

TRUTH WITH A CUDGEL

Re: 8/3/20 Senate-Assembly hearings on the COVID-19 nursing home crisis in NYS

Observations of a long time advocate who watched from 10AM to 9PM

FACT: DOH, PHHPC, Dr Zucker are de facto enablers of harm to the elderly-demonstrated by years of malfeasance and confirmed by the Commissioner's evasive testimony on 8/3/20.

FACT: Dr Zucker showed a clear disdain for the legislators who called the hearing, as well as those who took their time and trouble to testify when he left the proceeding without the curiosity or concern to learn more and stay for its entirety.

FACT: The malfeasance and mismanagement of the DOH in its failure of responsibility and oversight to ensure safety for those New Yorkers relying on this Agency to protect them has gone on for years, There has been a systemic failure which allowed the Coronavirus to find its perfect victims –those who were never attended to sufficiently long before we ever heard of Covid-19!

FACT: The 2016 Federal Regulation required that the NYS DOH put a Pandemic Plan in place: IT WAS NEVER DONE.

FACT: Zucker's reference to Florida 'workers' infecting Nursing Home patients failed to note the disparity of the unfettered inflections due to the lack of any Florida Covid-19 governmental interdiction. Comparing NY with Florida as justification to blame the spread in NYS by Nursing Home workers is based on a fallacy and is a self-serving shameless evasion of taking blame ownership where it is well deserved.

FACT: If NYS Title 10 CRR requires & subjects long term care facilities to inspection and the enforcement of 'condition, operation and quality of care' why would Governor Cuomo erode liability options which would normally hold accountable those who flouted their NYS licensed facility's oversight obligations?

FACT: Someone needs to own the flagrant stall of the Safe Staffing Bill A2954/S1032. Versions begun in 2009 and even as taken up every year, are lost to outer space. Where is the will – 37 other states have a higher ratio?! It remains chimeric posturing –NYS legislators are complicit if this continues to fester.

FACT: Thumbs on the scale incentivizing of higher Medicare remunerated COVID elder patients (\$800) not only pushed out existing residents being paid a lower (\$200) daily rate, but

exacerbated the admission of infected elders which in turn put ever more frail residents in criminal harm's way.

FACT: Any pretext, often avowed, for the NYS Attorney General i.e. the Executive Branch's attorney- to investigate its own sister agency, the Department of Health will be a de facto conflict of interest and the final blow to any pretext of credibility of NY State government's stewardship of Nursing Home accountability and purported honest oversight

FACT: Any pretext, often avowed, by the NYS Dept of Health i.e. the appointees of Governor Cuomo, to investigate itself, namely to 'remedy itself' in view of the well known and widely publicized failures of that department's oversight, enforcement and moral imperative, must not be permitted. The mismanagement, ineptitude and incestuous DOH relationships with the very Nursing Homes and Assisted Living Facilities which have failed their ethical, moral and regulated obligations present a conflict of interest and the final blow to any pretext of credibility of NY State government and purported independent oversight.

FACT: Any empanelling of oversight Committees generated by a new Bill to fund its realization, must be thoroughly vetted prior to their appointments. A prerequisite of a clean record showing no campaign financing nor political donations must be required. The usual 'suspects' must not be certified as independent judges. Foxes in the hen house sussing how they're going to eat their prey should be evident to all legislators of good intention and be abjured.

FACT: Ombudsmen could and should play an important role-but irrespective of how much funding to increase their numbers, they will never fulfill their promise to be the interlocutors protecting the Nursing Home patient unless the following is also addressed:

- A) Ombudsman have no enforcement powers!!!
- B) Ombudsman may be interviewing fearful patients while operators or their staff hover close by & monitor any complaint dared to be spoken –ergo, suppressed concerns go unspoken
- C) Ombudsmen are confronted by limitations inherent in Alzheimer's patients as well as a majority of elders with hearing loss and an inability to fully understand and sufficiently exchange problems and issues succinctly.

FACT: The Department of Health is a House of Cards

- A) The Agency is not transparent
- B) The Agency is not responsive to public interaction for direct & rectifying responses
- C) The Agency prioritizes the Governor's fiat and not Resident/Patient ethical care and safe oversight

- D) The Agency pays deference to Lobbyists self-serving proposed legislative acts
- E) The Agency has insufficient Consumer Representation who are stakeholders
- F) The Agency doesn't have independence from the Governor where necessary
- G) The Agency's reliance on an April, 2020 "Kitchen Cabinet" (per Balboni of GNYHCFA!) and Operators for emergency 'fixes' explains the resulting onerous consequences.

FACT: The Public Health and Health Planning Council is a failed Agency

- A) The PHHPC FAILS due diligence prior to Licensing an applicant
- B) The PHHPC FAILS to prevent bad owner/operators from Certification
- C) The PHHPC has council members with conflicts of interest-recusal is inadequate!
- D) The PHHPC has only one consumer rep...a restructure is imperative
- E) The PHHPC ignores chronic histories of violations when licensing ongoing operators.

FACT: Liability shield which still remains in place with a 'technical' parsing continues to preclude the rights of patients to seek accountability and justice for those among the 6600 who died. The partial repeal is a shameless concession to Lobbyists and to Cuomo.

FACT: Until and unless there is coordination with New York City's guidance on property ownership of facilities there will be an unsustainable deficit of them. The 'left hand doesn't know what the right hand is doing' evasion by New York State enables ever more real estate churns and dismantling of Assisted Living and Nursing Home facilities in NYC. These sites will continue to diminish, allowing for few to no places left for New Yorkers to age out their lives safely as exponential growth of the 'old-old' gets to crisis stage.

FACT: When Cuomo's increase of the minimum wage was enacted-and implemented in 2018, all aide Agencies cut back on their employees' hours to avoid paying overtime. Unconscionable both for those workers needing to take 2 and 3 jobs...but also forced travelling/journeymen aide workers in increased 'musical chairs' commutes during the time of the pandemic to earn a living wage.

FACT: MLTC 24 hour Home Attendant shifts allow slave labor wages of only 13 hours paid per 24 hours. REMARKABLE and disgusting-how can you let this continue?

FACT: Per LTCCC, Nursing Home chains had a 6.2% boost in profits-the industry is paid to provide humane care-where is the money going?

FACT: For-profit Nursing Homes have had a higher rate of resident death than those of non-profits.

FACT: Per 1199's Executive VP Millie Silva-NYS is a low(!) 31st in the nation for Nursing Home quality and in the bottom 10 for ulcers.

FACT: LLC shells have allowed scofflaw individuals and share holders to remain shielded from liability and accountability. No one who wishes to operate any facilities in which elders are living, should be permitted the use of LLC corporate veil protection.

FACT: The failure of accountability and consequences of malfeasance by NY's tax-paid government employees like Dr Zucker has come due. Additionally, what should be considered criminal predation by owner/operators' harm to the disabled and frail was not addressed-is it ever? Unless there are consequences that have real teeth-these hearings will have been ever more exercises in indignant optics and painful stories which nonetheless sustain the status quo. Larger fines will not do it...they are built into the cost of doing business. Zucker must resign!

FINAL FACT: NO ONE addressed the corruption that Lobbyists like Mr Balboni of the GNYHCFA use as standard operating procedure. The list of pay to play owner/operators, Lobbyists, PACs is long and traceable. ("I've been able to work well with the administration...", said Balboni, who co-hosted a "Republicans for Cuomo" fundraiser last week at The Pierre hotel in Manhattan for which tickets went as high as \$50,000 a head.")
<https://www.politico.com/states/new-york/albany/story/2014/03/cuomos-elite-republican-strategy-078891>

Why is no one connecting dots? They are there for the 'discovering' and readily available to expose and finally mitigate the reason why these long term care facilities flourish while the most frail and voiceless become commodified. Follow the money. It's now on you.

MY CONCLUSION: All the regulations, rules, codes, check lists in the world will never mitigate the lack of conscientious and purposeful long term care facilities as long as cavalier businessmen are willing to dispose of those who are inconvenient to their bottom line. This is where the rubber meets the road. Clean up the DOH and the PHHPC and we'll all be the better and safer for it. I'll leave the obvious...a comment about Governor Cuomo to another time and place.

(PS If you need 'dot connecting' help-email me! Happy to do it)

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