

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
GULF COAST HEALTH CARE, LLC, et al.,)	Case No. 21-11336 (KBO)
Debtors.)	Jointly Administered
)	
)	

**APPLICATION OF PATIENT CARE OMBUDSMAN FOR ENTRY OF AN
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
NEUBERT, PEPE & MONTEITH, P.C. AS COUNSEL, EFFECTIVE AS OF
DATE OF APPOINTMENT OF PATIENT CARE OMBUDSMAN**

Daniel T. McMurray, the patient care ombudsman appointed in these Chapter 11 cases (the "Ombudsman"), submits this application for entry of an Order, pursuant to sections 105, 327, 328, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "**Bankruptcy Code**") and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authorizing the retention and employment of the law firm of Neubert, Pepe & Monteith, P.C. ("**Neubert Pepe**") as counsel for the Ombudsman, effective as of the date of the Ombudsman's appointment on October 25, 2021. The facts and circumstances supporting this application (the "**Application**") are as set forth herein and in the Declaration of Mark I. Fishman (the "**Fishman Declaration**"). In further support of this Application, the Ombudsman respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This

matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. The ombudsman confirms his consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. The statutory predicates for the relief sought herein are sections 105, 327, 328, 330 and 333 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016.

BACKGROUND

3. On or about October 14, 2021, the debtors filed their petitions for relief under Chapter 11 of the Bankruptcy Code.

4. On October 20, 2021, this Court entered an agreed Order directing the appointment of a patient care ombudsman under Section 333 of the Bankruptcy Code (the “Appointment Order,” Doc. 91).

5. On October 25, 2021, the Office of the United States Trustee for this district filed a notice of the United States Trustee’s appointment of the Ombudsman (the “Notice,” Doc. 112).

6. The Ombudsman is a Managing Director of Focus Management Group USA, Inc., which specializes, inter alia, in the management and turnaround of distressed health care businesses. Although the Ombudsman has vast experience in

the health care field, the Ombudsman is not an attorney and requires the assistance of bankruptcy counsel.

RELIEF REQUESTED

7. The Ombudsman desires to retain and employ Neubert Pepe as his counsel in this case. The Ombudsman has determined that Neubert Pepe has the resources and experience necessary to represent him, as described hereinafter. Neubert Pepe's attorneys have substantial experience with complex reorganization cases and health care cases, including prior representation of the Ombudsman in such capacity. Given the nature of these cases, including the specific duties required under section 333 of the Bankruptcy Code, as discussed hereinafter, the Ombudsman believes that retention of Neubert Pepe is appropriate and necessary.

8. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing him to employ and retain Neubert Pepe as his attorney, effective as of October 25, 2021.

SCOPE OF EMPLOYMENT

9. The professional services that the Ombudsman expects that Neubert Pepe will be called upon to render include, but shall not be limited to, the following

- (a) Advising the Ombudsman concerning the requirements of the Bankruptcy Code and Rules and the Appointment Order relating to the discharge of his duties under Section 333 of the Bankruptcy Code;
- (b) Representing the Ombudsman in any proceeding or hearing in this Court and in any action in other courts where the rights of the patients generally may be litigated or affected as a result of those cases;
- (c) Representing and advising the Ombudsman in connection with

gaining access to patient records in accordance with Section 333 of the Bankruptcy Code and other relevant law to the extent applicable;

- (d) Advising and representing the Ombudsman concerning the effect on patients of a potential reorganization, sale or other transfer of the debtors' assets or closing of any of the debtors' programs or facilities;
- (e) Assisting the Ombudsman in connection with his periodic reports;
- (f) Monitoring proceedings in these cases to identify any proceedings which could affect patients or which reflect developments potentially affecting patients; and
- (g) Performing such other legal services as may be required under the circumstances of these cases in accordance with the Ombudsman's powers and duties as set forth in the Bankruptcy Code.

10. Subject to this Court's approval of this Application, Neubert Pepe has indicated that it is willing to serve as the Ombudsman's counsel to perform the services described above and has begun performing those services for the Ombudsman.

**NEUBERT PEPE DOES NOT HOLD OR REPRESENT ANY ADVERSE
INTEREST AND IS EMINENTLY QUALIFIED TO REPRESENT THE
OMBUDSMAN**

11. As set forth in greater detail in the Fishman Declaration, Neubert Pepe has conducted a conflict check and is disclosing in the Fishman Declaration its known connections, if any, with other parties in these cases.

12. To the best of the Ombudsman's knowledge, based upon the Fishman Declaration, Neubert Pepe (a) does not hold or represent any interest adverse to the debtors or their estates and (b) is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code. Because Neubert Pepe has substantial

practices in the areas of, inter alia, bankruptcy law and health law, the Ombudsman is aware that Neubert Pepe may represent, or may have represented, certain creditors of the debtors or other parties-in-interest in matters unrelated to the debtors or these cases.

13. Neubert Pepe and its lead attorney, Mark I. Fishman, are eminently qualified to represent the Ombudsman. Mr. Fishman is a graduate of Harvard Law School and practiced law for more than six years with the law firm of Sullivan & Cromwell in New York City. He has served as the Chapter 11 Trustee of Cuisinarts, Inc. in the District of Connecticut, Northeastern Conference Nursing Home, Inc. in the Southern District of New York and Highgate LTC Management, LLC, owner of four nursing homes, in the Northern District of New York. Neubert Pepe has represented the Ombudsman in his capacity as patient care ombudsman of, inter alia, Quorum Health Corporation in this Court, Saint Vincents Catholic Medical Centers of New York, DeWitt Rehabilitation and Nursing Center, Inc., Sound Shore Medical Center of Westchester, and Our Lady of Mercy Medical Center in the Southern District of New York, Brooklyn Psychiatric Centers, Inc. and Caritas Health Care, Inc., in the Eastern District of New York, St. Mary's Hospital, Passaic, N.J. and Hudson Healthcare, Inc., d/b/a Hoboken University Medical Center, in the District of New Jersey, Primecare Nevada, Inc. in the District of Nevada and ADPT, Inc. in the Northern District of Texas and represents or has represented numerous medical providers as well as medical and dental societies. It also represented secured bank creditors in the nursing home case of Marathon Healthcare in the District of Connecticut and in the case of Johnson Memorial Hospital in the same district. More

information about both Neubert Pepe and Mr. Fishman can be found at www.NPMLAW.com.

COMPENSATION AND REIMBURSEMENT OF EXPENSES

14. Subject to this Court's approval, the Ombudsman requests that Neubert Pepe be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses, if any, that Neubert Pepe incurs, including, but not limited to, photocopies, word processing, courier service, computer assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by Neubert Pepe specifically for these matters, at the rates commonly charged for such costs to other Neubert Pepe clients.

15. Neubert Pepe has advised the Ombudsman that the current hourly rate applicable to Mr. Fishman for non-Connecticut matters is \$425.00. Other attorneys and paralegals within Neubert Pepe may render services to the Ombudsman as needed. Generally, Neubert Pepe's hourly rates for persons other than Mr. Fishman are equal to or less than \$400.00.

16. The Ombudsman understands that the hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions.

17. Other than as set forth above, there is no proposed arrangement to compensate Neubert Pepe in connection with its representation of the Ombudsman. Neubert Pepe has received no compensation in these cases to date.

BASIS FOR RELIEF

18. The retention of counsel is essential to a patient care ombudsman's proper discharge of his duties. The debtors are in a period of transition. While the

debtors are seeking approval of a management operations and transfer agreement (the “MOTA”), it remains possible that some of the debtors’ facilities could be closed, especially if the MOTA is not approved or encounters other impediments. The debtors also have encountered financial difficulties. Generally speaking, and not reflecting on the debtors in these cases in particular, whenever financial conditions dictate that a debtor seek reorganization or cease doing business, there is concern whether ongoing patient care is being compromised. Should any such decline become apparent, then it would be necessary for the Ombudsman to report to the Court and possibly to engage in motion practice. Pre-existing retention of counsel is necessary for the Ombudsman to discharge these responsibilities in a full and timely matter.

19. Counsel also has an important role to play in connection with a patient care ombudsman’s periodic reports, separate versions of which must be posted in each respective facility . Review by counsel of drafts of the reports can assure that the patient care ombudsman does not violate patient privacy, especially in an ombudsman’s discussion in the report of his review of patient records or his interviews with patients. Counsel is also necessary in order properly to meet the technical requirements for 14-day notice of issuance of the reports, as mandated by Rule 2015.1(a), to comply with the requirements of the Appointment Order, section 333 of the Bankruptcy Code and applicable non-bankruptcy law and to assure the accuracy of references in the reports to legal matters and court proceedings.

20. Experienced bankruptcy counsel is necessary in order to monitor these cases so that the Ombudsman will be apprised of developments that can either directly affect patient care (for example, a stay relief or reclamation motion seeking leave to

repossess essential medical equipment) or can indirectly affect patient care (for example, developments that impact upon the debtors' financial condition and/or cash position and the debtors' consequent ability to provide adequate care).

21. Many courts, including this Court, have approved the engagement of professionals by patient care ombudsmen pursuant to Sections 330 and 333 of the Bankruptcy Code. See In re Quorum Health Corporation, Chapter 11 Case No. 20-10766 (KBO) (Bankr. D. Del. 2020); In re New York Westchester Square Medical Center, Chapter 11 Case No. 06-13050 (SMB) (Bankr. S.D.N.Y., February 26, 2007); Atlantic Health Services, Inc., Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md., March 11, 2006); In re Sound Shore Medical Center of Westchester, Chapter 11 Case No. 13-22840 (RDD) (Bankr. S.D.N.Y., August 9, 2013); In re Renaissance Hospital – Grand Prairie, Inc., 399 B.R. 442 (Bankr. N.D. TX 2008); In re Primecare Nevada, Inc., Chapter 11 Case No. 13-20348 (LED) (Bankr. D. Nev., Aug. 4, 2014); In re Upland Surgical Institute, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal.); In re Brotman Medical Center Inc., Case No. 07-19705 (Bankr. C.D. Cal.); In re Meridian Behavioral Health, LLC, Case No. 11-10860 (Bankr. S.D.N.Y.); In re Christ Hospital, Case No. 12-12906 (Bankr. D.N.J.); In re ICL Holding Company, Inc., et al., Case No. 12-13319 (Bankr. D. Del.); In re Horizon Health Center, Inc., Case No. 13-26348 (Bankr. D.N.J.); In re Fairmont General Hospital, Inc., et al., Case No. 13-01054 (Bankr. N.D. W.Va.); In re Curae Health, Inc., Case No. 18-05665 (Bankr. M.D. Tenn.) and In re ADPT DFW Holdings LLC, et al., Case No. 17-31432 (Bankr. N. D. TX). For amplification, the Court is respectfully referred to the discussion in In re Synergy Hematology-Oncology Medical Associates, Inc., 2010 WL 28537 (Bankr.

C.D. Cal. 2010).

22. Other authority exists to grant this Application and approve the retention of professionals by the Ombudsman. The appointment of a patient care ombudsman is analogous to the appointment of an examiner, and, in many cases, courts have routinely authorized examiners to employ professionals notwithstanding the absence of express, specific authorization in the Bankruptcy Code for such employment, pursuant to Section 105. See, e.g., In re Enron, Case No. 01-16034 (Bankr. S.D.N.Y. 2001) (allowed examiner to retain professionals); In re Southmark Corp., 113 B.R. 280, 283 (Bankr. N.D. Tx 1990) (allowing examiner to retain professionals); In re Tighe Mercantile, Inc., 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986) ("This Court holds that in appropriate circumstances, a bankruptcy court may rely on § 105(a) to authorize examiners to employ professional persons."). See Synergy, supra, authorizing counsel for an ombudsman after a discussion of several of the cases cited in this paragraph.

WAIVER OF MEMORANDUM OF LAW/NO PRIOR REQUEST

23. Because this Application does not present any novel issues of law, and the authorities relied upon are set forth herein, the Ombudsman requests that the Court waive and dispense with any requirement that a separate memorandum of law be filed in support of this Application.

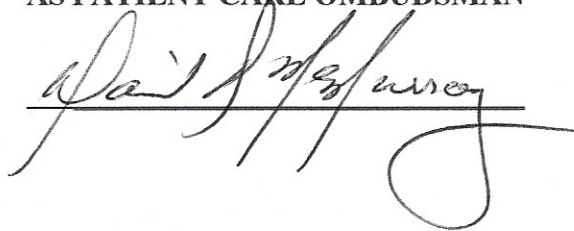
24. No previous motion or application for the relief sought herein has been made to this or any other court.

WHEREFORE, based upon the foregoing, the Ombudsman respectfully requests that the Court enter an order substantially in the form annexed hereto (a) granting this

Application, (b) authorizing the Ombudsman to retain and employ Neubert Pepe as his counsel in this case, effective as of October 25, 2021, , and (c) granting such other and further relief as this Court may deem just and proper.

Dated: November 18, 2021

**DANIEL T. MCMURRAY,
AS PATIENT CARE OMBUDSMAN**

A handwritten signature in black ink, appearing to read "Daniel T. McMurray", written over a horizontal line.