

Melanie L. Cyganowski
Jennifer S. Feeney
OTTERBOURG P.C.
230 Park Avenue
New York, New York 10169
Telephone: (212) 661-9100
Facsimile: (212) 682-6104

*Counsel to Melanie L. Cyganowski,
Patient Care Ombudsman*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

21ST CENTURY ONCOLOGY HOLDINGS,
INC., *et al.*,

Debtors.

Chapter 11

Case No. 17-22770 (RDD)

Jointly Administered

SECOND REPORT OF PATIENT CARE OMBUDSMAN

As the Patient Care Ombudsman (the “PCO”) appointed in the above-captioned chapter 11 cases of 21st Century Oncology Holdings, Inc., *et al.*, (collectively, the “Debtors” or “21st Century Oncology”), I respectfully submit this second report (the “Second Report”) in accordance with the *Order Directing the Appointment of a Patient Care Ombudsman Under 11 U.S.C. § 333*, dated June 19, 2017 (the “PCO Appointment Order”). [Dkt. No. 121].

PRELIMINARY STATEMENT

1. I found no indication that the Debtors’ bankruptcy filings have adversely impacted operations or the quality of treatment and care provided to the patients. In fact, after years of uncertainty, the bankruptcy appears to have provided greater stability and assurances to staff that there is a clear path forward. I saw no evidence that patient care has suffered. To the

contrary, patients continue to receive the highest quality of treatment from dedicated professionals.

2. From the beginning of the Debtors' founding, the guiding principle of the Company has been grounded in providing quality patient care in a holistic matter. The motto at 21st Century Oncology (quoted to me many times) continues to be that it is in the business of treating the patient and not just the disease. Perhaps for this reason, it is no surprise that in my view (based primarily upon my observations and discussions with doctors and other medical staff at the facilities), the bankruptcy has not impacted patient care in any discernable respect.

3. As described in greater detail below, during my visits to corporate headquarters and several of the Florida offices, among other things, I observed (i) clean, professional, and welcoming environments at each of the offices that I visited; (ii) physicians (reflecting all years of experience) that are the cream of the crop in the industry and are dedicated to their work and their patients; (iii) staff that is friendly and knowledgeable, (iii) regional management who knew the history, equipment, and personnel at each of the offices under their supervision; and (iv) state of the art technology and multiple treatment offerings, which provide patients with the full array of options within each region. As a result, the Debtors have not seen (i) any decline in overall patient volume since the bankruptcy cases; (ii) any decline in referrals from other physicians and healthcare facilities; or (iii) any impact on employee retention.

4. Based upon what I observed thus far concerning the facilities and level of patient care, I do not believe that the bankruptcy has negatively impacted operations at the patient level and, if asked, I would not hesitate to recommend 21st Century Oncology to any in need of the cancer care provided at their facilities.

BACKGROUND

A. 21st Century Oncology

5. 21st Century Oncology is the largest radiation oncology provider and one of the largest groups of urologists in the United States. 21st Century Oncology was founded more than 30 years ago by doctors that were committed to providing state-of-the-art, academic quality radiation therapy and other cancer treatments in a patient-centric setting.

6. The company is headquartered in Fort Myers, Florida, and operates 179 treatment centers, including 143 centers located in 17 U.S. states. The company also operates 36 centers located in seven countries in Latin America. It employs or is affiliated with over 947 physicians globally, including radiation oncologists and other cancer-related specialists such as urologists, medical oncologists, hematologists, gynecologic oncologists, surgeons and pathologists.

B. Appointment of Patient Care Ombudsman

7. On June 20, 2017, William K. Harrington, United States Trustee for Region 2, appointed me as the Patient Care Ombudsman in these cases pursuant to the PCO Appointment Order. [Dkt. No. 124]. In accordance with section 333(b)(2) of chapter 11 of title 11 of the Bankruptcy Code, §§ 101-1532 (the “**Bankruptcy Code**”), a patient care ombudsman shall:

(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

(2) not later than 60 days after the date of this appointment, and not less frequently than at 60 day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or written report, with notice to the parties in interest immediately upon making such determination.

11 U.S.C. § 333(b).

8. Section 333 of the Bankruptcy Code requires that the PCO provide a report to the court regarding the quality of patient care provided to patients of the debtor not later than 60 days after the date of appointment and the PCO Appointment Order provided that the first report be made within 30 days of the date of appointment:

Not later than 30 days after the date of the appointment, and not less frequently than at 60-day intervals thereafter, the Ombudsman shall 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 of the Debtors.

PCO Appointment Order at 2.

9. On July 10, 2017, I filed my *Notice of Proposed Work Plan of Patient Care Ombudsman*, dated July 10, 2017 [dkt no. 191] (the “**Work Plan**”). The Work Plan was approved on July 27, 2017 [dkt. no. 264]. As set forth in the Work Plan, with 179 locations in North America and Latin America, including 143 centers located in 17 U.S. states, it is impractical and cost prohibitive to visit all of the locations. Accordingly, I have, with the Debtors’ input in choosing locations, determined to make site visits to Florida and California, where the Debtors have a concentration of facilities.

10. As contemplated by the Work Plan, and since filing the First Report of PCO on July 20, 2017 [dkt. no. 242], I made a three-day trip to Florida at the beginning of August, visiting corporate headquarters and six facilities on the west coast and east coast of the state.

11. This Second Report describes my visits to headquarters and the Florida locations and sets forth my overall observations.

SUMMARY OF FLORIDA VISIT

A. Visit to Headquarters

12. I visited the headquarters of 21st Century Oncology in Fort Myers on August 7, 2017. During my visit to headquarters, I met with the Debtors' (i) Interim CEO, Paul Rundell, (ii) General Counsel, Kim Commins, (iii) Chief Financial Officer, Douglas Staut, and (iv) Chief Compliance Officer, Betta Sherman (via telephone). I was given a tour of the headquarters and spoke with management for several hours, covering a wide range of topics concerning the Debtors' operations, the effect of the bankruptcy, and standard of care, all of which are discussed further below.

B. Tour of Facilities

13. In addition to visiting headquarters and meeting with management, over the course of the following two days in Florida, I visited six facilities. The tours of the facilities on the west coast were guided by Gary Delanois, SVP of Operations, and Patricio Andisco, VP of Operations. The west coast facilities that were visited were as follows:

- a. The Regional Cancer Center, located at 8931 Colonial Center, Fort Myers;
- b. The Lakes Park Office, located at 7341 Gladiolus Drive, Fort Myers; and
- c. The Cape Coral Office, located at 1419 SE 8th Terrace, Cape Coral.

14. On the last day of my visit, I visited locations on the east coast of the state. These visits were guided by Ravi Patel, SVP of Operations, and Angelo Vasiliou, Director of Operations. The east coast facilities that I visited are part of the South Florida Radiation Oncology system that was merged into 21st Century Oncology in 2014. The specific facilities that I visited were as follows:

- d. The Wellington Office, located at 3343 State Road 7, Wellington;
- e. The Boynton Beach West Office, located at 10301 Hagen Ranch Road, Boynton Beach; and
- f. The Boynton Beach East Office, located at 2301 West Woolbright Road, Boynton Beach.

15. I am appreciative of the time that Messrs. Delanois, Andisco, Patel and Vasiliou took to meet with me beforehand, providing the history and background of each facility, answering all of my questions, and then guiding me through the facilities for the remainder of the days. It was apparent to me that they all take a hands on approach to the facilities in their region and are intimately familiar with the operations and personnel at each facility; greeting all of the employees by name and clearly being known by the employees in return.

16. All of the doctors and other personnel at the facilities were similarly extremely informative and helpful to me in answering my inquiries and guiding me through several of the procedures. I was, of course, careful not to interfere or distract the personnel from their work, but I was allowed to observe (without the patients being aware) certain of the treatment procedures (*e.g.*, External Beam Radiation Therapy) and pre-treatment planning (*e.g.*, observing a dosimetrist map a tumor for targeted radiation treatment).¹

17. I toured each facility, was given a guide of the typical step by step process a patient will go through during each visit, including an explanation of the different radiation procedures and equipment utilized at each site. I also had the opportunity to speak with several of the technicians and doctors at each office. I appreciate the time taken by each of these professionals, including, among others, Drs. Kishore Dass, Constantine Mantz, James Parsons,

¹ Patients receiving radiation care are always fully clothed.

Alan Brown, Jr., and Arie Dosoretz. Most of the personnel were not aware of my visit beforehand, which allowed me to observe the operations as they would exist on an average day at the facility (*i.e.*, no special measures or preparations were taken in anticipation of my visit) and have candid conversations with personnel.

OBSERVATIONS

A. Holistic Approach to Treatment

18. 21st Century Oncology treats all forms of cancers and patients of all ages, regardless of financial situation. The Debtors take a holistic approach to treatment – treating the patient and not just the cancer – meaning that the Debtors treat ancillary medical issues that may arise, which is not always the case with cancer treatment centers.

19. The Debtors have the ability to offer a variety of treatment options and do not focus on a single type of treatment, or even a single form of radiation treatment. In terms of radiation treatment, the Debtors offer both (i) External Beam Radiation Therapy (EBRT), in which radiation is delivered from outside of the body using one of several different types of radiation systems, including Trilogy radiation therapy and cyberknife radiation treatment, among others; and (ii) Brachytherapy, in which a radioactive sources (known as seeds) are temporarily or permanently placed near the tumor site or in a cavity left by a tumor that has been surgically removed. Brachytherapy is offered in both low dose and high dose form and as a standalone treatment or in conjunction with the surgical removal of a tumor.

20. The benefit to the patient of having all treatment options and technology available is that the physicians have full access to the various treatments and technologies that are available and can choose the treatment plan that is best suited for the particular patient and type of cancer. Certain of the offices have multiple forms of radiation technologies on site, while

others may have just one or two of the technologies at that particular office. However, even if a particular location does not offer all of the technology options, the offices are strategically located within a region so that all treatment options are available within a small area. 21st Century Oncology doctors may work at several different offices within the area. As part of the patient-driven rendering of care, 21st Century Oncology has strategically opened its offices or acquired new offices so that people can be treated at a top level facility without having to travel to larger cities away from home.

B. Facilities and Equipment

21. Each of the offices that I visited was clean, orderly, and made a positive impression. The office space was well planned out with the patients' needs in mind, and the facilities, furniture, equipment, all appeared well maintained and in line with what a patient would expect and want to observe at a top notch facility. In addition, while the offices were quiet, clean, and professional, there was still a welcoming atmosphere for the patients and their families. The waiting rooms had a coffee station and water available, some had televisions, and many had large fish tanks, thus creating a serene and calming environment. Some of the larger offices had gift shops that specialized in merchandise specific to cancer patients, such as wigs and scarfs. Treatment rooms had a variety of murals, music, and other calming distractions available to the patients. Employees were friendly and social and there was no air of dread that might be expected at a cancer treatment facility.

22. The Debtors have also sought to keep current with new technology by updating and replacing the equipment at their offices. At its founding, 21st Century Oncology prided itself on being at the forefront of radiation technology—offering the newest, cutting edge forms of technology before any of its competitors. While at least one of the doctors noted that the

company may no longer be leading the charge in obtaining the newest equipment before all others, the company continues to update and replace its equipment to continue to make available all treatment options and provide treatment at the highest level. Of course, the continued maintenance of the equipment is critical to providing uninterrupted treatment. The Debtors report that they have a 99% “up time” on their machines.

23. The bankruptcy cases do not appear to have prevented the Debtors from purchasing new equipment. The Debtors are in discussions to purchase 30 new radiation machines and hope to move forward with the purchase in the next 30 to 60 days. The machines that are being replaced will likely be sent to Latin America. The new machines will be strategically placed to continue to ensure that patients in any one region have access to all forms of treatment within a short distance from their homes. The process of moving and placing the machines requires a great deal of coordination and planning so as not to negatively impact operations. The entire process could take three to four years.

24. When the Debtors are deciding to purchase new equipment, they solicit input from all levels, both financial and medical. The Debtors want to know on the physician level what new technology is available and if there is any patient demand for a new type of technology. Decisions are made on a market by market basis. When new technology is acquired, the Debtors make an effort to publicize the new treatment capabilities.

25. Upon the bankruptcy filing, the Debtors received some inquiries from vendors and initially saw a day or two delay in shipments, but the Debtors ordered necessary medicines a day or two in advance, so there was no issue with all of the offices having access to the medicines they required. The Debtors reported that any issues with vendors were resolved

within a week and that all precautions have been taken to ensure that the bankruptcy will not impact the delivery of medicines.

C. Communications and Inquiries Concerning the Bankruptcy

26. I inquired about the level of concern raised by patients and employees concerning the bankruptcy filing. In speaking with the doctors at the facilities, they reported that they have received very few direct inquiries from patients concerning the bankruptcy filing. To the extent that the Debtors have received inquiries from the patients, it is usually a result of patients receiving periodic bankruptcy notices that are sent to a patient master list (*e.g.*, notice of bar date). The Debtors established a call center to handle inquiries. The Debtors have also tried to stay ahead of these inquiries by providing information to the physicians ahead of time, so that they can better respond to any patient inquiries.

27. Management has been proactive and has done an excellent job of keeping doctors, other employees, and vendors apprised of the bankruptcy process to address any concerns, maintain calm, and communicate the message that it is still business as usual, the bankruptcy is intended to fix the Debtors' balance sheet problems, and that the bankruptcy will not impact operations.

28. Even before the bankruptcy, the Debtors were in a distressed situation. When the bankruptcy filing occurred, current management, listening to the concerns of their medical staff, made it a priority to enhance communications. To that end, management implemented a variety of communication channels, which appears to have been well-received by the staff. In addition to preparing and disseminating monthly newsletters, management implemented monthly town hall meetings with the doctors, and established weekly meetings with senior management teams, who in turn have meetings with their teams. Management has also instituted monthly socials.

The Debtors' concerted effort to keep its employees informed provides physicians and management with the tools needed to answer any questions of employees, patients and referring physicians, and allay fears that may have existed at the onset of the cases. The Debtors are aware that the key to the Debtors' success is strengthening the physician/employee relationship with management by keeping them well informed and making sure that the restructuring does not impact their ability to deliver treatment at the highest level.

D. Patient Volume and Referrals

29. Patients generally come to 21st Century Oncology by virtue of either word of mouth or referrals from other health care providers. The percentage breakdown of each varies by region. For example, in the southwest of Florida, approximately 75% of patients are referred by other doctors, while in the southeast, the name recognition of "South Florida Radiation Oncology" and word of mouth is a large factor in attracting patients.

30. The Debtors have not noticed any negative trends in patient volume since the filing. The Debtors continue to treat approximately 3,000 patients a day on average. There are the normal ups and downs in volume. For example, June volume was high and, as a result, July volume was down by comparison. August has traditionally been a lower volume month, but the Debtors expect September and October to return to the normal monthly averages. Management believes that these are normal ebbs and flows and that overall patient volume does not appear to have been negatively impacted by the bankruptcy.

31. The doctors have not seen any changes in the volume of patients seen. This can largely be attributed to (i) the relationship between patient and physician and assurances by the physician that treatment will not be interrupted, and (ii) positive feedback by the patients to the initial referring physician, thus ensuring future referrals.

E. Employees

32. All of the employees that I observed (again, without notice of my visit or even knowledge of my role in the bankruptcy cases) by all accounts seemed fully vested in their work and any concerns that they may have had regarding the bankruptcy were not apparent in any way with respect to their continued commitment to the patients. I repeatedly observed a strong rapport between the employees and the patients that was both professional and friendly. Given the purpose for which the patients were at the office, it was remarkable to observe the number of smiles and friendly interactions between staff and the patients. I had thought that when I was initially told that patients leave their treatments with a smile on their faces, it was a bit of hyperbole, but I did in fact observe first hand an elderly patient go into the treatment room and approximately fifteen minutes later walk out with a smile on his face, ready to continue with the rest of his day.

33. The physicians that I met with were all impressive. 21st Century Oncology has attracted the best and brightest physicians who have received training from top universities and hospitals (including, *e.g.*, Harvard, Yale, Duke and Massachusetts General). Given the educational and training pedigrees held by the physicians with whom I met, which presumably are representative of the remainder of the medical staff, they all could have had their choice of places to work anywhere in the country. They chose 21st Century Oncology because of the quality of care, investment in treating the patient as more than just a clinical outcome, and commitment to new technology. 21st Century Oncology continues to invest in its physicians by providing its own additional tertiary training. In speaking with the physicians, it does not seem that the bankruptcy filing has had any impact on their commitment to continuing to provide first rate treatment to their patients.

34. The Debtors have not seen any out of the ordinary changes in employee retention since the bankruptcy filing. 21st Century Oncology has been in a financially precarious position and the subject of government investigations since before the bankruptcy filing. The bankruptcy filing, and robust communications with physicians and employees, seems to have in fact provided a greater sense of stability. Prior to the bankruptcy filing, there was much uncertainty surrounding the future of 21st Century Oncology, which was alleviated by the plan to emerge from bankruptcy in the fourth quarter and a clear direction of how to move forward. Management has not seen any trends in employee complaints relating to the bankruptcy and there have been no management changes at the regional levels.

F. Compliance and HIPAA

35. During my visit to headquarters, I raised questions specifically related to compliance. The Debtors have a Corporate Integrity Agreement, which provides the corporate standards to follow. Additional specific requirements and guidelines may be added for certain specialties. The Debtors have regional compliance officers, who, pursuant to the Corporate Integrity Agreement, are required to visit each facility in their region at least once a month.

36. Clinical quality control is under the auspices of the Chief Medical Officer, Dr. Mantz. The Chief Technology Officer sets specific measurements of acceptable radiation levels. New physicians undergo a vetting process, including accompanying the new physician on clinical rounds after they are hired and are periodically re-tested. 21st Century Oncology has three labs in Florida, which are subject to quarterly quality control meetings. The Debtors are working on trying to standardize the processes at each of the labs.

37. For the past two years, 21st Century Oncology has had a third party compliance review, pursuant to which retained auditors visit the facilities to monitor compliance and HIPAA

issues. 21st Century Oncology has practice accreditation (third-party, impartial peer review and evaluation of patient care) in 80% of its facilities, compared to an industry average of 15%.

38. On the issue of HIPAA compliance, the Debtors have seen no increase in violations or any causal link as a result of the bankruptcy. The Debtors have focused much attention over the last year on improving policies and procedures relating to HIPAA and installing firewalls. The biggest challenge the Debtors currently face is standardizing the procedures amount all of the different offices. The Debtors are focused on standardizing procedures, including having a more efficient billing model to enhance consistency in billing.

Impact of Hurricane Irma

39. My visits to the Florida facilities took place prior to Hurricane Irma which impacted almost the entire state. I was in contact with management before the hurricane hit and followed up with the CEO following the hurricane to learn of the impact. I also had a conference call with Gary Delanois, SVP of Operations for the west coast and Ravi Patel, SVP of Operations for the east coast. The Debtors' General Counsel also participated in the call.

40. As a result of the hurricane, many of the Florida operations were temporarily knocked offline. Fortunately, there was limited structural impact on the facilities or the equipment, even in Key West, which took a direct hit. The impact on operations was largely the result of lack of power and telecommunications interruptions throughout Florida. The amount of downtime at the facilities that were impacted was limited, with the majority being closed for only one to two days at most. Facilities in certain of the harder hit areas that did not have the benefit of being connected to a hospital grid, took a couple of more days to regain power and be fully operational, but with the exception of a few facilities, including a facility in Key West, one in Fort Lauderdale and one in Miami, the Debtors facilities are now fully operational.

41. The Debtors have worked tirelessly to get all of the facilities back up and running as soon as possible to minimize the impact on patient care. Among other things, even before the hurricane hit, the Debtors procured generators from the west coast, as generators in Florida were commandeered by the government, and will be able to use such generators in the few facilities that are still without electricity. The Debtors also communicated with patients before and after the hurricane to advise of the status of the facilities and to re-route patients to other facilities where needed. To alleviate any backlog caused by the offices being down for the few days, the Debtors also scheduled Saturday appointments and saw almost 800 patients this last Saturday alone at certain of the Florida locations. I will continue to follow-up with the Debtors.

CONCLUSION

42. It is apparent to me, that the bankruptcy cases provide an opportunity for the Debtors to restructure their financial obligations, but that the Debtors' medical operations prior to the filing were sound and the high quality of care and treatment options that existed pre-petition have not been impacted as a result of the bankruptcy filings. The physicians and other employees reported no changes that they have observed since the bankruptcy filings.

43. I intend to visit certain California offices in the next couple of months and will report on such visit in my next report.

Dated: New York, New York
September 18, 2017

**MELANIE L. CYGANOWSKI, SOLELY IN
MY CAPACITY AS THE COURT
APPOINTED PATIENT CARE OMBUDSMAN**

By: /s/ Melanie L. Cyganowski
Melanie L. Cyganowski