

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

MIAMI INTERNATIONAL MEDICAL CENTER, LLC<sup>1</sup>  
d/b/a THE MIAMI MEDICAL CENTER,

Case No. 18-12741-LMI  
Chapter 11

Debtor.

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**DEBTOR'S MOTION FOR ENTRY OF AN ORDER FINDING  
APPOINTMENT OF PATIENT CARE OMBUDSMAN UNNECESSARY**  
*(Expedited Hearing Requested - preferably on March 19<sup>th</sup> along with other matters pending)*

Miami International Medical Center, LLC d/b/a The Miami Medical Center (the “*Debtor*”), by and through undersigned counsel, and pursuant to 11 U.S.C. § 333 and Rule 2007.2 of the Federal Rules of Bankruptcy Procedure, moves for the entry of an Order determining that no need exists for the appointment of a patient care ombudsman (the “*Motion*”).

In support of this Motion, the Debtor states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are 11 U.S.C. § 333 and Bankruptcy Rule 1021.

**Background**

3. On March 9, 2018 (the “*Petition Date*”), the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code.

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<sup>1</sup>The Debtor’s current mailing address is 5959 NW 7 St, Miami, FL 33126 and its EIN ends 4362.

4. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtor is a regional acute care hospital that provided a limited suite of medical services from its opening in February 2016 until it voluntarily requested conversion of its operating license to inactive status from the State of Florida Agency for Health Care Administration (AHCA) in October 2017. Since its shutdown in October 2017, the Debtor has not had any patients under its care.

6. No trustee, examiner, or statutory committee has been appointed.

### **Relief Requested**

7. By this Motion, the Debtor seeks the entry of an Order determining that there is no need for the appointment of a patient care ombudsman under the Debtor's current circumstances.

8. The Debtor closed the hospital and converted the hospital license to an inactive status effective October 30, 2017.

9. On October 23, 2017, the patients were notified starting on that date and moving forward. Any patient who had already been admitted to the hospital was cared for and discharged within the next several days according to their normal treatment course. The Debtor ceased admitting new patients after October 24, 2017, and all patients were discharged by October 30, 2017.

10. At the time of closing, the Debtor posted the closing notices in the newspaper, on signage on its doors, and on its website. The Debtor also draped the large hospital signage out front to deter patients from seeking care at the facility.

11. Currently, the only communication the Debtor receives are patient requests for medical records. The Debtor has posted the Nicklaus Children's Hospital Health Information Management (“*HIM*”) phone number on its main hospital telephone recording system, and on its website. This enables patients seeking their records to call HIM directly and receive them efficiently.

**Medical Records Process While the Hospital Was Operating**

12. The Debtor was developed with the provision of IT Services, including the Cerner Electronic Medical Record (EMR), through Nicklaus Children’s Hospital. Under an IT Management Services Agreement, TMMC has utilized NCH IT as its vendor to provide the EMR, so all TMMC patient information is in a segmented data warehouse controlled by Nicklaus Children’s Hospital. Since opening in February of 2016, the Debtor had an outsourced HIM department using a vendor named Precyse Health Information Management Company (“*Precyse HIM*”) that took the calls from patients when they requested medical records, and the Precyse HIM staff would meet the patient’s need and send out the information as requested.

**Medical Records Process During the Warn Act Notice Period**

13. During the 60 days following the notification of staff that the hospital was closing and they were being terminated, the Debtor developed an interim medical records plan wherein the in-house Patient Registrar, Nancy Leon, would receive all requests for Medical Records and would transfer the call to the Debtor’s outsourced HIM contractor, Precyse HIM. During that time, Precyse gave notice and quit working based on non-payment. The Debtor then arranged for the internal Nicklaus Children’s Hospital HIM department to accept the calls and meet the patient’s needs. Nancy Leon began transferring the calls directly to NCH HIM.

**Medical Records Process Post-Employee Terminations**

14. Upon the termination of the Debtor's in-house employees on December 22, 2017, Nancy Leon was no longer available to take the calls and transfer them to the NCH HIM department. Since that time, the Debtor has put a patient instructional recording on the main hospital number so as they dial in, they are instructed as to what number to call to access the NCH HIM department directly and have their requests met. This process is working well and is reinforced with a similar message that is posted on the Debtor's web-page.

15. To date, the Debtor has had no patient complaints about inaccessibility of their medical records

16. Under these circumstances, an ombudsman is not necessary and the cost of an ombudsman is an extraordinary expense for the Debtor that should be avoided.

**Basis For Relief Requested**

17. Section 333(a)(1) of the Bankruptcy Code states:

If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business **unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.**

11 U.S.C. § 333 (a)(1). (emphasis added)

18. In determining whether an ombudsman is required, "the Court will examine the totality of the circumstances surrounding the bankruptcy filing and the operations of the debtor. This determination is to be made by analyzing the following non-exclusive list of nine salient factors:

- (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 interests 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;  
and
- (9) the impact of the cost of an ombudsman on the likelihood of a successful reorganization.”

*In re Alternate Family Care*, 377 B.R. 754 (Bankr.S.D.Fla.2007).

19. Applying these factors to the instant case, the cause of the Debtor’s bankruptcy is business related losses; since there are no patients, licensing and supervising is not applicable; the Debtor’s past history of patient care is excellent (but not applicable today); nothing is preventing patients from protecting their rights; there is no level of dependency of any patient; it is unlikely there will be tension between the Debtor and patients since none are being cared for by the Debtor; there is no risk of injury to any patient; internal safeguards are not applicable; and the cost of an ombudsman would significantly impact the Debtor since limited funds are available from DIP lending.

20. In *In re North Shore Hematology-Oncology Associates, P.C.*, 400 B.R. 7 (2008), the bankruptcy court waived the appointment of a patient care ombudsman for a similar physician owned healthcare practice engaged in the business of providing various health care services to patients where the Debtor was engaged in treatment to more than 30,000 patients and where the debtor did not provide in-patient services at any of its facilities. The Debtor is similar in many respects to the Debtor in *In re North Shore Hematology-Oncology Associates, P.C. Id.*

21. Based upon the foregoing, the Debtor submits that the appointment of an ombudsman is unnecessary under the specific facts of this case, and therefore, that such an additional administrative cost would be wasteful and unnecessarily dilute any distribution to the Debtor's Estate.

WHEREFORE, the Debtor-in Possession, South Florida Multispecialty Associates, LLC, respectfully requests the entry of an order (i) granting this Motion, (ii) finding the appointment of a patient care ombudsman unnecessary, and (iii) granting such other and further relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served on March 14, 2018, via the Court's Notice of Electronic Filing on those parties listed on the attached **Exhibit 1** and via Regular U.S. Mail upon the Master Service List attached as **Exhibit 2**.

s/ Peter D. Russin  
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*Proposed Attorneys for  
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## Mailing Information for Case 18-12741-LMI

### Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

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