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8 42062-0001/sng

9 Patient Care and Consumer Privacy Ombudsman

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF ARIZONA**

12 In re:

Chapter 11

13 GV HOSPITAL MANAGEMENT, LLC,
14 (EIN: 46-5098773)

No.: 4:17-bk-03351-SHG

No.: 4:17-bk-03353-SHG

No.: 4:17-bk-03354-SHG

15 GREEN VALLEY HOSPITAL, LLC
16 (EIN: 45-4006710)

(Jointly Administered)

17 GV II HOLDINGS, LLC,
18 (EIN: 46-1495917)

Debtors.

19 Address: 4455 S. I-19 Frontage Rd.,
20 Green Valley, AZ 85622

21 This Filing Applies to:

22 All Debtors

23 Specified Debtor(s)

24 **PATIENT CARE AND CONSUMER PRIVACY OMBUDSMAN'S**
25 **REVIEW OF SALE PROCESS**

26 Pursuant to 11 U.S.C. §333 of the Bankruptcy Code, Susan N. Goodman was appointed as the Patient Care Ombudsman on April 14, 2017 [Docket No. 83]. Consistent with this role, the Patient Care Ombudsman is tasked with “represent[ing] the interests of the patients of the health care business.” 11 U.S.C. §333(a)(1). Further, pursuant to the *Stipulated Order Expanding Patient*

1 *Care Ombudsman Duties to Include Review of Sale Process* dated January 19, 2018 (Docket No.
2 634), PCO's role expanded to include sale process review and Consumer Privacy Ombudsman
3 duties under 11 U.S.C. §332. For simplicity, the ombudsman will refer collectively to both roles in
4 this pleading as PCO.

5 The U.S. Trustee filed the *United States Trustee's Statement of Position Regarding Debtors'*
6 *Motion for Entry of Order (A) Approving Asset Purchase Agreement Between Debtors and Buyer;*
7 *(B) Authorizing the Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims,*
8 *Encumbrances, and Interests; (C) Authorizing the Assumption, Assignment, and Sale of Certain*
9 *Executory Contracts and Unexpired Leases; and (D) Granting Certain Related Relief* (the "Position
10 Statement") on January 24, 2018 (Docket NO. 646) requesting that the PCO be provided a specific
11 written transition plan to ensure that "patient records and the maintenance of proper medical
12 equipment continue[d] to be available upon sale." Position Statement, page 4, ¶ 2.

13 Accordingly, PCO engaged with site clinical and information technology ("IT") leadership,
14 representatives from Lateral U.S. Credit Opportunities Fund ("Lateral"), Debtors' Counsel, and
15 Counsel for Cerner Corporation ("Cerner"). PCO also reviewed with particularity the equipment
16 listings associated with the UCC Financing Statements filed by SQN Asset Finance (Guernsey)
17 Limited ("SQN").

18 PCO's impression is that discussions are ongoing between Lateral, the Debtors', and these
19 various constituencies. As such, PCO is not in possession of a specific written plan as proposed in
20 the Position Statement.

21 As to patient records, Debtors' indicated that the records would be included in the sale.
22 Accordingly, PCO recommended that the buyer execute a Custodial Record Agreement with
23 Debtors' to ensure a clear understanding of obligations under the Health Insurance Portability and
24 Accountability Act of 1996 (Pub. L. 104-191), and any amendments or implementing regulations
25 ("HIPAA"), and the Health Information Technology for Economic and Clinical Health Act, which
26 was enacted as title XIII of division A and title IV of division B of the American Recovery and

1 Reinvestment Act of 2009 (Pub. L.111-5), and any amendments or implementing regulations
2 (“HITECH”) including the Final Omnibus Privacy Regulations in 45 CFR Parts 160 and 164 and
3 state law. Absent a record disposal process under 11 U.S.C. §351, PCO’s understanding is that the
4 buyer would assume responsibility for the remaining record hold periods consistent with state and
5 federal laws and regulations.

6 In speaking with Debtors’ IT Director, PCO confirmed that all clinical departments, patient
7 financial services (claims billing and follow-up), ancillary departments, materials management,
8 clinical laboratory, and pharmacy are integrated on the Cerner Community Works electronic health
9 record platform (“EHR”). Hence, operational issues related to ongoing EHR connectivity and/or
10 planned transition from this EHR to a different electronic system(s) or a paper system would require
11 some sort of transition period to avoid operational and/or patient care impact. While it is hard to
12 say with certainty what type of period would be involved, the IT Director felt that something in the
13 order of a 45-60 day period would be a minimal expected transition time.

14 Counsel for Cerner confirmed that no current contractual terms are in place between the
15 potential buyer and Cerner, although a recent productive discussion was reported. Cerner Counsel
16 was versed in understanding that a transitional service agreement would be the contractual
17 mechanism to detail a transition to another EHR and/or a paper system if needed. PCO asked that,
18 at a minimum, some sort of HTML file allowing read only record access be available for a buyer to
19 respond to clinician and/or patient requests for record access with a sufficient transition period to
20 allow transition to another record system.

21 Debtors’ have the appropriate record processes and authorization documents for use and
22 disclosure, with the buyer presumably continuing to use them to ensure appropriate privacy and
23 security of protected health information. However, attachment of appropriate record management
24 forms to the purchase agreement was not noted. Patient and clinician access to other electronic or
25 digital data, such as DICOM image data associated with diagnostic and interventional radiology is
26 also important, with continued access understood as not at issue.

1 The potential implications surrounding equipment foreclosure and removal are as numerous
2 as the attachment pages associated with SQN's UCC Financing Statements. At the broadest level,
3 the ongoing provision of certain core clinical services is a hospital licensure requirement. Those
4 departments associated with these essential services have the expertise to detail the minimum
5 essential equipment needed to maintain licensure and compliance with the regulatory bodies for an
6 orderly equipment transition. Equipment transition would need to be staged over a period of time
7 and could not be effected all at once if patient care services were ongoing during the transition.

8 DATED: January 30, 2018.

MESCH CLARK ROTHSCHILD

9 By: /s/ Susan N. Goodman, #019483

Susan N. Goodman, RN JD

Patient Care Ombudsman

11
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that the above and foregoing *Patient Care and Consumer Privacy*
14 *Ombudsman's Review of Sale Process* was electronically filed with the Clerk of Court using
15 the CM/ECF filing system and a true and correct copy of this pleading has been sent to the
16 following parties or counsel of record who have registered to receive electronic service.

17 **Exhibit A**

18 19 20 21 22 23 24 25 26	S. Cary Forrester Forrester & Worth, PLLC 3636 N. Central Avenue, Suite 700 Phoenix, AZ 857012 scf@forresterandworth.com <i>Attorneys for Debtor</i>	Larry L. Watson Renee Sandler Shamblin Office of the U.S. Trustee 230 N. First Avenue, Suite 204 Phoenix, AZ 85003 larry.watson@usdoj.gov renee.s.shamblin@usdoj.gov Attorneys for U.S. Trustee
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