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*Patient Care Ombudsman*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 17-13478

PLACE FOR ACHIEVING TOTAL  
HEALTH MEDICAL, P.C.

Chapter 11

Debtor.

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**FIRST REPORT OF JOSEPH J. TOMAINO  
AS PATIENT CARE OMBUDSMAN**

I, Joseph J. Tomaino, the duly appointed Patient Care Ombudsman appointed by the United States Trustee pursuant to an Order of the Court entered in the above-captioned bankruptcy case, file this interim report pursuant to 11 U.S.C. § 333 (b)(2), regarding Place for Achieving Total Health Medical, PC (“PATH”), a professional corporation operating a practice of medicine in its offices located at 304 Park Avenue South, New York, New York 10010.

*Risk Assessment*

Upon initiation of the role as Patient Care Ombudsman, a risk assessment of the practice was undertaken by reviewing primary sources and respectable secondary source information available on the internet regarding regulatory or consumer concerns of the practice. The following information was found:

1. On December 1, 2014, PATH and the New York State Attorney General entered into an agreement (the "Agreement") regarding providing accurate information to patients on pricing and their responsibility for payment. In the Agreement, PATH admitted no wrongdoing and agreed to follow a series of procedures to prevent potential misrepresentation of insurance coverage. The practice agreed to a separate patient consent process than the medical treatment consent, and a transparent billing explanation be given before testing or procedures. The "Consent for Tests and Pricing Policy" developed because of this Agreement also addresses privacy concerns as to how test results are reported to patients.
2. A review of the State Education Department website revealed that Dr. Eric Braverman is currently licensed to practice Medicine in New York through November 2018.
3. Dr. Braverman's medical license information was checked against the Office of Professional Misconduct records and an entry was made on December 28, 2017. The Hearing Committee of the Office of Professional Misconduct sustained the charge finding Dr. Braverman guilty of committing professional misconduct by having been convicted in the Criminal Court of the City of New York, County of New York, New York State, of Petit Larceny. No restriction on his license to practice Medicine was indicated in the report.
4. According to the public records available on the New York State Unified Court System website, Dr. Braverman is currently facing criminal charges following an arrest on October 31, 2017. Dr. Braverman was indicted by a Grand Jury on one count of Sexual Abuse in the Third Degree and one count of Forcible Touching. Dr. Braverman pled Not Guilty to the charges; the case is currently pending before the New York County Supreme Court Criminal Term.

The above information was used to develop focus areas for interviews and observations during site visits and other discussions.

*Approach and Findings*

An initial site visit was conducted on January 24, 2018 at PATH offices located at 304 Park Ave South. A meeting was held with Dr. Braverman to discuss the role of the Patient Care Ombudsman in assuring that patient care is not compromised during bankruptcy reorganization. Dr. Braverman was forthcoming with information about the practice and assigned Anish Bajaj, D.C. to give the Ombudsman a tour. Dr. Bajaj is a Chiropractor with additional qualification to perform x-rays. His license was verified on-line and a check of the Office of the Professions website did not reveal any disciplinary action.

The office is spacious with a comfortable waiting room and a sign in desk accompanied by a worker. There are several examination rooms, and reportedly two physician assistants on staff in addition to Dr. Braverman. One of the physician assistants was on duty at the time and was interviewed, Vanessa Arcuri, PA. Ms. Arcuri's license information was verified on the State Education Department license verification website, and no disciplinary actions were listed.

A room is dedicated to ultrasound testing and another for chelation therapy, although Dr. Bajaj indicated that because of the financial issues the practice has not been performing chelation. There is a room dedicated to stem cell harvesting by a plastic surgeon who comes in periodically to perform the procedure using liposuction and obtaining stem cells from the adipose tissue collected. Several rooms are comfortably furnished for the executive health program where patients come in for a full battery of medical examinations and testing and have a comfortable environment to relax between tests or procedures. A Dexascan machine is housed in a room, which is not lead lined but according to Dr. Bajaj not indicated given low levels of radiation involved.

This was later research and confirmed on the website of the International Atomic Energy Agency:

"In a properly designed DXA facility with an adequate room size, the radiation levels in adjoining rooms will be at a level acceptable for members of the public.

Typically no additional shielding is required in the walls."

Several conference rooms are also available, but each of these has piles of charts and materials stacked for research and writing purposes. Adjacent to the office and just by the foyer is a store selling vitamins and other biologics and non-prescription medicines, as well as Dr. Braverman's books. This is not part of the practice, but is the store of Total Health Nutrients, Inc., which is not part of PATH's Chapter 11 bankruptcy.

Dr. Bajaj indicated that because of erratic payroll schedules and interruption of health insurance benefits from time to time, many workers have left. He then proceeded to show the Ombudsman his letter of resignation, which he tendered that day. In addition, to the staff already described, there is a part time biller, a part time cleaner, a business manager, and an in-house counsel. Interviews with several of the medical assistant staff were conducted in private and anonymously. They were given the Ombudsman's contact information and advised that they could anonymously report any patient care issues.

During this visit, Dr. Braverman indicated that since a Receiver, Mr. Simon Miller, was assigned to both his personal and business finances because of a matrimonial case, the practice is no longer in control of its finances and this has resulted in payroll issues. He also indicated that this sometimes risks interruption of patient care if materials needed for a patient are not paid for in time. The Ombudsman interviewed Henry Weisberg, Office Manager, who indicated that he receives a daily report from the Receiver showing cash available and checks outstanding. The Receiver then asks the debtor for prioritization of payments due based on available cash. The

Ombudsman interviewed the Receiver on January 26, 2018, who confirmed the procedure as described by Mr. Weisberg is the procedure in place. He stated that he communicates regularly with the practice to avoid patient care issues related to payment.

Based on the observations during the initial visit and subsequent phone and email conversations with the debtor and other parties, the Ombudsman issued an interim report on January 30, 2018. This report alerted the court that there was evidence of staffing turnover due to payroll issues, and that without a financial management plan, the sustainability of the practice to continue caring for patients was in jeopardy.

A follow up site visit was conducted on February 9, 2018, and additional staff were privately and anonymously interviewed. During these interviews, the Ombudsman asked questions related to the areas identified in the practice risk assessment. The staff reported that since the Agreement, they have been using a consent form when patients are beginning or have changes to their treatment. They reported that with all the recent changes in staff, they could not guarantee that the consents are being utilized at all times. Several of the staff were also asked of the allegations of sexual abuse made in the reported court indictment in December. They indicated that there have been no complaints made by any other women, and that the office now has a policy that when Dr. Braverman is examining a female patient, another female staff member must be present in the room.

During both site visits, patients were observed receiving care. The interactions with staff were respectful and professional. Several patients were interviewed and they indicated satisfaction with their care and appreciation for what Dr. Braverman and his staff do for them.

During this visit, Dr. Braverman also indicated that his place of residence is sometimes used for facilitating executive health assessments for high net worth individuals. The level of activity indicated related to marketing and business entertainment. The office manager was interviewed and confirmed that several times a year the residence has been used in this manner.

On February 23, 2018, the Ombudsman received a complaint from a patient that had pre-paid for a procedure and was concerned that the staff and equipment needed for that procedure on the day scheduled would not be available. The patient indicated that he had difficulty with a similar situation in the past and did not want to have a recurrence. The Ombudsman facilitated dialogue between the practice and the Receiver, and the staff and equipment needed for the procedure were made available, and a follow up call to the patient indicated he was satisfied with the outcome.


On March 6, 2018, a second interim report was issued by the Ombudsman requesting an emergency hearing related to a disagreement between the debtor, Itria, and the Receiver over the use of cash collateral since the debtor had ordered the Receiver to discontinue paying the previously agreed daily payment. The Ombudsman was concerned that malpractice and workers compensation payments were not going to be met on time for the continuation of coverage if the issue was not resolved, and that the result would be an abrupt discontinuation of patient care without prior notification of patients. The hearing was granted and the issue of the daily payments and use of cash collateral was addressed by the court and payments resumed.

#### Monitoring Plan

Because of the tenuous financial situation of the practice, the Ombudsman plans to continue to closely monitor PATH with monthly visits. The next site visit is planned for March 29, 2018, with a focus on patient consent and the practice's compliance with the Agreement they entered into with the Attorney General. Additional staff and patient interviews focused on areas

identified in the risk assessment will continue. The next full report of the Patient Care Ombudsman will be made 60 days from this report. Interim reports will be issued if indicated.

Dated March 23, 2018



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Joseph J. Tomaino  
Patient Care Ombudsman for  
Place for Achieving Total  
Health Medical, PC