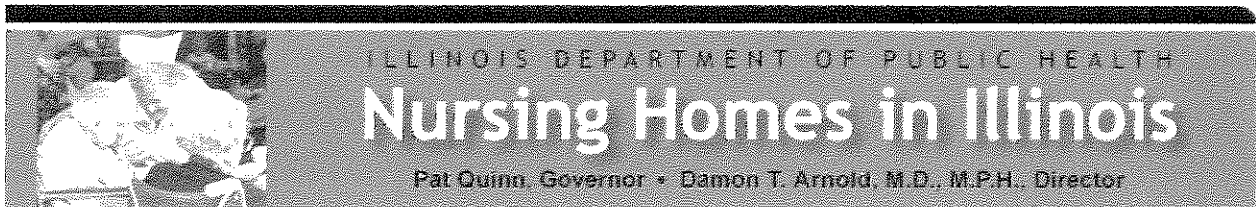
Entity Name	GREENWOOD CARE, INC.	File Number	54520751
Status	ACTIVE		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	01/13/1987	State	ILLINOIS
Agent Name	ERIC A ROTHNER	Agent Change Date	10/20/2003
Agent Street Address	2201 MAIN STREET	President Name & Address	ERIC ROTHNER 2201 W MAIN STREET EVANSTON 60202
Agent City	EVANSTON	Secretary Name & Address	GALE ROTHNER SAME
Agent Zip	60202	Duration Date	PERPETUAL
Annual Report Filing Date	12/09/2008	For Year	2009
Old Corp Name	06/25/1990 - RAINTREE HEALTH CARE CENTER, INC.		

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Ownership Information

GREENWOOD CARE

1406 CHICAGO AVENUE
EVANSTON IL 60201

ADMINISTRATOR: DELVIN K RYCHENER

TELEPHONE: 847-328-6503

Licensee Name:
GREENWOOD CARE, INC.

Name of Owner:	% of Ownership
----------------	----------------

JULIANNA R BARRISH	15.50
--------------------	-------

BRYAN G BARRISH	15.50
-----------------	-------

ERIC A ROTHNER	54.00
----------------	-------

Ownership Type:

FOR-PROF CORPORATION

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August 11, 2009

My name is Pam Ray; I am an International Union Representative with the American Federation of State, County and Municipal Employees. We represent 1.6 million workers across the U.S.A. and Local 2468 is a local in our family. I am here to speak to you about keeping Lancaster Manor under the County's jurisdiction. Based on the information I have reviewed in the last few days, it is clear the best interest of the residents of Lancaster Manor is to remain with Lancaster County.

The Mission of Lancaster Manor "is to provide a homelike environment with personalized care and service. Our goals are specifically designed to enable each individual resident to live their life to the fullest".

After looking at the investigation into nursing homes owned in part or whole by the Rothner family, who is Hunter Management; it is unconscionable that you are still proceeding with negotiations/discussions, what ever you want to call it, with these people.

You have been given information that 30 out of 45 facilities these people own are rated "**below average or much below average**" by Medicare.

Reports show:

1. A resident in their care, had a bed sore dripping blood (Berwyn Nursing Home 2-09 Chicago Tribune)
2. A 52 year old resident in their care suffocated when he was trapped between the mattress and side rails
3. A dementia patient in their care was found dead – AFTER 14 HOURS (Hazel Crest Nursing Home, IL)
4. A 69 year old resident in their care was raped (Chicago 5-09 AP)

These are just a scant few of the horrific violations that take place under Hunter Management!!

In a letter dated 2/11/09 you told the residents of Lancaster Manor that "the highest priority of the Lancaster County Board of Commissioners is providing long-term quality care to you, the residents of Lancaster Manor"

How can you say that when you are talking to people like Hunter Management about taking over the care of these residents?

You are talking to people that only care about money – not the quality of care that is given to residents in their care.

You are talking with people that are criminals; that have defrauded Medicaid and Medicare for money they are not entitled and still did not give care to their residents.

I have seen all the projected budget numbers; I don't claim to be an expert but I have had experts to look at the information supplied by your own County Budget Office and the numbers don't come any where near your 3.60 million loss number. In fact, they show that Lancaster Manor has had a surplus in each of the past three years. Fiscal year 2007 finished with unreserved funds of 1.85 million or about 11% of total expenses for the year, FY 2008 finished with 2.39 million in unreserved funds, reaching 13% of the year's expenditures, FY 2009 finished with 1.15 million or 5.6% of total expenses for the year. Municipal finance experts typically recommend that this percentage be in the 5 to 15% range so the Manor is doing well. In short, the projected deficit for FY 2010 depends on a significant drop in revenue over that of the year that has just ended. The rationale for that drop is not clear in any available documents. If the drop does not occur, the deficit will not occur. It is important to note that in all three of the past three years FY's 2007 – 2009, the Manor fund has outperformed budget expectations.

FY 2009 could have been stronger but 2 million of the Manor's funds were used to retire capital improvement bonds 5 years before maturity, unnecessarily, which weakened the Manor's cash reserves.

The Board has refused repeated requests to hire an experienced Administrator for Lancaster Manor. Ms Thorpe is an interim Administrator and she is not doing everything possible to bring revenue to the Manor. She told you she would not seek Preferred Provider status unless the Board directed her to do so. I have received information that to seek preferred provider status with Blue Cross/Blue Shield for example, would require a copy of 1. the audit from Medicare 2. the Medicare cost report and 3. the state survey. If these three things are sent, Blue Cross/Blue Shield will write up a contract and send it to the Manor. It seems to me this should not require months of work as stated previously. Back in January of this year, Ms Thorpe was questioned about advertising for the Manor and she stated that the Manor receives more referrals than it can accept; if that is so, why the projected downfall in revenue? Ms Thorpe removed with Board approval, the Manor listing from the Yellow Pages, where most people go to look up businesses under topic to find services. If you were looking for a nursing

home for a loved one would you know the names of all of them to look them up under the white pages? Most people would not.

So, after saying all that, I'm not sure what is really happening here. Is erroneous information being put out to the public to scare them so they will quietly go along with an unnecessary sale of Lancaster Manor so the Board will not have to deal with it any longer or are you starting to privatize a piece at a time to get rid of Local 2468 so employees won't have any say in what occurs in county government? I just want to say – whatever your reasons are, we are prepared to stand with Local 2468 and make sure the community is aware of the **facts** not the fiction I have seen up to this point.

Lincoln, Neb.
August 11, 2009

Bernie Heier, Chair
Lancaster County Board of Commissioners
555 South 10th Street, Suite 110
Lincoln, NE 68508

RE: Public Records Request

Dear Commissioner Heier:

Under the provisions of Neb. Rev. Stat. § 84-712, *et seq.*, we are hereby requesting copies of the following public records:

(1) A copy of the original budget for Lancaster Manor for FY2010, and any subsequent revisions or proposed revisions to the original budget. (2) All workpapers used by county officials in the preparation of the manor's FY2010 budget and budget revisions. (3) Any memoranda or correspondence, including email messages to/from/between/among county officials, including county commissioners, pertaining to the original budget and any subsequent revisions or proposed revisions.

If any fees for searching for, or copying, the records requested will exceed \$100.00 (one hundred dollars), please inform Mark Vasina (402-890-6958) before you fill the request.

If all or any part of this request is denied, please cite the specific exemption(s) under Neb. Rev. Stat. § 84-712.05 which you believe justifies your refusal to release the information, and inform Mark Vasina of the appeal procedures available to us within your agency.

We would appreciate your handling this request as quickly as possible, and we look forward to hearing from you within four business days, as the law requires.

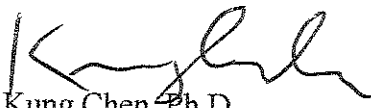
Sincerely,



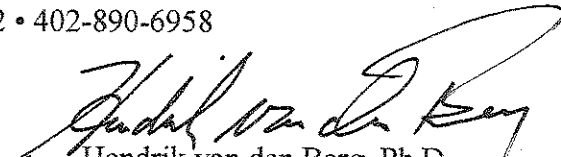
Mark Vasina
2905 S. 19th Street, Lincoln, NE 68502 • 402-890-6958



F. Gregory Hayden, Ph.D.
Professor of Economics, UNL



Kung Chen, Ph.D.
Professor of Accountancy, UNL



Hendrik van den Berg, Ph.D.
Professor of Economics, UNL



Linda Ruchala, Ph.D.
Associate Professor of Accountancy, UNL

August 11, 2009

TO: Lancaster County Board of Commissioners

RE: Lancaster Manor

Once again I call upon this board not to sell Lancaster Manor, primarily because the decision appears to be made void of the Spirit of Love and Caring for the elderly which was the purpose for its establishment in the first place.

This absence of the Spirit of Love and Caring affects negatively Lincoln and the whole Lancaster County community. While I do not know any of you personally, surely that is not the intent of your actions.

Each of us starts our lives as helpless, needful human beings, and each of ends our lives the same way, as helpless, needful human beings, though our end of life conditions may vary. Some people can pay for help in our waning years and days. But all cannot. Lancaster Manor was conceived for those of us who do not and will not have the means to pay for our care at the end of our lives.

Surely, we do not want to add to the decay in America by making material gain the bottom line.

I urge you to continue the Spirit of Love and Caring in this community by retaining ownership of the Manor.

Thank you, for your consideration.

Respectfully,



Lela Knox Shanks
2761 Randolph St.
Lincoln, NE