

OLD  
TOWN

218  
NORTH  
MOSLEY

WICHITA  
KANSAS  
67202

TEL  
316.266.4058

FAX  
316.462.5566

GRAYBILL & HAZLEWOOD L.L.C.  
LAWYERS

Sean M. McGivern  
sean@graybillhazlewood.com

June 3, 2020

Senate Committee on Judiciary  
C/O Natalie A. Nelson  
Principal Research Analyst  
Kansas Legislative Research Department  
*Via Email Natalie.Nelson@klrd.ks.gov*

RE: Written Testimony of Christine Zeller, RN, MSN – Opposing SB 7

Greetings:

Please consider the attached written testimony of my client, Christine Zeller, RN, MSN, in opposition to pending proposals to extend immunity to nursing homes.

Ms. Zeller is an eyewitness to the disaster at Clearwater Nursing & Rehabilitation Center in Clearwater, Kansas, where at least eight COVID-19 deaths have occurred.

Please give Ms. Zeller's testimony due weight as you consider proposals to immunize nursing home operators for their wrongful conduct. Ms. Zeller has been at the ground level of this pandemic—few industry representatives can say the same.

Ms. Zeller cannot attend the hearing on June 4, 2020 due to the death of a close friend. She thanks you for your consideration.

Very truly yours,



Sean M. McGivern  
GRAYBILL & HAZLEWOOD, L.L.C.

Wednesday, June 3, 2020

Dear Governor Kelly and Members of the House and Senate Judiciary Committees:

My name is Christine Zeller and I have been a registered nurse for 24 years; I have worked in the healthcare profession since 1979. As you consider legislation to provide legal protection for negligent nursing homes and adult care facilities, I would like to share both my personal and professional experience working in at the Clearwater Health and Rehabilitation Center leading up, and during the COVID-19 pandemic. **I believe that nursing home and adult care facilities should be accountable for the quality of care and the work environment they provide. They should not be exempt from laws that are in place to protect patients and workers, or from being held accountable in court when their negligence causes injury.**

On February 24, 2020, I began working at the facility as the Director of Nursing. At that time, the total number of residents was between 57 to 62, with maximum capacity for the facility being 68.

**February 24<sup>th</sup>, 2020: First day.** Employee morale was at zero and one of my first priorities was working to gain the trust of all the employees. The residents were unhappy and lacked confidence in the administrative staff. In a resident council meeting, I was asked, "How long will you be here? No one lasts in that position."

I was told that the number one priority was address the 3 "F-Tags" that the facility received from the State. The facility had until March 29, 2020, to remediate the issues and show regulators what steps were taken to comply with the law. I immediately set to work to get the employees in-service training and professional education, enact the new policies and job requirements, and assist in completing the task of bringing the facility into compliance before the deadline.

The facility was primarily staffed with agency staff who were largely charged with running the facility. My next task was to perform interviews to increase the number of house staff so that the facility could reduce the use of agency staff as soon as possible. This staffing issue resulted in no continuity of care for residents.

Many of the residents had gone more than five weeks without being bathed, as the facility had a shortage of appropriate accommodations. The facility has one shower room with 2 side-by-side showers so that either two men or two women can be bathed at the same time; there are no baths or whirlpools for residents.

**Beginning of March 2020:** We began a lock down of the facility to all non-employee visitors due to the COVID-19 pandemic. All employees were screened each time they entered the building; screening included temperature checks and handwashing before entering the floor to work. If an employee wore a mask into work, they were told to take it off by administrator so as to not create panic among the residents.

There was a shortage of PPE in the facility. At the beginning of March, we only had about 200-300 disposable isolation gowns and were sharing inventory with other facilities. (By April 9, 2020, before

I was diagnosed with COVID-19, our isolation gown supply was decreased to 175.) Gloves were the only PPE that were stored where employees could easily access them; all of the other PPE, including the masks, were locked up and could be accessed under the direction of the administrator. Employees were told to hang one disposable isolation gown inside each room and everyone who entered the room shared that same gown. Each employee received one N95 disposable mask and were told to reuse it at all times once positive COVID-19 cases were diagnosed in the building. All these PPE supplies continue to be under lock and key and are only accessible under the direction of the administrator.

**April 11, 2020:** The first positive COVID-19 case was reported, and all management staff reported to the facility to sanitize and clean all touchable surfaces – the room where the resident tested positive was scrubbed and sanitized from floor to ceiling with Clorox products. All other residents were quarantined to their room. In my opinion, this day would mark the day that things began to unravel related to COVID-19.

I was there from around 12:00 p.m. through 1:15 a.m. on Sunday. I trained staff on the new protocols that were enacted to prevent further spread of the virus. I began having a headache and dry cough that Saturday evening while working. (I was not ill upon entering the facility that day). I tested positive for COVID-19 on Monday, April 13, 2020.

At that time, my physician and the Reno County Health Department instructed me to quarantine at home with my family for 14 days. I immediately reported this to Beth Block, Acting Administrator, and Michelle Novotny, owner. I offered to work from home on anything I could help with and received no response from management. On April 27, 2020, I was retested; I received clean results on Wednesday, April 29<sup>th</sup>, 2020. At that time, I notified the owner, let her know that I was being released from quarantine, and that I could return to work. She and her husband (Willie Novotny) asked me to come in on Friday, May 1, 2020, to have a meeting with them.

**May 1, 2020:** In my absence, they hired an interim Director of Nursing and told me that she would serve as the primary director – I was to shadow her and learn from. They presented this as a privilege since training is not provided to any other Directors of Nursing throughout the company. Willie Novotny told me that if I stayed in my current position, that he “owned me” and that he expected me to be available 24/7 – sick or not.

The meeting was very uncomfortable and every time I tried to ask or answer questions, Willie Novotny would tell me to “quit interrupting.” Willie Novotny also told me that my staff lost confidence in me and were angry with me for being off sick and that I would have to do a lot of back paddling to regain their confidence. He also told me that staff loved him and Michelle since they were there during the COVID-19 outbreak.

I agreed with their plan and returned to work on Monday, May 4, 2020. I took time to speak with Clearwater staff to determine if, in fact, they were upset that I was out sick and offered apologies. Not one individual I spoke with validated the statements made by the Novotnys. Instead, they expressed concern for my health and indicated they could not wait for the owners to leave. I

worked through Tuesday May 12, 2020, when Beth Block and Michelle Novotny came into the office and told me that they were terminating me as I was not a “good fit” for the facility.

It was clear the owners were angry with me for being out sick for 14 days. Willie Novotny told me they did not care what my doctors or the Reno County Health Department told me; he believed that their rules – return to work within 7 days onset of symptoms and 72 hours without fever – were the ones that I should have followed. He told me he did not care if I was 100 percent or not that they would have found something for me to do behind my desk.

My 103 fever did not begin to break until day 10 and came and went throughout my quarantine time. I was very weak and would not have been well enough to return under their timeline – even if the county health department and my doctor had said I could. COVID-19 spread through that facility so quickly. It killed several residents, with the rest of the residents testing positive during the time I was out sick.

This massive outbreak and spread makes me question their ethics and safety protocols to the residents and employees. I was not there long enough to make much of a change or impression on the staff and facility, but things did change for the positive with staffing and residents. The staff and residents felt supported and valued me in my role as Director of Nursing.

I am an advocate by nature and want to be the eyes and words of the residents and employees that work at Clearwater Health and Rehabilitation Center. I hope to shed some light on what the state is doing by protecting these owners from any retribution by lawsuits from families of residents or employees that have been wrongfully terminated during this COVID-19 pandemic. I am the type of person that would walk straight into the fire to help those who need it. This is the reason I became a nurse. I wanted to care for all people – regardless of socioeconomic, race, or religious background – in the same way I would treat my own family members who I love and respect.

**It is disturbing to me that the Legislature already passed legal protections for owners and facilities. And now in the special session, legislators are again considering protections for facilities instead of protecting patients and workers. It makes no sense that owners and facilities should be protected from their negligence and given an excuse to escape accountability for causing harm. I ask that you please help the residents and staff who are in facilities. Protect the elderly Kansans living there and their rights as human beings to receive the proper care necessary at this most vulnerable time in their lives.**

Thank you,



Christine Zeller RN, MSN  
8100 N. Yaggy Rd.  
Hutchinson KS 67502