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WellCare ex-director fires more volleys

By Mike Wells
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Rather than simply resign from WellCare Health Plans' board of directors and leave peacefully, Dr. Regina Herzlinger apparently isn't willing to let the company have the last word.

Last week, according to a Securities & Exchange Commission filing by the company, Herzlinger sent WellCare a letter saying she disagreed with the company's description of the circumstances regarding her recent resignation.

This week, she's made her feelings clear in an online site read by millions: *Huffington Post*. In an **opinion piece** published Wednesday afternoon, Herzlinger said she was going public about what happened at WellCare to show the need for greater "transparency" about medical decisions and insurance coverage.

She wrote that she resisted being pushed off the board "because of my concern for the welfare of our shareholders and vulnerable enrollees: The company had the lowest Medicare quality scores and the most fines and sanctions recently among its peers and, as the Chair of the Audit Committee. I knew just how fragile its accounting system was."

Herzlinger continued, "I was advised that if I quietly sat out the remainder of my term, rather than publicly resigning, nearly $150,000 worth of unvested shares would be mine. Many directors, faced with these circumstances ...would accept the advice. But I was so concerned about the firm's shareholders and enrollees that, instead, I spent considerable effort gathering information about the firm's worrisome quality and financial issues which I included in my publicly disclosed resignation."

In an interview with *Health News Florida*, Herzlinger said she isn't interested in a tit-for-tat exchange with the company and that she simply wants to see remaining board directors fix the accounting and quality problems she alerted them to.

"I'm interested in making sure that the problems that concerned me ... are attended to," she said. "I wanted to stay on the board to attend to them. The reason I resigned was so I could at least alert people to the problems I perceived in WellCare and spur those remaining members to attend to those issues since I'm not there."

Herzlinger resigned from the board April 21 after what she described as a year and a half conspiracy by at least three board members to oust her because they found her difficult to work with.

The attention her resignation garnered in the business media has surprised her, she said.

"It is not my style (to quit)," Herzlinger said. "I'd rather be there to attend to those issues. The attention I was seeking was not about me but those issues."

In her latest letter to the company, Herzlinger reiterated her belief that her "relentless pursuit of best practices and accountability" influenced the decision to not renominate her.

"I have long been persistent, often times to the annoyance of some of the other directors, including the chair of the board and two other members who comprise half the membership of the Nominating and Corporate Governance (NCG) Committee, that WellCare's internal policies and procedures must be strengthened if it is to compete on par with its competitors and meet its obligations to the government and its vulnerable enrollees."

Herzlinger said she does not sit on the boards of any other private or publicly traded firms, though she is frequently invited.

"I am regularly asked to join other boards. Every month. This has not changed since WellCare," she said. She accepted the invitation to join WellCare's board, she said, because of her interest "in providing better health care for the poor and aged."

Considering the major accounting scandals that WellCare has faced in recent years, the company's decision not to renominate Herzlinger to the board was not in the best interest of its shareholders, she said, especially considering her extensive accounting and health care backgrounds.

Herzlinger is the first female tenured professor at the Harvard Business School and joined the WellCare board of directors in 2003. She was chair of the company's internal audit committee.

The incumbent directors who are up for re-election include: Executive Chairman Christopher Berg, former Florida Governor and U.S. Senator Bob Graham, David Gallitano, Kevin Hickey, Christian Michalik, Glenn D. Steele Jr., William L. Trubeck and Paul Weaver. Other current members include Alif A. Hourani and Neal Moszkowski.

New nominees include WellCare CEO Alec Cunningham, who assumed the company's top post in December, and Carol Burt, a former executive officer of WellPoint, Inc., the leading health plan in the U.S. with more than 33 million medical members.

WellCare stands behind its original reasoning for not renominating Herzlinger and issued the following statement in its SEC filing last week:

"The Board believes that the recruitment of new, independent, qualified directors is consistent with good corporate governance and that, from time to time, boards of directors should change their composition, particularly in the wake of challenges such as those that the Company has addressed in recent years."

WellCare spokesman Amy Knapp said board members would have no comment on Herzlinger's latest letter beyond what the company filed with the SEC. The company disputed Herzlinger's allegation of a conspiracy to oust her, saying that no tangible evidence has been offered.

The NCG Committee, as required by its charter, reviews at least annually the composition of the board and, "in the exercise of its business judgment," determined not to recommend that the board nominate Herzlinger and another director for election as directors at the upcoming annual meeting.

Herzlinger said she found WellCare's argument "a tough pill to swallow."

What she found even more incredible, Herzlinger said, was that the company would dispute that there even existed an agreement between Berg, Michalik and Hickey to remove her and take control of the board. Hickey and Michalik comprise half of the NCG Committee.

Herzlinger said she presented the NCG Committee and WellCare attorneys with evidence of a January 2008 conference call in which these three directors and others discussed a plan to take control of the board, "something they felt they could not accomplish with me as director."

Herzlinger said a responsible response would have been to set up a committee of the board to investigate her charge.

"If the Company truly disputes the statements quoted in my letter," she wrote, "then it has either been lied to by the directors involved, who themselves are up for reelection at the annual shareholders meeting, or it simply has not done its duty in properly investigating the claims."

In her resignation letter, Herzlinger said internal audits found WellCare overbilled the Illinois Medicaid program by $1 million in 2009 and potentially overcharged states for almost $500,000 worth of maternity care. She also said WellCare ran afoul of Georgia's requirements that it account for each patient visit for which it paid providers, resulting in a $610,000 fine.

WellCare paid Florida $80 million to settle federal and state criminal probes into allegations that it had defrauded Florida benefits programs for low-income adults and children of $40 million by inflating what it spent on care. After 200 state and federal agents raided its Tampa headquarters in the fall of 2007, WellCare fired its top three executives, restated more than three years of earnings to correct payment errors to the government and blamed accounting problems on the former executives.

Herzlinger said those problems, corrected in 2009 and 2010 after an internal audit, are signs of weak accounting practices and that she wanted to provide oversight as chair of the audit committee.

For her work as a director in 2009, Herzlinger earned a salary of $164,375, according to WellCare's proxy statement filed April 30. In February 2009, the board authorized a one-time payment of $80,000 to Herzlinger as chair of the audit committee in recognition of the unanticipated level of duties and responsibilities required of the committee during 2008, which included restatement of the company's prior years' financial statements.

By resigning, Herzlinger forfeited unvested stock awards that were valued at $164,611 on Dec. 31, according to the company's latest proxy filing. They have since dropped in value to nearly $100,000.

Herzlinger estimated her stock loss at $150,000, but said she doesn't regret it. Her concern is for WellCare's accountancy problems and the effects it will have on the poor and elderly who depend on its Medicare and Medicaid services.

WellCare's history of accounting problems wasn't the only concern Herzlinger addressed in her letters. Herzlinger said WellCare's success depends on the company's financial performance, as well as its quality of service. She said the firm has the lowest Medicare STAR ratings for quality and a higher rate of sanctions and fines compared to its peer group in the last few years.

"Our most recent medical health benefit ratio was below the 85 percent required by the new health reform legislation," she wrote in her resignation letter. "If this trend continues, we risk significant sanctions, including prohibitions on enrolling new members."

In the Huffington Post article, Herzlinger urged passage of H.R. 4803, the bipartisan Rep. Barton-Green-Burgess-Stupak Patients' Right to Know Act and a complementary bill by Rep. Steven Kagen 's, D-Wis. She said they would "force disclosure of which insurance companies and policies provide the most medical-care benefits and best outcomes per dollar, offer the best doctors and hospitals, and hassle sick people and their caretakers the least."

--Mike Wells is an independent journalist in Tampa. Questions and letters to the editor can be sent to **Editor Carol Gentry**.