

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

**DEBTORS' STATEMENT REGARDING
APPOINTMENT OF PATIENT CARE OMBUDSMAN**

NOW INTO COURT, through undersigned counsel, come Progressive Acute Care, LLC ("PAC"), Progressive Acute Care Avoyelles, LLC ("PAC Avoyelles"), Progressive Acute Care Oakdale, LLC ("PAC Oakdale") and Progressive Acute Care Winn, LLC ("PAC Winn") as debtors and debtors-in-possession (collectively, "Debtors"), who in response to the *Order Setting Hearing to Consider Appointment of Patient Care Ombudsman* [P-31] ("Order"), respectively represent that appointment of a patient care ombudsman is not necessary in these cases; and, in support thereof, aver the following:

I. BACKGROUND

1.

On May 31, 2016, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the U.S. Code ("Bankruptcy Code"). The Debtors continue to operate their businesses in the ordinary course as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2.

The Debtors operate three community-based hospitals in Louisiana (the "Hospitals"), ranging from 50-60 bed facilities, which provide inpatient, outpatient and emergency care,

primarily for patients of the immediate regions of the Hospitals. The Hospitals are located in Marksville (PAC Avoyelles), Oakdale (PAC Oakdale) and Winnfield (PAC Winn). PAC is the sole member and manager of PAC Avoyelles, PAC Oakdale and PAC Winn. Each of the Debtors is a “health care business” as that term is defined in Section 101(27A) of the Bankruptcy Code.

3.

Pursuant to the June 1, 2016 Order, this Court scheduled a hearing on June 28, 2016 to consider whether it is required to order the appointment of a patient care ombudsman (a “PCO”), and requested that parties-in-interest file any pleadings setting forth their respective position as to whether or not an ombudsman should be appointed.

4.

For the reasons set forth below, the Debtors maintain that appointment of a PCO is not necessary in these chapter 11 cases.

5.

II. LAW AND ARGUMENT

Pursuant to Section 333(a)(1) of the Bankruptcy Code, a court is required to order “the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of patients of the health care business *unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.*” This exception to the appointment requirement provides a bankruptcy court with great discretion in weighing the facts of each case to determine whether an ombudsman is required. *In re Smiley Dental Arlington, PLLC*, 503 B.R. 680, 688 (Bankr. N.D. Tex. 2013); *citing In re Valley Health Sys.*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008). In making this determination, courts have generally considered the following factors:

- a. the cause of bankruptcy;

- b. the presence and role of licensing or supervising entities;
- c. the debtor's past history of patient care;
- d. the ability of the patients to protect their rights;
- e. the level of dependency of the patients on the facility;
- f. the likelihood of tension between the interests of the patients and the debtor;
- g. the potential injury to the patients if the debtor drastically reduced its level of patient care;
- h. the presence and sufficiency of internal safeguards to ensure an appropriate level of care; and
- i. the impact of the cost of an ombudsman on the likelihood of a successful reorganization.

See, e.g., In re Alternate Family Care, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007); *In re Smiley Dental Arlington*, 503 B.R. at 688; *In re Flagship Franchises of Minnesota, LLC*, 484 B.R. 759, 762 (Bankr. D. Minn. 2013); *In re Pioneer Health Services, Inc., et al.*, No. 16-01119 (Bankr. S.D. Miss. Apr. 29, 2016); and, *In re New Louisiana Holdings, LLC, et al.*, No. 14-50746 (Jointly Administered) (Bankr. W.D.La. April 1, 2015). The facts and circumstances surrounding these Debtors and their chapter 11 cases indicate that appointment of a PCO is neither necessary nor warranted.

6.

A. The Cause of the Bankruptcy

“Generally, the first factor weighs against the appointment of an ombudsman when the cause of [a debtor's] bankruptcy is something other than deficiencies, or allegations of deficiencies, in patient care.” *In re Pediatrics at Whitlock*, 507 B.R. 10, 11-12 (Bankr. N.D. Ga. 2014). Here, while certain litigation claims related to *alleged* deficiencies in patient care have been asserted

against the Debtors (commonplace throughout the healthcare industry), they were not the principal cause of the Debtors' bankruptcy cases. Instead, these chapter 11 proceedings resulted from a host of financial issues including: considerable liabilities retained following the sale of a related entity, Dauterive Hospital, reductions in subsidies and adverse payer reimbursement changes, and, the retirement of long-tenured physicians at some of these community-based Hospitals. Thus, the first factor weighs against the appointment of a PCO.

7.

B. The Presence and Role of Licensing and Supervising Entities

The second factor also weighs against the appointment of a PCO. The Hospitals are licensed in the State of Louisiana, are in good standing, and are subject to regulatory oversight by numerous agencies and departments, including the Louisiana Department of Health and Hospitals ("DHH"); and, the Department of Health and Human Services' Centers for Medicare and Medicaid Services ("CMS").

Each of the Hospitals participate in and receive payment from the Medicare or Medicaid programs; and, thus, must meet the eligibility requirements and must be certified as complying with the Conditions of Participation ("CoP"), or other federal standards. Such certifications are based on surveys regularly conducted at the Hospitals by DHH and/or accrediting organizations on behalf of CMS. In addition, the Hospitals are subject to other federal and/or state surveys. These Hospital surveys reflect few, *if any*, patient care problems or issues.

Additionally, the Debtors employ or contract with physicians, registered nurses and other trained medical personnel for their patients' care. The employees and independent contractors are likewise licensed and failure to properly take care of patients would jeopardize the credentials of those healthcare professionals. The Debtors closely monitor the status of the licenses and training of healthcare professionals they employ or with whom they contract to provide patient care.

8.

C. The Debtor's Past History of Patient Care

The Debtors have consistently been in substantial compliance with federal and state regulations. When cited for deficiencies, the Debtors have quickly remedied such deficiencies to the applicable regulating authority's satisfaction. While the Debtors have occasionally received complaints from patients, the Debtors have internal processes and procedures in place to track all such complaints; and, actively seek to investigate and resolve those complaints promptly.

9.

D. The Ability of Patients to Protect Their Rights

To assist in protecting the rights of their patients, the Debtors have established written policies and procedures for patient care and addressing any patient complaints. Such procedures are included in employee training, conducted through new employee orientation and annual employee education. In addition, DHH receives and investigates patient complaints related to any hospital throughout the State of Louisiana.

For these reasons, the Debtors submit that this factor also weighs against appointing a PCO.

10.

E. The Level of Dependency of the Patients on the Facility

While the Hospitals primarily serve the local communities in which they are located, there are other facilities in relatively close proximity to the Hospitals (less than one hour drive). Thus, the level of dependency is mitigated by the availability of alternative facilities, should any perceived decline in patient care arise.

11.

F. The Likelihood of Tension Between the Interests of the Patients and the Debtor

The Debtors rely on their reputation for providing patient care to attract patients in the local communities that they serve. Should the level of patient care decline, the Debtors' businesses would likewise suffer. Thus, the Debtors' interests are aligned with those of their patients in this case.

12.

G. The Potential Injury to the Patients if the Debtor Drastically Reduced its Level of Patient Care

Courts have generally noted that this factor almost always weighs in favor of appointment of a PCO. *See In re Pediatrics at Whitlock*, 507 B.R. at 12. However, the potential for harm is mitigated where other options for treatment are available. *Id.* (citing *In re Denali Family Services*, 2013 WL 1755481 at *3 (Bankr. D. Alaska, April 24, 2013)). In this case, there are other hospitals and clinics within a relatively short distance from the Hospitals, thereby mitigating the harm that might result if the level of patient care were drastically reduced and patients either desired, or were forced, to seek healthcare services elsewhere. However, the Debtors have no intention of reducing the level of patient care at the Hospitals; but, instead are committed to maintaining the level of quality care which has existed since inception. Accordingly, this factor also weighs against the appointment of a PCO.

13.

H. The Presence and Sufficiency of Internal Safeguards to Ensure an Appropriate Level of Care

As set forth more fully above, there are considerable internal safeguards in effect to ensure an appropriate level of care for the Hospitals' patients, as well as State and Federal oversight and regulation. Additionally, the Hospitals continue to maintain the confidentiality and security of

patient information and records through electronic systems and secure storage sites. Therefore, this factor also weighs against the appointment of a PCO.

14.

I. The Impact of the Cost of an Ombudsman on the Likelihood of a Successful Reorganization

With respect to the final factor, in some cases the appointment of a PCO can lead to the incurrence of substantial administrative expenses on a debtor's estate. Furthermore, courts have generally evaluated this factor in the context of comparing the cost of the PCO with the value realized by the appointment of a PCO. *See In re Pediatrics at Whitlock*, 507 B.R. at 12-13. The Debtors submit that in these cases, when considering the other factors discussed above, the anticipated costs would clearly outweigh the benefits of a PCO.

15.

III. CONCLUSION

For the foregoing reasons, the Debtors respectfully submit that, at this time, it is not necessary to appoint a PCO, and requests that the Court enter an order (i) finding that the appointment of a PCO is not necessary for the protection of patients under the specific facts of these cases; and, (ii) granting any further relief the Court deems appropriate.

Respectfully submitted by:

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