

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

FOLTS HOME, *et al.*,

Debtors.

Case No. 17-60139

Chapter 11 (Main Case)

Case No. 17-60140

Jointly Administered

**FIRST REPORT OF THE PATIENT CARE OMBUDSMAN
FOR FOLTS HOME AND FOLTS ADULT HOME**

The following report is provided by the court appointed Patient Care Ombudsman (PCO) for Folts Home, and Folts Adult Home, Inc. Krystal Wheatley was appointed on March 07, 2017. Per the appointment order, the PCO shall:

- Monitor the quality of patient care provided to the patients of the debtors, to the extent necessary under the circumstances, including interviewing patients, medical directors, administration, and staff
- Not later than 60 days after the dated of the appointment and not less frequently than at 60 day intervals thereafter, report to the court after notice to parties in interest, at a hearing or in writing regarding the quality of patient care provided to patients on the debtors; and
- If she determines that the quality of patient care provided to patients of the debtors is declining significantly or is otherwise being materially compromised, file with the court a motion or written report, with notice to the parties of interest immediately on making such determination; and
- Maintain any information she obtains by virtue of her appointment as PCO in this case as it relates to patients as confidential information

Introduction

Krystal Wheatley is the Senior Coordinator of the NYS Long Term Care Ombudsman Program. She provides consultation and advocacy to uphold quality of life and quality of care for the patients of long term care facilities. Her experience in long term care facilities includes both for and non-profit entities; skilled nursing facilities, assisted living, and adult care facilities. In her role as an Ombudsman she has experience collaborating with regulatory compliance agencies such as the central region Department of Health and Attorney General's office to make appropriate referrals when necessary for the patients she serves. The appointed PCO is very knowledgeable of systemic issues and concerns patients experience in long term care facilities. She also possesses an understanding of long term care facility regulatory requirements. Her goal is quality of care, dignity, respect and satisfaction for the patients she serves.

Background

The HomeLife at Folts & Folts-Claxton campus is in the Village of Herkimer, New York. The facility has a rich history and has a community oriented philosophy. This stems back to 1893, when the Folts family home was transferred to the Northern New York Conference of the Methodist Church. The campus became the Folts Mission Institute until 1927. In 1943 the Northern New York Conference of the Methodist Church obtained ownership of the property. Non-profit Folts Home LLC was later established. Renovations were made to the property as healthcare needs in the community increased.

In 2011, the non-profit Folts Home Inc. began to face financial hardship. In 2012, an investigation through the Attorney General's office circulated the news for financial irregularities in the facility. In 2013, the non-profit Folts Home Inc. had requested the state to appoint a receiver as a strategy during this ongoing time of hardship. The goal was for the facility to remain open and to provide continuity of care for the patients. The receiver appointed to voluntarily operate the facility in 2013 was FRNC, LLC. This corporation ended receivership of the facility after an almost two-year span. In February of 2015, Homelife at Folts LLC was appointed receivership to voluntarily operate the facility. HomeLife at Folts & Folts- Claxton was then established.

Presently, The Homelife at Folts & Folts-Claxton campus consists of an Adult Care Facility, Rehabilitation Unit, Skilled Nursing Facility and an Adult Day Health Care (Medical Model). The facility currently has 163 skilled nursing beds and 80 beds on their adult care side. The facility currently has on March 20, 2017, 150 patients occupying their skilled nursing unit and 66 patients occupying the adult care unit. The facility employs 240 members in the community. There appears to be a sense of community interest in keeping the facility open and for the patients to have continuity of quality care through this process.

PCO Methodology

- Interview and discussion with administration and employees throughout the facility
- Interview and discussion with patients and family members/visitors
- Review recent licensing and regulatory documents and surveys from CMS and The NYS Department of Health
- Review newspaper and media sources surrounding the facility
- Physical tours and observations of the facility in all settings of the campus
- Direct Observations of staff to ensure quality of care; and dignity and respect in communications to patients and family members

- Review of staffing ratios and ability to provide quality care
- Review of Elopement Policy and Procedure
- Review of Incident Reporting Policy and Procedure
- Review of Personal Food Storage Policy and Procedure
- Review of Lost or Stolen Items Policy and Procedure
- Direct Observation of Call Light Response Times to Patients
- Review of staffing turnover rates, retention and recruitment mechanisms
- Review of multiple infection control and prevention policies and procedures
- Review of grievance, complaints, concerns policy and procedures
- Medication Management and Administration Policy and Procedure
- Review of the Resident Council Minutes
- Direct Observation of a Resident Council Meeting
- Review of patient satisfaction surveys
- Review of vendor services, supplies, and nutritional orders
- Review of Resident Rights Policy Procedures and Staff Education
- Review of Abuse and Neglect Policy and Procedures
- Review of Environmental and Safety Policy and Procedures
- Review of staff trainings, continued education, and orientation policies
- Review of emergency relief and disaster plan

Summary of Initial Interview and Visit

The PCO had an initial interview with Donna Kelly, current administrator overseeing the facility on Monday, March 20, 2017.

The administrator, Donna Kelly, believes the facility has improved under her new leadership and the support of Homelife. She understands receivership is a temporary measure, but expressed strongly during the interview Homelife's support, positive relationship, and overall improvement in the quality of care for the patients. She claimed services have not been limited due to financial hardships. She claimed the facility continues to make orders to vendors as usual, issue paychecks and incentives to employees, and orders equipment as needed with no difficulty. The administrator claims herself and other employees anticipate having an owner and getting out of the receivership status.

The facility organized a meeting in February of 2017, to announce the bankruptcy to patients, and family members. The administrator claimed patients and family members naturally had a lot of questions and concerns which were answered by a legal representative of the facility. She claimed the facility attempts to continue to be transparent with residents and family members through this difficult process. The administrator said this meeting calmed patients down and the facility is slowly restoring trusting relationships between administration and the patients. She feels the families and patients are in an adjustment phase through the process.

The administrator shared results of the NYS Department of Health Survey from October of 2016. She felt the survey went well and life safety codes were the major issue on survey which have been corrected. She claimed after the survey, the maintenance director was replaced. After review, the PCO saw other issues on survey which were not mentioned by facility administrator. The administrator shared, the Department of Health, has been present in the facility on complaint concerns throughout the bankruptcy process.

The administrator works to educate her staff. She has hired a new director of education to address the grievances of staff and residents. The administrator expressed her goal to improve the next survey and the 4.8 % staff turnover rate the facility experienced in February of 2017. The facility continues to recruit new staff especially in the dietary and CNA nursing sector which faces the highest turnover rate. The administrator has shared that staff whom previously terminated employment with the facility often comes back. There are recruitment mechanisms such as sign on bonuses, shift differentials, weekend and overtime bonus incentives, an increase in orientations and staff educational trainings offered. The administrator claimed these staff incentives have not changed in the facility's current financial situation.

The facility employees 240 staff members, mostly from the local community. The administrator claimed the facility has become more stable in their employment of RN's. The administrator praises the facility for having an RN on each unit in the skilled nursing section. The administrator claimed that increasing the morale of the employees through this challenging time has been beneficial to the nursing staff where there has been a significant shortage and hardship in the nursing industry. The facility has seen a decrease in using agency hired nursing staff and this has positively impacted quality of care for the patients. However, it must be noted that as

PCO reviewed the staff schedule, there was still agency nurses on various shifts. The facility staff scheduler claimed evening shift is the most challenging to fill between 3pm-11pm. The scheduler pointed out that this is a time agency hired nurses are typically called in. The PCO is aware that these staff shortages in the nursing industry are not unique to Folts, but fears shortages impact quality of care and response times to patient needs.

When asked about most pressing concerns in the facility, the administrator was forthcoming with an investigation the AG office had conducted for missing medication which involved a staff member that had been hired by the facility.

The administrator shared another concern regarding patients who call local authorities, such as the police, if they feel they had lost or stolen items or monies.

Another reoccurring issue is a family related visitation concern that has been investigated by the Department of Health and appeared on the last survey.

The administrator stated dietary complaints were low and that the food service director addresses issues with the resident council.

A copy of these policies and procedures regarding the above matters were requested and discussed. A copy of the recent resident council minutes was requested by the PCO for review.

The PCO toured and observed Claxton Manor on this initial visit. The environment appeared to be clean. There were no unusual odors of urine. The environment was dimly lit. The administrator quickly turned on the lights as she went through each unit. Staff was present in each unit, and reminded to turn on the lights as well.

Residents were observed in groups together, in their rooms, and in public areas watching television. A resident approached us with a retaliation concern. The resident discussed she felt her medical condition caused the facility to threaten her to leave. The administrator consulted the resident and addressed her concerns in front of the PCO. The PCO plans to follow up in the future to see if this concern was resolved.

A resident was also observed by the PCO to be experiencing problems with a medication order she did not receive. The administrator, in front of the PCO, ensured the resident she would follow up with her medication grievance and direct the concern to appropriate staff. The PCO will follow up on a future visit to confirm this concern was resolved.

Resident Council information was requested by the PCO. The administrator explained to the PCO, resident council attendance was low in both the skilled nursing unit and the adult care unit. The administrator claimed to have attempted to raise attendance herself, with little luck. The resident council has about 12 members participating on the skilled side out of 150 residents whom occupy the facility. The PCO plans to meet with resident council president to discuss any quality of care concerns they may be aware of in their roles as patient activists.

On March 23, 2017, the administrator, Donna Kelly, followed up with complaint concerns of the two residents that occurred on the March 20, 2017 tour of Claxton. The medication concern regarding unordered medication was a verified concern. She claimed staff would continue to be educated on ordering medication for compliance. The resident went without blood pressure medications for the night. Cindy Reese, Claxton Administrator, met with the resident and discussed a change in pharmacy and other mechanisms to resolve medication concerns in the future. The resident appeared to have no other concerns.

On March 27, 2017, the administrator, Donna Kelly informed the PCO the resident concern regarding retaliation was unresolved as the resident who approached the PCO and administrator with this concern was recently admitted to the hospital since the last PCO visit. It was later reported to the PCO that this resident is back in the facility with no current concerns, but communications were made for the resident to be transferred to Florida to be closer to her son.

On March 27, 2017, the PCO was present for an all staff meeting with various department heads and direct care staff. Many facility announcements were given and a current census of 146 residents on the skilled nursing side, 61 residents in Claxton, and 12 adult day residents was announced.

The PCO observed a common reoccurrence in this meeting. Reported incidents of resident falls seemed somewhat high in the skilled nursing section. The high volume of falls correlated around toileting issues and one issue was regarding a resident tripping on her slippers. It was stated in the meeting that some residents did not want to wait to be toileted by staff and attempted to use the bathroom on their own resulting in a fall.

The PCO received a total number of reported falls for the previous month of February: 40 and March: 30. The administrator explained the falls; "It sounds like quite a few, however, we count all incidents when residents put themselves on the floor, when residents slide slowly down from a chair, sit on the floor, for example. Some of these are not "falls", but we report on everything and then discuss root cause analysis, then try to remedy whatever happened." The PCO shared her concern of a staff shortage that could create an environment for more falls to occur and requested a copy of the staff schedule for review. On April 3, 2017, the PCO made the Department of Health aware of the high volume of falls in the facility.

During this meeting, staff also shared a resident whom they suspected had potentially injured her wrist. The cause was unknown. The PCO attempted to meet with this resident to discuss injury, but the resident was meeting with an x-ray technician and unavailable to speak with her. The PCO later followed up with the administrator on this issue, and was told no permanent injury was sustained by the resident.

In the meeting, staff was anticipating what will happen through the bankruptcy process. They had no voiced grievances toward the current receiver, Homelife. They all appeared to be fulfilling their roles and responsibilities as normal. They felt their duties have not changed over this process. They expressed there was no change in quality of care for the residents of Folts.

The PCO asked questions to the group regarding common resident concerns throughout the facility. The director of social work and other department heads shared the current resident concerns coming in continue to be focused around staff shortages. The facility department heads suggested that even when the facility is adequately staffed, the residents still make staffing complaints. The facility department heads do not feel they have a staff shortage and do not verify these resident complaints. The director of social work felt resident related concerns regarding the facility bankruptcy were lower than anticipated. Another frequent concern seems to be lost and missing resident items.

It was expressed dietary department works to resolve dietary concerns in the resident council. The PCO was told, the dietary manager is now very thorough in addressing food concerns. On April 5th, a new resident to the rehabilitation unit was concerned about adjusting his diet and menu to fit his individual needs. Currently this was the only dietary related concern made to the PCO on her visits. The resident was educated by the PCO to approach the director of dietary if his concerns continued.

The activity director confirmed low attendance for resident council despite efforts to raise attendance. She claimed the consistent attendees are very vocal about their concerns. Despite low attendance she feels the council is active.

Furthermore, the activities director claimed to see no interest in a family council. Other staff members confirmed this. They expressed families visit regularly and attend educational workshop opportunities at Folts, but do not have interest in a family council. The PCO suggested more efforts to raise attendance in resident council and to ask families if they would be interested in their own council.

All department heads felt the resident related concerns above, expressed in the meeting, were not unique to Folts. They claimed, along with the resident council president, these concerns existed prior to the bankruptcy and were not newly voiced grievances. The PCO believes these grievances are common in the long-term care community.

On March 27, 2017, the PCO toured and observed the skilled nursing and rehabilitation section of Folts. The facility appeared to have dim lighting on some floors and needed overall refreshing. The floors were not very well cleaned as trails of urine were observed in some areas. There was missing ceiling tile around the chapel on the second floor. There were no unusual odors throughout the air.

It was observed, on some floors, multiple residents were parked in wheelchairs around nurse's stations. Most of these residents were non-responsive to the PCO and appeared to be medicated or to have symptoms of dementia. The PCO asked some residents how long they had been sitting and if they'd like to be moved by a staff member with little response. The PCO suggested to staff some residents may want to be moved and can't communicate their needs. This observation was a bit concerning to the PCO and was later discussed with the administrator. It was explained by the administrator; dementia residents are scattered throughout the facility and not just placed on one floor, hence the need for residents to group around the nurse's station so staff can watch over them.

On March 27, 2017, the PCO also spoke with residents and a family member. The resident council president was interviewed by the PCO in her room on the first floor.

The resident council president was vocal in her complaints:

- She was personally upset with the facility's transfer to liquid oxygen in her portable air tank. She felt the new oxygen was a reduction in quality. She feared she would run out of oxygen if she left her room for long periods at a time and participated in activities.
- She also shared staff pressures to evict her of her current room and move her to another floor. She said they plan to use her room as an extension to the rehabilitation unit. She was aware of her right to stay in her room and knew she cannot be forced out.
- She expressed the facility possessed the same "short staffing" issues since she was admitted and claimed this was an ongoing complaint long before the bankruptcy. She felt the workers are "worked to death" with overtime mandates.
- She claimed medication passes continue to be late due to what she feels is a staff shortage.
- She claimed resident items are often missing and stolen and the lost and found is not well organized.
- She claimed she recently heard an aid treat another resident with lack of dignity and respect. She claimed to overhear a CNA during the evening shift tell her neighbor she should be able to toilet herself with no assistance. The president was aware this resident sometimes needs assistance and felt it was wrong for the CNA to respond in that manner.
- She claimed she and the other residents were comfortable in making complaints to the nurse manager and through the resident council without fear of retaliation, but feels the facility is apathetic in resolving these complaints brought forward.

The PCO informed the resident of her rights. She also suggested she further share her grievances to the NYS Long Term Care Ombudsman Program and The Department of Health.

Although, the resident council president was forthcoming with complaints, she stated she had no reduction in care, or of quality of life throughout the current bankruptcy process. She felt these have been ongoing issues she experienced prior to the bankruptcy.

With resident authorization, the PCO addressed these various voiced concerns with the administrator. The administrator was aware of the oxygen, room change, staff, and medication grievances. The administrator is planning to investigate the allegation regarding staff attitudes and lack of respect toward the resident whom was allegedly told to toilet herself. The administrator told the PCO she plans to review the resident care plan and educate staff on anticipating resident needs. She is also considering other oxygen and room options for the

resident. It was later expressed by the administrator; the resident gets anxiety over her oxygen which the administrator felt was common.

On the first-floor rehabilitation unit, the PCO spoke with another resident and family member regarding quality of care. The family member stated staff is "as attentive as they can be" and that they have experienced much worse in other facilities. The family member praised the facility rehabilitation unit, but was concerned over excessive swelling in the resident's foot. They claimed a request was made, the previous week, for the physician to evaluate the foot. Their request was not responded to. The resident and family member were told the physician comes in on his own schedule, but the Director of Nursing would address the issue. As the PCO exited the room, the DON came in to assess the foot. The family member was still hoping this would be done by the facility physician. The administrator shared the physician was not always available for this type of concern as he only visits the facility twice a week on his rounds. The administrator shared the DON did address the issue and made appropriate diagnosis and treatment plan for the resident.

On the second floor, the PCO observed a resident in need to use the bathroom and complaining of pain. Although this resident was in sight of facility staff, she was being ignored. The PCO went to seek help from nurse manager on the unit. The nurse manager expressed there was nothing she could do since the resident was a two person assist and they would have to wait for two CNA's to be available to appropriately follow the resident care plan. The PCO was not suggesting the nurse not follow the care plan, but to seek assistance to address the resident needs. It was stated the CNA's designated to the floor were busy helping someone on another floor and showering a resident. The PCO observed the resident continue to ask for help and two staff members asking her to wait for more staff to be available. It appeared through this observation, there was an inadequate amount of staff present to provide quality of care to the resident.

The PCO shared this observation with the administrator. The PCO reviewed the staff scheduled for the day. The administrator suggested the nurse manager should have helped toilet the resident with the CNA present. The administrator said she would address the issue. The PCO was told by staff scheduler the schedule was "above minimum on all three shifts." The PCO reviewed the staff schedule which appeared to be sufficient on paper, but in practice, led this resident to wait to have her immediate toileting and pain needs addressed.

On April 5, 2017, The PCO toured the facility to follow up with previous resident and speak with new ones. On the skilled nursing section of the facility the PCO met with a new resident transferred in to the rehabilitation floor of the facility. The resident was very happy with the facility thus far, and felt it was an improvement from another facility he recently resided in.

The PCO spoke again with the resident council president and her neighbor, where grievances were previously made. The residents appeared to have no current complaints and felt the facility was addressing their needs after their initial meeting with the PCO.

On the first floor, it was observed by the PCO, a resident parked in a wheel chair around the nursing station displaying signs she needed to be toileted. The PCO asked the resident if she needed help. The resident stated she had been waiting to use the bathroom for some time, but

staff hadn't addressed her needs. There were two staff members at the nursing station. The PCO approached the staff members to assist the resident. Staff claimed they would help, but did not immediately respond to the resident.

The PCO spoke with the resident with the previous complaint of foot pain. The resident stated the facility has addressed the issue, but pain in her foot continues. However, the resident felt satisfied with care to her foot since PCO last spoke with the resident and her family member.

On the second floor, the PCO spoke with a resident who claimed staff doesn't like her, or have any time to "monkey around helping me". She claimed staff are too busy to address her needs and no one talks to her.

The PCO observed another resident on the second floor that had visible injuries to the left side of her face. The resident observed had sustained bumps and bruising to the forehead and dark bruising puddled in a large area around the forehead and eye socket. The PCO tried to speak with the resident about her injuries, but the resident just repeated "help me" and "go." It appeared the resident did not have capacity to speak to the PCO. The PCO approached the nurse manager on the floor at 4:35pm on April 5, 2017, to inquire about this resident. The nurse manager claimed the resident had been fidgeting the night before and fell from her chair in the common area on the second floor. The nurse manager claimed the resident was assessed on site of the fall by an RN. Incident reports were filed appropriately and the family was notified.

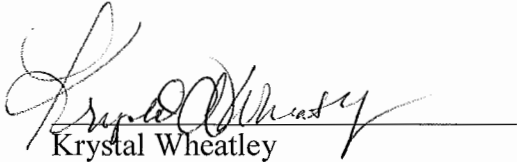
The PCO notified the Department Of Health of the observed injury on the second-floor resident seen on April 5, 2017. Although it appeared facility took appropriate measures following the fall incident of the observed resident, the PCO wanted to update the DOH with falls being an ongoing issue in the facility. The PCO also wanted to inform DOH of the staffing complaints throughout the facility that may potentially be contributing to the high volume of falls reported.

The PCO observed medication passes being distributed throughout the skilled nursing side of the facility. Some residents had questions about their current medications which nurses answered in a friendly manner.

The PCO noticed unusual strong smells of urine odors during this second shift observation, that were not present on the last observation. Lighting was dim throughout the floors. Residents appeared somewhat more active and not grouped as much around nursing stations. Nursing staff appeared to be very active during this time addressing resident needs and distributing evening medications.

PCO observed many hard-working staff members in the facility. Residents testing the patience of staff was also observed, especially on the 5th floor of the facility. It appeared staff responded to residents with dignity and respect, even if residents were observed trying to instigate staff members. Overall staff seemed to genuinely care for the residents they serve, but appeared too busy at times to immediately address needs.

Respectfully submitted this __12__ day of April, 2017

A handwritten signature in cursive script, appearing to read "Krystal Wheatley", is written over a horizontal line.

Krystal Wheatley

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