IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

GREATER MERIDIAN HEALTH CLINIC, INC., CASE NO. 06-51313-NPO

DEBTOR. CHAPTER 11

MEMORANDUM OPINION AND FINAL ORDER
REGARDING ANSWER AND RESPONSE OF THE DEBTOR
TO THE ORDER DIRECTING APPOINTMENT OF PATIENT
CARE OMBUDSMAN AND SETTING HEARING, AND MOTION TO DISPENSE
WITH THE APPOINTMENT OF A PATIENT CARE OMBUDSMAN

There came on for consideration on January 11, 2007 (the "Fourth Hearing"), the Order Directing Appointment of Patient Care Ombudsman (Dk. No. 9) (the "Order") and the Answer and Response of the Debtor to the Order Directing Appointment of a Patient Care Ombudsman, and Motion to Dispense with the Appointment of a Patient Care Ombudsman (Dk. No. 22) (the "Debtor's Response and Motion") in the above-styled chapter 11 proceeding. Craig M. Geno represented Greater Meridian Health Clinic, Inc. (the "Debtor"), and Angela D. Givens represented R. Michael Bolen, the United States Trustee for Region 5 (the "UST"). The Court, being fully advised in the premises and having considered the pleadings, evidence, authorities, and arguments presented by counsel, finds as follows:[1]

[1] The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

Facts

On January 5, 2007, this Court entered a Preliminary Order (Dk. No. 64) (the "Preliminary Order") regarding the Debtor's Response and Motion.[2] In the Preliminary Order, the Court outlined the facts underlying and the procedural history of the above-styled chapter 11 proceeding. In short, the Debtor provides primary care services, both medical and dental, for the indigent and working poor through its main clinic in Meridian, Mississippi, and its community-based clinics in five outlying, rural areas of Mississippi. The Debtor provides such services, as well, through its mobile medical vehicle known as "MAC."

The Court also reiterated in the Preliminary Order its previous finding that the term "health care business" as defined in 11 U.S.C. § 101(27A)[3] includes the Debtor and that, accordingly, § 333 applies in this case. Given that finding, the question remaining before the Court is whether a patient care ombudsman (the "PCO") should be appointed for this health care business.[4]

Discussion

As indicated in the Preliminary Order, the Court has considered a number of factors in determining whether a PCO should be appointed. Those factors include the quality of the facility's patient care, the financial strength of the facility, and the existence of an internal ombudsman

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[2] The Preliminary Order, attached hereto as "Exhibit A," is adopted in its entirety for purposes of this Memorandum Opinion.

[3] Hereinafter, all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code, unless otherwise noted.

[4] Section 333(a)(1) provides that if the debtor in a case under chapter 11 is a health care business, the court "shall order . . . the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the 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."

program. *See* 3 Collier on Bankruptcy, § 333.02 (Matthew Bender 15th Ed. Rev. 2005). Moreover, the Court considered the availability of qualified professionals to accept the appointment, the projected costs of such an appointment,[5] and the type of medical care provided by the Debtor.

As an initial matter, the Court will elaborate on its consideration of the type of medical care provided by a debtor as a factor in whether a PCO should be appointed in addition to its consideration of the type of medical care provided in its determination of whether a particular debtor falls within the definition of a "health care business." The Court notes that the bankruptcy court in the 7-Hills Radiology, LLC[6] case, which was cited in the Preliminary Order, determined that the debtor radiology service in that case was excluded from the definition of "health care business" under § 101(27A) because it did not offer services to the general public, but rather offered services only to referring physicians. The 7-Hills court went on to state that "the type of health care businesses that were the primary targets of the definition were businesses that had some form of direct and ongoing contact with patients to the point of providing them shelter and sustenance in addition to medical treatment." Id. at 905.[7] However, the 7-Hills court further acknowledged that

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[5] As noted in the Preliminary Order, the Court requested from the UST information regarding the availability of and costs associated with the appointment of a PCO on several prior occasions. At the Fourth Hearing, the UST finally provided the requested information. Also at that time, the UST's counsel advised the Court that the UST had not willfully violated the Court's prior instructions, but had believed that a "reasonable disagreement" existed as to how the UST was to comply with the Court's directives. Although the Court cannot appreciate how such a disagreement occurred, the Court accepts for now the UST's explanation at face value.

[6] 350 B.R. 902, 904 (Bankr. D. Nev. 2006).

[7] *See also* In re Banes, 2006 WL 3333805 (Bankr. M.D.N.C. Nov. 16, 2006) (relying on 7-Hills and determining debtor's dental practice was not within the range of health care businesses anticipated by the definition set forth in § 101(27A) because it did "not provide patients with shelter and sustenance in addition to medical treatment"); J. Lucian, Does the Patient Care Ombudsman Statute Apply to Outpatient Facilities? (2006), Am. Bankr. Inst., available at http://abiworld.org, (appearing to the author that "the statute was intended for, and

"entities other than those who provide direct and ongoing patient care may be within the definition" as long as they provide care to the general public. Id.

This Court, given the broad definition of "health care business" contained in § 101(27A), determined in the Preliminary Order that the plain meaning of the term "health care business" includes the Debtor. More specifically, this Court is not convinced that an inpatient care facility is included in the term "health care business" while an outpatient facility is excluded from the definition.[8] Nevertheless, in this Court's opinion, the type of care, *i.e.* inpatient or outpatient, provided by a health care business debtor is an important factor in determining whether a PCO should be appointed.

To that end, application of the above-referenced factors to this case persuades the Court that the appointment of a PCO is not "necessary for the protection of patients." *See* § 333(a)(1); Interim Fed. R. Bankr. P. 2007.2(a) (adopted in Southern District of Mississippi by General Order dated Sept. 14, 2005) (the "Interim Rule"). The Debtor has established that it provides only outpatient care, which lessens the need for the appointment of a PCO to insure a continuity of day-to-day care for patients. The Debtor also has implemented a basic internal ombudsman program by designating two employees to handle patient complaints, few of which have ever been lodged.

In addition, the Debtor has demonstrated that it is providing quality medical and dental services to its patients. In fact, though not required by law to do so, the Debtor has voluntarily

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should apply only to, traditional inpatient facilities").

[8] Pursuant to § 102(3), the words "includes" and "including" are not limiting. Thus, the list of examples of "health care businesses" set forth in § 101(27A) is not inclusive. Moreover, because the list identifies both "ancillary ambulatory . . . treatment" facilities and "home health" agencies as "health care businesses," this Court finds it difficult to read the definition so restrictively as to eliminate outpatient facilities. *See* § 101(27A).

enrolled itself in an accreditation program as a method of accountability for whether the Debtor is providing high quality care. Also, though the Debtor filed bankruptcy in part because of difficulties in obtaining government reimbursements, it is actively seeking and expects to receive government funding as well as, ultimately, the reimbursements it claims are due. Thus, the Debtor is optimistic that it will be able to maintain adequate financial strength to sustain quality patient care.

Having considered the foregoing,[9] the Court is of the opinion that the appointment of a PCO is not "necessary for the protection of patients under the specific facts of this case." § 333(a)(1); *see also, e.g.*, In re Total Woman Healthcare Ctr. 2006 WL 3708164 (Bankr. M.D. Ga. Dec. 14, 2006) (finding appointment of ombudsman unnecessary where debtor provided outpatient care at her office or performed medical procedures at area hospitals where hospital staff provided additional patient care, where no complaints had been received since bankruptcy filing, and where neither office staff nor patient scheduling had changed due to bankruptcy). Nevertheless, should the Debtor experience any negative trend which indicates the need for the appointment of a PCO in the future, the Court anticipates the filing of an appropriate motion so that the Court might reconsider such an appointment. *See* Interim Rule 2007.2(b) ("[T]he court, on motion of the United States trustee, or a party in interest, may order the appointment at any time during the case if the court finds that the appointment of an ombudsman has become necessary to protect patients.").

IT IS THEREFORE ORDERED that the Debtor's Response and Motion is well taken and that the appointment of a PCO is not necessary for the protection of patients in the above-styled chapter 11 proceeding.

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[9] Although the UST contends that a PCO should be appointed in this case, he failed to present any evidence or legal authorities in support of his position.

A separate final judgment consistent with this Memorandum Opinion will be entered by this Court in accordance with Federal Rule of Bankruptcy Procedure 9021.

SO ORDERED. this the 16th day of February, 2007.

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

GREATER MERIDIAN HEALTH CLINIC, INC., CASE NO. 06-51313-NPO

DEBTOR. CHAPTER 11

PRELIMINARY ORDER REGARDING ANSWER AND RESPONSE OF THE DEBTOR TO THE ORDER DIRECTING APPOINTMENT OF PATIENT CARE OMBUDSMAN AND SETTING HEARING, AND MOTION TO DISPENSE WITH THE APPOINTMENT OF A PATIENT CARE OMBUDSMAN

There came on for consideration at the two hearings referenced below the Order Directing Appointment of Patient Care Ombudsman and Setting Hearing (Dk. No. 9)(the "Order") and the Answer and Response of the Debtor to the Order Directing Appointment of Patient Care Ombudsman and Setting Hearing, and Motion to Dispense with the Appointment of a Patient Care Ombudsman (Dk. No. 22)(the "Debtor's Response") in the above-styled chapter 11 proceeding. Craig M. Geno represented the Debtor, Greater Meridian Health Care, Inc. (the "Debtor"), and Betty Ruth Fox and Christopher J. Steiskal represented the United States Trustee for Region 5 (the "UST"). The Court, being fully advised in the premises and having considered the pleadings, evidence, authorities, and arguments presented by counsel, makes the following preliminary findings:

1. The Debtor initiated this voluntary chapter 11 case by the filing of a petition (the "Petition") on November 21, 2006.

2. On the Petition, the Debtor indicated that the nature of its business is "Health Care Business." The Debtor provides primary care services, both medical and dental, for the indigent and the working poor through its main clinic in Meridian and its community-based clinics in DeKalb, Louisville, Scooba, Shuqualak, and Starkville, as well as through its mobile medical vehicle known as

Exhibit "A"

"MAC." These services are offered to its patients on an ambulatory basis. See Testimony of Wilbert L. Jones.

3. On November 27, 2006, this Court entered the Order and directed the UST to appoint a disinterested person to serve as a patient care ombudsman[1] pursuant to 11 U.S.C. § 333,[2] unless a motion to dispense with the appointment was filed as provided in Federal Rules of Bankruptcy Procedure 1021(b) and 2007.2(a).

4. On November 30, 2006, the Debtor's Response was filed. No response to the Order was filed by the UST.

5. On December 18, 2006, the Court held an evidentiary hearing (the "First Hearing") on the Order and the Debtor's Response. At the First Hearing, the Debtor took the position that the Court should not appoint a patient care ombudsman based on the specific facts and circumstances of this case. First, the Debtor argued that § 333 did not apply, citing In re 7-Hills Radiology, LLC, 350 B.R. 902 (Bankr. D. Nev. 2006). In 7-Hills Radiology, the services provided by the debtor were performed only at the request of a referring physician and were not offered to the general public. As such, the bankruptcy court held that this type of business was not a "health care business" within the meaning of § 101(27A) and the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). The court reasoned that "the primary targets of the definition were businesses that had some form of direct and ongoing contact with patients to the point of providing them shelter and sustenance in addition to

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[1] According to Collier on Bankruptcy, "[t]his ombudsman is, apparently, to serve as a 'patient advocate' - one who can speak for the consumers of the health care business's services who might have different interests then those of the health care business's creditors - monitoring the quality of patient care, representing the interests of patients and reporting to the bankruptcy court every 60 days on the status of patient care in the debtor's health care business." 3 Collier on Bankruptcy, ¶ 333.01 (Matthew Bender 15th Ed. Rev. 2005).

[2] Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code, unless otherwise noted.

medical treatment." Id. at 905.

6. Second, the Debtor argued that a patient care ombudsman was not necessary "for the protection of the patients" even if § 333 did apply. See 11 U.S.C. § 333(a)(1). The Debtor described the quality care offered to patients, the voluntary accreditation received by the Debtor, and the very low incidence of patient complaints or malpractice claims.

7. At the First Hearing, the UST did not take any position on the matters before the Court, indicating that he needed additional documents from the Debtor and the opportunity to conduct the initial debtor interview the next day before he could formulate a position. The UST did not have any candidate identified for the position of patient care ombudsman[3] and had not determined the projected costs of such an appointment.

8. At the First Hearing, the Court advised the parties that it would consider authorities provided by counsel before making a ruling on whether § 333 applied in this chapter 11 case. The Court also indicated that it would consider a number of factors in determining whether a patient care ombudsman was needed if § 333 applied. According to Collier on Bankruptcy, "[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 (Matthew Bender 15th Ed. Rev. 2005). In addition, the Court stated that it also would consider the practical implications of such an appointment including whether (a) professionals were available to accept the appointment who had the requisite

[3] According to representations made at the Second Hearing by the UST, the UST does not maintain a list of potential patient care ombudsman, even though § 333 became effective on October 17, 2005, and this provision of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 1021(b) and 2007.2 require an expedited procedure.

expertise and were capable of performing the tasks required of the ombudsman and (b) the projected costs of such an appointment. As a result, the Court continued the First Hearing until December 28, 2006 (the "Second Hearing") to allow the UST time to formulate his position and provide the information requested by the Court.

9. Having obtained the necessary documents from the Debtor and having conducted the initial debtor interview, the UST took the position at the Second Hearing that § 333 did apply and that a patient care ombudsman was needed. The Debtor reasserted its previous position to the contrary. Based on the plain meaning of the term "health care business" as defined in § 101(27A), this Court held that this term included the Debtor and that accordingly, § 333 did apply. However, at the Second Hearing, the UST again did not have any candidates identified for the position of ombudsman though he asserted that one was needed and had no information on projected costs, despite the Court's instructions at the First Hearing.

10. At the Second Hearing, the Court again reset the hearing on the Order and the Debtor's Response for 4:00 p.m. on January 9, 2007 (the "Third Hearing").

11. At the Third Hearing, the UST is hereby ordered again to appear and present evidence of the candidate(s) identified to serve as a patient care ombudsman and the projected costs in order for the UST to fulfill the statutory obligations under § 333(a)(2)(A) and for the Court to make an informed decision with respect to the Debtor's Response.

SO ORDERED, on this the 5th day of January, 2007.

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE