



# Jim Clark expected the Hermitage nursing home to care for his father. Instead, it killed him.

**A** phone call marked the beginning of a long night for Jim Clark. It was 10 p.m. on November 20, 1996, and on the line was a nurse telling Clark that his father did not look good. The 87-year-old man was having trouble breathing, blue blotches covered his ankles and the old man's toes were purple. Clark had better come down and see for himself.

He knew the drill. In the 14 years his father had been a resident of the Hermitage Health and Rehabilitation Center in Worcester, Clark had grown used to his father's bouts with illness and bleak descriptions of his health. He called his daughter, who picked up other family members, and by 11 p.m. they had gathered in the small room, where Frank D. Clark lay wasting away.

The nurse on duty left the family alone but told Clark to call her if his father appeared uncomfortable. Shortly after 1 a.m., Clark did just that. He told her his father appeared to be in pain. Moments later she entered the room carrying a syringe and injected the old man. As she was doing that, Clark remembers, a second nurse walked in and asked her: "Did you give it all to him?" When the nurse replied "yes," they both left the room.

A few minutes later the nurse returned, injecting Clark with a second needle. The old man reacted with fits of labored breathing. Around 3 a.m. Dr.

Henry Wieman, with nurses in tow, came into the room and examined the patient. Jim Clark asked what was going on and Wieman said, "Oh, it's just something we had to do," and then he left. Clark followed the doctor into the hall, continuing his questions. Wieman told him the prognosis was not good and said: "I understand you don't want any heroic measures."

Clark later testified that he found the statement odd, but assumed it meant his father was succumbing to the pneumonia and prostate cancer that had slowly destroyed his body.

"Naturally, I don't want him on a respirator," responded Clark. "We don't want to keep him alive artificially."

"Okay, good," said Wieman. In another hour, the nurse returned to the room and checked the patient's lingering vital signs. She could not get a reading and asked Clark if he wished to try. Clark could hear no pulse and assumed his father was dead. But a seed of suspicion had been planted by all the unusual activity. Clark asked her if his father had gotten too much medicine.

"Yes," she replied. "Your father got too much medicine."

It was nearly dawn and Clark was exhausted. Spent. Believing his father deceased, he went home and collapsed into his bed.

At around 7:30 that morning, he was awakened by the telephone. Wieman

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Beverly Healthcare Hermitage.

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was on the line announcing that his father had died only moments before. The doctor asked Clark to make arrangements to move the body. Clark agreed and he hung up the phone.

But he didn't go back to sleep. Instead he lay there for a long time, thinking about the night before, about what the doctor and nurse had said to him. The seed of suspicion had now blossomed

into a full-blown gut feeling that something had gone incredibly wrong and he was not being told the truth.

**T**hese days when Jim Clark talks about that night, fury and frustration simmer below the surface of his words. He is disappointed that District Attorney John Conte has chosen not to prosecute the people he believes are responsible for his father's death. And

he is angry at the way Beverly Enterprises Inc. — the parent company of Hermitage — has handled every aspect of the case.

Clark paces around his dining room. He talks quickly and refers to the stacks of documents, photocopies and articles that cover the tabletop. One minute he is thumbing through inquest transcripts and quoting testimony. The next he is skimming through a magazine article describing Beverly's legal problems in California.

He is blunt in his assessments of Beverly and their franchise of nursing homes. His comments make Michael Barris, his attorney, wince. Barris sits at the table and reminds Clark to be careful what he says. After all, the civil case they are preparing against Beverly is still in the early stages, but Barris' advice falls on deaf ears. It's like trying to tether a pit bull with a ribbon.

"I'm only saying what happened here, Mike," says Clark. "I'm not afraid of Beverly. I'm only telling the truth and the truth can never hurt you."

Worcester Magazine attempted to interview the administrators at Hermitage — which now operates under the name of Beverly Healthcare Hermitage. Those calls were not returned. Dan Springer, vice president of public relations for Beverly Enterprises Inc. says his company does not comment on pending civil suits.

Clark says he received little cooperation from Beverly or Hermitage when he was seeking answers about his father. He says it was only through his own persistence that he was able to find out the true cause of his father's death.

Following Wieman's phone call that November morning, Clark says he received four more calls from Hermitage before 11:30 a.m. Each call was a reminder to remove the body. What was the hurry, he wondered? When he finally called the funeral home to make arrangements, they too reported receiving "several" phone calls from the nursing home requesting the body be moved.

Clark gave the funeral director the green light to pick up the body, but he asked him to hold-off on the cremation. Instead, he requested that his father's body be taken to

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Boston for an analysis by the state medical examiner.

Months later, when Clark read the state's findings, it confirmed his suspicions that pneumonia was not the primary cause of his father's death. The toxicology report attributed the death to a morphine overdose.

**H**ermitage is only one of the more than 560 nursing facilities owned and operated by Arkansas-based Beverly Enterprises Inc. Beverly is the largest for-profit nursing home company in the country, and the civil suit being brought by James Clark is only one of the company's many legal headaches.

In July 1998, the U.S. Department of Justice began investigating allegations that between 1990 and 1997 Beverly improperly billed Medicare. That investigation, which is ongoing, triggered further legal ripples when shareholders reacted by filing a class-action suit charging that the alleged illegal actions damaged the value of their stock.

The list of legal woes goes on. In 1997, Beverly was hit with a whopping \$95 million judgement in a California suit stemming from charges of inadequate staffing. The judge in the case later reduced the settlement to \$3 million. Springer says the company is appealing that decision and, based on the outcome of other lawsuits, anticipates "further reductions."

Beverly has also had problems with state

regulators in North Carolina, Missouri, Minnesota, its home state of Arkansas, and others.

Last year, California slapped Beverly with a \$724,000 fine and put it on probation following an investigation into the deaths of nine patients at Beverly-run homes there. Texas cut off Medicaid pay-



Frank Clark in 1995.

ments to 24 of the company's facilities in that state following investigations of health-code violations: Beverly no longer operates in Texas due, says Springer, to the "overly litigious and punitive nature of that state." Beverly had a similar reaction to regulators in Maine, where it quietly shut down its operations. Washington State has banned Beverly from doing business there.

Recently it was reported that Alabama inspectors cited nearly 400 violations of federal regulations at Beverly homes in that state between 1996 and 1998. Springer says those numbers are misleading. The figure of 400 works out to be six violations per Beverly facility in Alabama, he says, a "number that is not dramatically different

Beverly to its roster of companies with the highest on-the-job illnesses and injuries. Last August, the National Labor Relations Board issued a "cease and desist" order against Beverly, citing 240 violations of labor laws in 18 states. Included in the list of infractions were threats, coercion and the surveillance of employees.

The Massachusetts Department of Public Health regularly inspects nursing homes and releases its findings in the form of a "report card." This year 11 of the 24 Beverly-run homes in the Massachusetts have received below-average scores.

Springer told Worcester Magazine that "every facility is required to develop a corrective action plan when those facilities are found deficient." He says the company holds both facility management and senior-level management accountable for such poor inspection results.

In spite of its regulatory entanglements, the company's financial picture appears promising.

According to reporter Eric Bates, in an article examining Beverly and the nursing home industry in *The Nation* magazine, "although Beverly posted a loss last year, it remains an industry giant. In 1997 the company enjoyed after-tax profits of \$58.5 million on revenues of \$3.2 billion."

Nursing homes are big business. Long ago, corporations recognized the industry as a feeding trough full of state and federal dollars waiting to be consumed. For-profit corporations own the majority of the country's nursing homes. Advances in medicine

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from the rest of the industry." He says the company uses those findings to improve the care they offer. "Our goal is for all our facilities to be deficiency-free."

Meanwhile, the General Accounting Office in Washington, D.C., included Beverly on its list of the 15 worst violators of federal labor laws. And the Occupational Safety and Health Administration's added

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guarantee them a steady flow of customers and, as baby boomers age, clientele will only increase. By 2050, 5.5 million Americans will call a managed care facility home. Meanwhile, taxpayers pick up the bulk of the tab — through Medicare and Medicaid — so revenue is guaranteed.

In his March 1999 article, Bates reports, "facilities that care for nearly 2 million elderly and disabled residents form a lucrative private industry that profits from pain — while taxpayers foot the bill. Nursing homes ring up \$87 billion of business each year, and more than 75 cents of every dollar comes from public funds through Medicaid and Medicare. The less of that money homes spend on care, the more they pocket for themselves and their shareholders."

Although Beverly is the biggest, they are certainly not the only player in the industry whose facilities have come under fire.

"In general, we find about a third of all homes are not giving adequate care," says Sarah Green Burger, executive director of the National Citizens Coalition for Nursing Home Reform. "There are people in the homes suffering every day. Suffering from dehydration. Pressure sores.

**"Wieman and others testified that Hermitage administrators were concerned about the potential of a morphine disaster months before Clark's death."**

Malnutrition. They are left in wet beds. There are medication errors. All of the facilities are short-staffed and all the people who work there work under extremely difficult conditions. These companies continually put profits before people.

"Beverly has some good facilities," she says, "but they also have a history of coming up short and not spending their money at the resident level."

**J**im Clark believes financial decisions killed his father that November morning.

"You have to understand. All they care about is maximum profits," says Clark. "They get bonuses if they keep costs down. [Administrators at Hermitage] testified that they get bonuses for keeping the place in the black."

The testimony to which Clark refers comes from last

September's inquest into Frank Clark's death. Based on what was said under oath, Clark believes the push for profits led to the understaffing and under-training. Those things, he says, caused the overdose.

Massachusetts requires nursing facilities to provide one nurse per each unit of patients. According to testimony, Hermitage is made up of three units and

only two nurses were on duty the night of Frank Clark's death.

Both Thomas Sager, then-group vice president of Beverly's 24 Massachusetts nursing homes, and Teresa Brosnihan, director of nursing at Hermitage, testified they were unfamiliar with the state's staffing requirements. Brosnihan, though, stated the corporation gave her free reign when it came to staffing decisions, as long as she kept the total number of hours worked in check. The DPH investigated

Hermitage following Clark's death and recommended it maintain a nurse-per-unit ratio. Brosnihan, assured the court that following the death, those standards were being met. However, additional testimony in the inquest contradicted her claim. In his findings, Judge Austin Philbin concluded, "Clearly Brosnihan committed perjury during the inquest ... when she said she had three nurses on-duty since the report."

But Clark believes understaffing was only one factor in his father's death. Read the testimony, he says. The nurse left in charge of his father and 67 other frail patients that night had less than three weeks' experience as a licensed practical nurse. And according to her testimony, she recognized her own limitations.

"You know ... I just started, and I can't." She said that to a nurse who was leaving after completing a 7 a.m. to midnight shift.

To which the other nurse responded: "You will do fine." That nurse denied the conversa-

tion took place.

Regardless, an hour later the novice nurse found herself being asked by Clark to do something about his father's discomfort. The upstairs LPN suggested she call Wieman for instructions. Again she was hesitant, she claims, saying she was too "nervous" to make the call. The senior nurse told her she needed to gain experience talking with doctors.

She called Wieman, who advised her to

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Frank Clark in 1929.

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administer morphine to Clark. The doctor testified he told her two milligrams of the narcotic would be sufficient; the nurse wrote down "two milliliters" — 15 times the prescribed amount.

According to testimony, neither nurse on duty that night had ever administered a narcotic before. They followed instructions from a book and prepared the dosage. It was only after the nurse went to Clark's room to inject the drug that the senior nurse rechecked the dosage and realized the mistake. By the time she reached the room to intervene, the morphine was already rushing through Clark's veins.

"Did you give it all to him?" the senior nurse asked.

When the nurse replied that she had, another phone call was placed to the doctor.

**W**ieman and others testified that Hermitage administrators were concerned about the potential of a morphine disaster months before Clark's death. They were, in fact, in the process of getting state

approval to stock safer, pre-measured doses of the drug. In spite of those concerns, though, administrators posted no announcements warning staff about the possible hazards of morphine overdose.

The doctor instructed the nurse to follow-up the overdose with a shot of Narcan — a drug that blocks the absorption of morphine. At the inquest, Wieman explained its function in layman's terms. He compared the brain to a crowded parking lot with limited spots. "Narcan goes into the same space and makes it so the morphine can't go into the spot," he said.

To do its job Narcan must be injected every half-hour. What Clark saw in his father's room that night was a nurse injecting morphine, followed by the first dose of Narcan. There

would not be a second. After Wieman arrived at Hermitage and asked Clark about heroic measures, he discontinued the drug.

"The standard of care for morphine overdose is hospitalization with technical intervention," Wieman explained in court. In other words, Narcan was just the beginning. If they continued to inject the anti-

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— Judge Austin Philbin

dote, Wieman believed the patient would "very likely" end up on a respirator. He testified that the old man's condition was so critical that death was imminent in spite of the overdose. And when Jim Clark responded to the doctor's cryptic inquiry by saying he did not want his father on a respirator, Wieman made his decision: No more Narcan.

However, Wieman testified he had never told Jim Clark about either drug. When asked why, he said, "I was afraid that an admission of that sort would be used in evidence against me." Before leaving the witness stand, he added: "For that I am very sorry and I apologize."

It was the closest thing to an apology the Clark family ever received from Beverly or Hermitage, Jim Clark says. No one else connected to the nursing home has ever admitted any wrongdoing, Clark believes. Wieman misled him with his vague question about "heroic measures," covering up the true motive for the inquiry.

At the inquest, Clark did not mince words.

Judge Philbin: "Is that what you felt they were doing, covering it up?"

James Clark: "Absolutely. They're still covering it up to this day. Not only are they covering it up, but I'm really mad because they're blaming me — that I said I killed my father, which I never did."

Clark says the "cover-up" went beyond the morphine fiasco. Following the incident, he says, administrators from both Hermitage and Beverly dragged their feet in releasing information about the case. Once he confronted administrators with his findings, they told him it was their understanding Wieman had notified Clark of the drug overdose — a claim the doctor denied.

After five days of testimony, the inquest came to a close. In a 15-page finding, Judge Philbin concluded, among other things, that Hermitage and Beverly administrators were aware of staffing requirements, and noted that "staffing has consistently been a problem for Beverly Enterprises Inc." He also mentions that,

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although the corporation paid for legal representation for representatives of Beverly and Hermitage. "It appears [the nurse] and Wieman had their own lawyers."

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Philbin added: "It is true that an 87-year-old man in Clark's physical condition is likely to die. There does not seem to be any legal excuse for acting in a reckless manner so it happens more quickly."

The judge's findings were presented to District Attorney John Conte's office. Last April, Conte announced he would not pursue criminal charges in the death of Frank Clark, stating "it's a question of negligence and not criminal intent." Conte did not return phone calls from *Worcester Magazine* requesting further comment.

Jim Clark says Conte "missed an opportunity to hold the corporation responsible." Meanwhile, he has asked the state attorney general to consider pressing criminal charges against the company. Officials at state Attorney General Thomas Reilly's office say they are reviewing the matter. Meanwhile

Clark and Barris are in the early stages of a wrongful death civil suit against Beverly and Hermitage. Barris says it may be a year before the case sees the light of a courtroom.

In 1997, Wieman left Worcester, accepting a position as the director of geriatrics at a facility in Maryland. It was not long before his reputation there grew. In May 1998 he was featured in a *Washington Post* article on geriatric medicine where he spoke thoughtfully on the aging process. "It's not the mileage," he told the reporter, philosophically, "it's the tread wear."

The same month that story appeared, he bought a new shotgun.

His knees had gone bad from years of playing rugby and he suffered from hip pain that he attributed to disease. He was forced to rely on a cane to get around. In the first week of June, his wife reported him missing. The follow-

ing week authorities found his body in the woods near Goshen Pass, VA. He had parked his van near a trailhead and, with the use of his cane, hiked a half-mile into the trees. There he assembled the shotgun and blew his head off.

Authorities found a suicide note in which Wieman wrote about his own "tread" being "worn" and his declining health. At 52 years of age, he was still young, especially when one considers the longevity of his patients.

No one will ever know the reason behind his final action. But it is striking that, after a career that included work in 22 different nursing homes, Wieman chose to end his life so abruptly.

**E**xcept for a stint in the Navy, Frank Clark spent his entire life in Worcester. Jim Clark remembers his father working an array of odd jobs during some lean

years to keep food on the table in the family's Grafton Hill home. Ironically the position he held the longest was that of a licensed practical nurse at Grafton State Hospital.

One day in 1984 Jim Clark visited his father's home and found him curled up on the basement floor in a pool of urine. A doctor recommended a nursing home in Marlboro, and Clark placed his dad there. But it did not last long. Jim Clark paid his first visit to his father's new home and found him doped up and tied down. It sickened him and he announced — on the spot — that he was taking Frank Clark home. Just like that. In a scene reminiscent of a Hollywood rescue, Clark ignored the objections of staff members, undid the straps, lifted his frail father in his arms and carried him out.

"Have you ever been to a nursing home?" Clark asks, explaining his actions that day. "It's a hard thing to see a loved one in a nursing home."

Clark had the best intentions when he brought his father into his own home. His live-in girlfriend agreed to take care of his father while Clark was at work. It resembled a solution until their relationship ended and she moved out. That left Clark and his incapacitated father alone in the empty house.

Hermitage was the next choice. The decision to commit his father was just as difficult the second time and Clark found his weekly visits just as disturbing as his visit to the Marlboro home. There was his father, numb from tranquilizers, strapped in a chair. "He looked like this," remembers Clark as he contorts his face into an eyes-at-half-mast Halloween mask. "He looked like a zombie. I asked an attendant, 'Why do you do this?'"

The attendant responded: "Do you want to take him?"

"I get the picture," said Clark. That was it. No more rescue missions.

"Nobody likes to put their family members into nursing homes," Clark says. "They're terrible places, but what choice do we have?"

And that, he believes, is ultimately what his case is all about. "This is much greater than my father's death. It's a shame the way this country treats its elderly. You go to these places and people are lying in their own feces. They have bedsores that go all the way to their bones. Eighty percent of us are going to end up in nursing homes. What are we as a country going to do about it?" □