

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
AJ HOME HEALTH SERVICES, INC., § CASE NO. 17-42820
§ (Chapter 11)
DEBTOR. §

MOTION TO WAIVE APPOINTMENT OF PATIENT CARE OMBUDSMAN

21-DAY NEGATIVE NOTICE – LBR 9007(a):

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion/Objection/Application unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading *WITHIN TWENTYONE (21) DAYS FROM THE DATE OF SERVICE* shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

TO THE HONORABLE BRENDA T. RHOADES, U.S. BANKRUPTCY JUDGE:

AJ Home Health Services, Inc., the debtor and debtor in possession (“Debtor”) in the above-referenced bankruptcy case, files its Motion to Waive Appointment of Patient Care Ombudsman (“Motion”) as follows:

1. On December 22, 2017 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code. The case was filed primarily to address a large tax debt asserted by the Internal Revenue Service (the “IRS”).

2. The Debtor is an operating a business that provides home health services with approximately 230 employees. The Debtor’s primary income is from insurance companies and its

primary expense is payroll for its home healthcare staff. The types of services typically performed by home healthcare service agencies include: (a) checking on patients' diets; (b) checking blood pressure, temperature, heart rate, and breathing; (c) checking that patients' are taking their prescriptions and other treatments; (d) inquiring as to patients' pain level; (e) checking the safety of the patients' home; and (f) helping patients' learn about ways to care for themselves when not accompanied by a home health assistant.

3. As discussed by another bankruptcy court in *In re Smiley Dental Arlington, PLLC*, 503 B.R. 680, 688-89 (Bankr. N.D. Tex. 2013) (internal citations omitted):

The exception to the mandatory appointment affords a court considerable discretion to weigh the facts of each case when determining whether an ombudsman is required. The party opposing the appointment of the ombudsman bears the burden of overcoming the mandatory appointment. In determining whether this burden has been satisfied, courts have applied a nine-factor test...:

(1) the cause of the bankruptcy; (2) the presence and role of licensing or supervising entities; (3) debtor's past history of patient care; (4) the ability of the patients to protect their rights; (5) the level of dependency of the patients on the facility; (6) the likelihood of tension between the interest of the patients and the debtor; (7) the potential injury to the patients if the debtor drastically reduced its level of patient care; (8) the presence and sufficiency of internal safeguards to ensure appropriate level of care; [and] (9) the impact of the cost of an ombudsman on the likelihood of a successful reorganization.

Some additional factors courts have considered include:

[1 that] the facility's patient care is of high quality, [2] that the debtor has adequate financial strength to maintain high-quality patient care, [3] that the facility already has an internal ombudsman program in operation or [4] that the situation at the facility is adequately monitored by federal, state, local or professional association programs so that the ombudsman would be redundant.

4. The most significant factors here are: (a) the Debtor is a relatively small operation that provides basic lower-level healthcare services rather than hospital or doctor-level diagnosis and treatment; (b) the Debtor's required insurance and licenses are in good standing; (c) the Debtor does not obtain or maintain detailed patient medical records; and (c) this case was not filed as a result of

patient care issues or any malpractice claims, but again, instead due to cash flow issues that led to a large IRS debt. *See id.* (declining to appoint an ombudsman for bankruptcy of dental offices where the case was filed due to cash flow issues and not patient care, required licenses and insurance were up to date, the Debtor's protections for records were adequate under the circumstances.)

WHEREFORE, PREMISES CONSIDERED, the Debtor prays that the court enter an order waiving the requirement that a patient care ombudsman be appointed and that the Debtor be granted such other and further relief to which it may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2018, a true and correct copy of the foregoing document was served via ECF electronic filing and/or first class mail, postage prepaid, on the United States Trustee at 110 N. College Avenue, Suite 300, Tyler, TX 75702, and upon the parties listed on the attached service list.

/s/ Hudson M. Jobe
Hudson M. Jobe