

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	CASE NO. 20-10247
Randolph Hospital, Inc. d/b/a Randolph Health,)	
)	CHAPTER 11
)	
Debtors. ¹)	
)	

JOINT MOTION TO LIMIT DUTIES OF PATIENT CARE OMBUDSMAN

Randolph Hospital, Inc. d/b/a Randolph Health and certain of its affiliates (the “Debtors”) and the Bankruptcy Administrator (collectively, the “Movants”) hereby file this motion (the “Motion”) for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the “PCO Order”), immediately limiting the duties of the Patient Care Ombudsman. In support of this Motion, the Movants respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Local Civil Rule 83.11, M.D.N.C. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory and legal predicates for the relief requested herein are sections 105(a) and 333 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

¹ The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health, Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; and MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

BACKGROUND

4. On March 6, 2020 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the Middle District of North Carolina ("Court") commencing the above-captioned cases ("Cases").

5. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request for the appointment of a trustee or examiner has been made in these Cases.

7. On March 9, 2020, the Bankruptcy Administrator for the Middle District of North Carolina noticed the formation of a committee of unsecured creditors (Doc. No. 33). The committee members are (i) Canopy Partners, (ii) McKesson Corporation and (iii) Boston Scientific Corporation (Doc. No. 69).

8. On May 5, 2020, the Court appointed Melanie L. Cyganowski as the Patient Care Ombudsman (the "PCO") for the Debtors pursuant to section 333 of the Bankruptcy Code (the "Appointment Order") (Doc. No. 217). On May 11, 2020, the Bankruptcy Administrator filed the Notice of Appointment of Patient Care Ombudsman Under 11 U.S.C. § 333, thereby providing notice of Ms. Cyganowski as the PCO (Doc. No. 231). On June 4, 2020, the Court entered an order authorizing the PCO's employment of Otterbourg P.C. ("Otterbourg") as her counsel in these Cases effective as of May 5, 2020 (Doc. No. 271).

RELIEF REQUESTED

9. By this Motion, and in order to preserve and maximize the value of the estates, the Movants seek an Order from this Court limiting the duties of the Court appointed Patient Care Ombudsman at this stage of these Cases.

10. The appointment of the PCO is within the Court's discretion. Section 333(a)(1) of the Bankruptcy Code provides for the appointment of an ombudsman "[. . .] 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." 11 U.S.C. § 333(a)(1) (emphasis added).

11. Bankruptcy courts throughout the United States that have found the appointment of an ombudsman to be unnecessary relied upon the following case-specific factors, including: (1) the cause of the bankruptcy; (2) the presence and role of licensing or supervising entities; (3) the debtor's past history of patient care; (4) the ability of the patients to protect their rights; (5) the level of dependency of patients on the facility; (6) the likelihood of tension between the interests of the patients and the debtor; (7) the potential injury to the patients if the debtor drastically reduced their level of patient care; (8) the presence and sufficiency of internal safeguards to ensure appropriate level of care; and (9) the impact of the cost of an ombudsman on the likelihood of a successful reorganization. *See In re Barnwell County Hosp.*, Case No. 11-06207-DD, 2011 WL 5443025, at *4 (Bankr. S.C. Nov. 8, 2011) (citing *In re Valley Health Sys.*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008); *see also In re Alternate Family Care*, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007).

12. Courts have also used the following factors to determine that an ombudsman is unnecessary:

The court considers a number of factors in determining whether a PCO is necessary. As set forth in a well-known bankruptcy treatise, '[f]acts that warrant a decision not to appoint an ombudsman could include that the facility's patient care is of high quality, that the debtor has adequate financial strength to maintain high-quality patient care, that the facility already has an internal ombudsman program in operation or that the situation at the facility is adequately monitored already by federal, state, local or professional association programs so that the ombudsman would be redundant.' 3 Collier on Bankruptcy, ¶ 333.02 (16th ed. 2011).

In re Adams, 2011 WL 2946710, at *1 (Bankr. N.D. Miss. 2011).

13. Since her appointment in May 2020, the PCO, with the assistance of Otterbourg, has been diligently reviewing the Debtors' operations and has submitted two reports to date. Each report reflects the high quality of the Debtors' patient care in accordance with applicable standards in the industry.

14. Pursuant to the order appointing the PCO, the PCO's fees and expenses were not to exceed \$75,000.00 (the "Cap"), absent an order from the Court after notice and a hearing.² On June 25, 2020, the PCO and her counsel filed their Initial Application for Approval of Fees and Expenses in the amount of \$11,827.80 and on September 16, 2020, the PCO and her counsel filed their Second Application for Approval of Fees and Expenses in the amount of \$60,639.13, which was voluntarily reduced by the PCO and her counsel to \$60,502.05.³ The PCO and her counsel have incurred fees and expenses of \$72,329.85 through August 31, 2020. The PCO and her counsel have continued to perform services on behalf of the Debtors' estates to date. To that end, the PCO has advised the Bankruptcy Administrator and the Debtors that, as of the date of this Motion, the PCO and Otterbourg have incurred fees and expenses in excess of the Cap. Accordingly, in recognition of the services that the PCO and her counsel have performed since September 1, 2020, the Movants respectfully request that the Cap be increased from \$75,000.00 to \$125,000.00 for fees and expenses incurred by the PCO and her counsel from the commencement of their services in these Cases through and including the date of entry of the PCO Order.

15. Because the PCO has reported no patient care issues during the pendency of

² Otterbourg also agreed to the \$75,000.00 monetary cap (Doc. No. 224).

³ On October 1, 2020, the PCO and her counsel, Otterbourg P.C., filed a statement confirming their voluntary withdrawal for reimbursement of \$137.08 in expenses.

these Cases, and in view of the pending sale of substantially all of the Debtors' assets, the Movants request that the Court enter an order directing the PCO to be on standby status at this time such that the PCO is not required to: (a) conduct any monitoring of the Debtors' patient care operations and (b) prepare or file any periodic reports. Similarly, the PCO should incur no further fees or expenses (except as to fees that may relate to the preparation of a final fee application and appearances, if any, before the Court with respect to such final fee application and this Motion), pending further order of this Court. Should a specific patient care issue arise, the Bankruptcy Administrator reserves the right to file a motion with the Court seeking further action by the PCO. In the meantime, the Bankruptcy Administrator and the Debtors agree that the PCO should be relieved of her responsibilities as patient care ombudsman as provided in the Appointment Order and not be required to provide any further services in these Cases.

16. To be clear, the purpose for the relief requested in the Motion is solely for reasons related to the administrative costs to the Debtors' estates and is not a statement or suggestion of any kind that the PCO has not performed her duties as required under the Appointment Order and applicable law.

17. The Movants believe that limiting the involvement of the PCO at this stage of these Cases is appropriate and will reduce administrative costs to the estates. The PCO has already found that the Debtors' patient care is of high quality and that there has been no noticeable, negative effect on patient care as a result of the Debtors' bankruptcy filings. The Debtors currently hold in excess of \$20 million in cash and investments to continue to maintain high-quality patient care – a much stronger liquidity position than the Debtors enjoyed pre-petition. The Debtors will continue to operate internal quality control programs as well as remain subject to monitoring by federal, state, and local regulators. Further, the Debtors are currently in

the process of selling substantially all of their assets pursuant to Court approved sales procedures. In that regard, the Debtors completed a public auction on October 6, 2020 and the successful bid contemplates a going concern sale of the Debtors assets. Because the Debtors are expected to consummate a going concern sale of their assets and are not expected to wind down their operations, the quality of patient care issues that could be associated with an expedited closure of the hospital are not present in these Cases. In the event the Court approves the proposed sale and the transaction is consummated, a PCO will no longer be necessary.

18. For the foregoing reasons, the Movants submit that limiting the PCO's role at this stage of the Cases is reasonable and appropriate to minimize the costs of administration of these Cases.

19. Counsel for Bank of America and the Unsecured Creditors' Committee consent to the requested relief.

NOTICE

20. Notice of this Motion has been provided by electronic mail or overnight delivery to: (a) the Bankruptcy Administrator for the Middle District of North Carolina; (b) the Official Committee of Unsecured Creditors, c/o Andrew H. Sherman, One Riverfront Plaza Newark, NJ 07102, and Rayford K. Adams, III, 110 Oakwood Drive, Suite 500, Winston-Salem, NC 27103; (c) those persons who have formally appeared in the Cases and requested service pursuant to Bankruptcy Rule 2002; (d) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; (e) Bank of America, c/o McGuire Woods, LLP, Attn: Scott Vaughn, 201 North Tryon Street, Suite 3000, Charlotte, NC 28202; and (f) any other entities directly affected by the Motion. A copy of the Motion has been made available on the website of the Debtors' claims and noticing agent, Epiq Corporate Restructuring, LLC, at

<https://dm.epiq11.com/RandolphHealth>. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Movants respectfully request that the Court enter an order, in substantially the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief to which the Movants may be justly entitled.

Dated: October 15, 2020

HENDREN, REDWINE & MALONE, PLLC

s/Rebecca F. Redwine
Jason L. Hendren (NC State Bar 26869)
Rebecca F. Redwine (NC State Bar 37012)
Benjamin E.F.B. Waller (NC State Bar 27680)
4600 Marriott Drive, Suite 150
Raleigh, NC 27612
Telephone: (919) 420-7867
Facsimile: (919) 420-0475
Email: jhendren@hendrenmalone.com
rredwine@hendrenmalone.com
bwaller@hendrenmalone.com

**NELSON MULLINS RILEY & SCARBOROUGH
LLP**

Jody A. Bedenbaugh D.S.C. ID No. 9210
Graham S. Mitchell D.S.C. ID No. 11763
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
Telephone: (803) 799-2000
Facsimile: (803) 256-7500
Jody.Bedenbaugh@nelsonmullins.com
graham.mitchell@nelsonmullins.com

CO-COUNSEL FOR THE DEBTORS-IN-
POSSESSION

WILLIAM P. MILLER, ESQ.
U.S. BANKRUPTCY ADMINISTRATOR

By: s/Robert E. Price, Jr.
Robert R. Price, Jr.
N. C. State Bar No. 9422
Assistant Bankruptcy Administrator
101 S. Edgeworth Street
Greensboro, NC 27401
(336) 358-4179

EXHIBIT A
(Proposed Order)

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	CASE NO. 20-10247
Randolph Hospital, Inc. d/b/a Randolph Health,)	
)	CHAPTER 11
)	
Debtors. ¹)	
_____)	

**ORDER ALLOWING JOINT MOTION TO LIMIT DUTIES
OF PATIENT CARE OMBUDSMAN**

Upon consideration of the motion (the “Motion”)²of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the Bankruptcy Administrator for the entry of an order, limiting the duties of the Patient Care Ombudsman (“PCO”); and the Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein at the hearing before the Court on November 5, 2020 (the “Hearing”); and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

¹ The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health, Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; and MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Motion.

1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (iii) venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409, (iv) notice of the Motion was sufficient under the circumstances, and (v) the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Motion as set forth herein is in the best interests of the Debtors, their estates and their creditors; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. This Order shall be immediately effective and enforceable upon its entry.
3. The PCO shall be on standby status pending completion of the sale of the Debtors' assets unless the Bankruptcy Administrator files a motion seeking further action by the PCO. Specifically, pending further order of the Court, the PCO: (i) is not required to conduct any monitoring of the Debtors' patient care operations and (ii) is not required to prepare or file any periodic report.
4. From the date of entry of this Order, neither the PCO nor any professionals employed by the PCO shall incur any fees or expenses payable by the Debtors' estates, except as to the preparation of any final fee application and appearances before the Court with respect to such final fee application.
5. In the event of any conflict or inconsistency between this Order and any prior orders of the Court, including, without limitation, the Agreed Order Authorizing the Appointment of Patient Care Ombudsman Pursuant to 11 U.S.C. § 333 [DE# 217], this Order shall be deemed to supersede such orders and shall govern and control for all purposes.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

7. The Debtors are directed to serve a copy of this Order on parties as required by the Order Implementing Certain Notice and Case Management Procedures (Docket # 134) within three (3) days of entry of this Order and to file a certificate of service with the Clerk of Court.

END OF DOCUMENT