

TESTIMONY
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My name is Donald Mark Berwick. I am President Emeritus and Senior Fellow at the Institute for Healthcare Improvement, a Boston-based non-profit that I co-founded in 1991. I served as Administrator of the Centers for Medicare and Medicaid Services under President Obama in 2010 and 2011. I am a pediatrician by training, practicing at the Harvard Community Health Plan for 19 years.

It is first as a physician that I wish to share my thoughts with you. I trained for seven years to become a doctor, and one message was drilled into me every day of my professional formation. It is this: “The needs of the patient come first.” Day after day, night after night, I was schooled to show up, invest every iota of my mind and skill, accompany the patient through their journey, however harrowing. I was taught to be proud of that commitment, and to let it become part of me. It did.

My career has wandered far from the bedside, but that imprint has never left me. Nor, I believe, should it leave any aspect of our health care system as – not just “a” guiding principle – but as “the” guiding principle for action, policy, investment, accountability, and system design. I believe that that principle – “the needs of the patient come first” – should apply to and be enforced in every single agent in the world of care – not just clinicians, but also organizations, payers, entrepreneurs, and investors. What does not help patients and community health, we should not do.

At the moment, we are dropping that ball. The patient today is at risk as never before in my memory. At risk of being demoted, forgotten, and harmed. As always in America, it is people at disadvantage, marginalized, poor, who are at greatest risk, but the threat is even bigger than that. It affects us all. We rank 69th among all nations on the planet in our health and health system performance, despite spending twice as much per capita as anyone else. That is an astonishing failure, and we owe it to ourselves to find and correct the causes.

Some of the threats are global – climate change, future pandemics, violence among people and among nations; but the threat we are focused on at this hearing is of a special nature – it is the threat of greed, profiteering, and financialization of health care in America. We are allowing the accumulation of wealth, not health, to become the aim, and that is causing harm, and at a phenomenal cost. Unchecked – and it is mostly unchecked so far – greed will cause disastrous and irreversible harm.

The Steward debacle is borne of unleashed gaming and profiteering – greed - among private equity investors, interested only in accumulating wealth and layering vulnerable health care organizations with debt and rental burdens too great to bear, no matter what the consequences for patients and communities. The needs of the patient, far from coming first, are nowhere in sight.

The Steward architects are by no means alone in this – putting money above the healing mission. We see the unmoderated pursuit of wealth in the confiscatory pricing of far too many pharmaceuticals. We see it in the consolidation of hospitals allowing them to jack up their prices. We see it in the behavior of the majority of large insurance companies, most especially in the world of Medicare Advantage, where the Medicare Payment Advisory Commission recently estimated that annual overpayments now total over \$80 billion a year. And, pointedly today, we see it in the behaviors of the majority of private equity investors whose sole aim is return on equity, who seem to care little if that return comes from peanut butter or health care, and for whom the pledge, “The needs of the patient come first,” has no meaning at all. Instead, the needs of the investor come first.

We have allowed American health care to become too much the servant of the profit motive, and we have too much lost the trail of duty to health care – excellent health care – equitable health care – as a human right. To overstate only slightly, the unmoderated pursuit of profit has only two fundamental mechanisms: charge as much as you can and spend as little as you can. That hurts patients. And it hurts the morale and effectiveness of clinicians who care for patients.¹

Academic evidence is accumulating about the types and degree of harm that private equity ownership of health care delivery brings to patients. Recent studies of private equity acquisitions of autism care programs show significant declines in staffing and increases in the use of “cookie cutter” care, rather than customizing care to individual patients’ need.² The result is worse quality of care. Similarly, private equity ownership of nursing homes is associated with a 10% increase in mortality, lower patient mobility, and an 11% increase in costs.³ An important study by colleagues at Harvard last year comparing patient safety before and after private equity acquisition of hospitals showed major increases in important forms of avoidable and serious patient injuries. After PE purchase of hospitals, avoidable patient injuries increased 25.4% compared with hospitals not bought by PE.⁴ For example, patient falls rose by 27.3%, central intravenous line infections rose by 37.7%, and surgical infections doubled, from 10.8 per 10,000 hospitalizations to 21.6. And, anecdotally, my email inbox is full of disturbing reports from physicians and other clinicians about the changing circumstances of their practices as profit-seeking overtakes patient protection.

I am not a lawyer, but I believe that the vast majority of these wealth-seeking practices, though morally offensive and harmful to patients and communities, are not illegal. And therein lies our failure and our opportunity. The power of money in politics makes it difficult to rein in wealth accumulation, like that in the Steward case, because wealth has the power to stop statutory attempts to rein in wealth accumulation. It is a vicious cycle that requires exception political courage to reverse. If that courage were available – and I think you see it in this room in Senator Markey and Senator Warren – then we know at least where to begin to prevent other Steward-like disasters and to restore patients’ needs to the front of our priorities.

We need statutory changes that continue to allow private sources of capital to support authentic innovation in health and health care, but that preclude private equity entities from non-value-added ownership of health care delivery, where they have typically relied on raising prices and decreasing costs to the point of threatening the adequacy and quality of care. We should forbid the typical private equity approach of buying health care organizations, loading those health care entities with debt, extracting capital, and ultimately leaving stripped down organizations at the verge of bankruptcy or worse.

To be clear, I would forbid private equity firms from owning or controlling health care delivery. To the extent that private equity does own health care delivery, an entirely new level of transparency is called for, much as contemplated in Senator Markey's "Health, Not Wealth" draft bill. That transparency should extend to the Real Estate Investment Trusts that private equity firms use to free cash up for them to pocket. Reporting should include leading indicators from the owned health care entities to reveal staffing levels, access levels, care program changes, and patient experiences. I would favor strengthening Corporate Practice of Medicine restrictions, as counseled by Professor Erin Fuse Brown in her March 25, 2024, testimony to the Massachusetts Joint Committee on Health Care Financing and in a recent *New England Journal of Medicine* publication.⁵ I commend Senator Warren for her proposed "Stop Wall Street Looting Act," which would close many of the loopholes used by the private equity players, including unfair tax advantage.

It would be my recommendation that governance requirements change, such that at least 50% of Directors of for-profit entities be unrelated to the investors, and representative of patients and community members. Board meetings should be required to be public.

In 2023, Professors Naomi Oreskes and Eric Conway published a landmark book called, "The Big Myth," which I think should be required reading among health care policy makers.⁶ The myth of which they speak is that markets and competition, not government action, provide the best solutions to meeting social needs. They trace the history of that myth, which was sold to us by big business and which took over the American zeitgeist in the last century despite the overwhelming evidence that it is not true. Their exploration of its consequences ranges largely in matters outside health care – into climate change, smoking, poverty alleviation, and more. But in seeking a case study of the failure of competition and pursuit of private self-interest to meet dire social needs, they could not have done better than to study the Steward debacle to show how the unmitigated pursuit of wealth enriches a few and makes our community far worse off. As I see the trends, I am coming to believe that the pursuit of profit ought to have, at most, a very, very limited role to play in navigating our way to the health and health care system we need and can afford, where the patient truly comes first.

¹ <https://www.youtube.com/watch?v=8KZkEv1CHgE>

² Batt R, Appelbaum E, Nguyen QT. Pocketing money meant for kids: private equity in autism services. 2023(Jun 21) Center for Economic and Policy Research: Washington, DC.

³ Gupta A, Howell ST, Yannelis C, Gupta A. Does private equity investment in healthcare benefit patients? Evidence from nursing homes. Working Paper 2021-20. 2021(Feb); Becker Friedman Institute: Chicago, IL.

⁴ Kannan S, Bruch JD, Song Z. Changes in hospital adverse events and patient outcomes associated with private equity acquisition. JAMA. 2023; 330(24): 2365-2375.

⁵ Zhu JM, Rooke-Ley H, Brown EF. A doctrine in name only: strengthening prohibitions against the Corporate Practice of Medicine. 2023 N Engl J Med 389(11); 965-968.

⁶ Conway EM, Oreskes N. The Big Myth: How American Business Taught Us to Loathe Government and Love the Free Market. (New York: Bloomsbury Publishing, 2023.)