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**UNITED STATES BANKRUPTCY COURT**
**CENTRAL DISTRICT OF CALIFORNIA**
**LOS ANGELES DIVISION**

| | |
|---|---|
| In re: | Lead Case No.: 2:18-bk-20151-ER |
| **VERITY HEALTH SYSTEM OF CALIFORNIA, INC. *et al.***, | Jointly Administered With:<br>Case No.: 2:18-bk-20162-ER;<br>Case No.: 2:18-bk-20163-ER;<br>Case No.: 2:18-bk-20164-ER;<br>Case No.: 2:18-bk-20165-ER;<br>Case No.: 2:18-bk-20167-ER;<br>Case No.: 2:18-bk-20168-ER;<br>Case No.: 2:18-bk-20169-ER;<br>Case No.: 2:18-bk-20171-ER;<br>Case No.: 2:18-bk-20172-ER;<br>Case No.: 2:18-bk-20173-ER;<br>Case No.: 2:18-bk-20175-ER;<br>Case No.: 2:18-bk-20176-ER;<br>Case No.: 2:18-bk-20178-ER;<br>Case No.: 2:18-bk-20179-ER;<br>Case No.: 2:18-bk-20180-ER;<br>Case No.: 2:18-bk-20181-ER |
| Debtor(s). | Chapter 11 Cases |
| ☐ Affects All Debtors<br>☒ Affects Verity Health System of California, Inc.<br>☒ Affects O'Connor Hospital<br>☒ Affects Saint Louise Regional Hospital<br>☒ Affects St. Francis Medical Center<br>☒ Affects St. Vincent Medical Center<br>☒ Affects Seton Medical Center<br>☐ Affects O'Connor Hospital Foundation<br>☐ Affects Saint Louise Regional Hospital Foundation<br>☐ Affects St. Francis Medical Center of Lynwood Foundation<br>☐ Affects St. Vincent Foundation<br>☒ Affects St. Vincent Dialysis Center, Inc.<br>☐ Affects Seton Medical Center Foundation<br>☐ Affects Verity Business Services<br>☒ Affects Verity Medical Foundation<br>☐ Affects Verity Holdings, LLC<br>☐ Affects De Paul Ventures, LLC<br>☒ Affects De Paul Ventures – San Jose Dialysis, LLC<br><br>Debtors and Debtors In Possession | **SUBMISSION OF SIXTH REPORT BY PATIENT CARE OMBUDSMAN, JACOB NATHAN RUBIN, MD, FACC, PURSUANT TO 11 U.S.C. §** 333(b)(2)<br><br>[NO HEARING REQUIRED] |


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Jacob Nathan Rubin, MD, FAAC, the Patient Care Ombudsman ("PCO") appointed under 11 U.S.C. § 333 in the above-referenced chapter 11 bankruptcy cases of the affected debtors and debtors in possession (collectively, "Debtors"), hereby submits his sixth report ("Report") to the Court pursuant to 11 U.S.C. § 333(b) regarding the quality of patient care provided to patients of the affected Debtors. The Report is hereby attached as Exhibit A.

Submitted by:

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: */s/ Ron Bender*
RON BENDER
MONICA Y. KIM
Attorneys for Patient Care Ombudsman

**IN RE VERITY HEALTH SYSTEMS, INC.**
**SIXTH REPORT OF PATIENT CARE OMBUDSMAN**

**PURSUANT TO 11 U.S.C. § 333**

## I. PCO's APPOINTMENT AND SCOPE OF REVIEW

The Debtors are health care businesses as defined under § 101(27)(A). The Court ordered the appointment of a PCO pursuant to 11 U.S.C. § 333 (a)(1) to monitor, and report to the Court, the quality of patient care provided by the Debtors. The PCO, whose appointment by the U.S. Trustee was approved by the Court, performed the duties described in 11 U.S.C. §333(b) and (c). The PCO performed these duties with the assistance of a Court approved, qualified employed expert, Dr. Timothy Stacy. Additionally, the Court approved counsel, Levene, Neale, Bender, Yoo & Brill, L.L.P. to provide legal guidance to the PCO regarding the performance of his duties under the Bankruptcy Code.

Subsequent to the PCO's initial evaluation as identified in his initial Report, the PCO continued to perform contemporaneous monitoring of any issues identified pertaining to a specific Debtor entity and the global issues identified requiring Debtors' immediate attention, and as required by 11 U.S.C. § 333(b) and (c).

The observation period for the sixth report was from August 6th, 2019, through October 3rd, , 2019. During this period, the PCO reviewed all new E-data room entries such as Joint Commission Reports, Survey Verification, and CDPH filings. The PCO stayed in contact with the Chief Medical Officer, Dr. Del Junco, to keep abreast of issues that impact the organization. During this period, the PCO met with hospital administrative teams via video conferencing and did site visits to review progress, new reporting data and the status of patient care.

## II. VERITY SITES REVIEWED BY THE PCO

The Debtors have transferred operations of O'Connor and St. Louise Medical Centers to Santa Clara County. In addition, the Medical Clinics and Urgent Care Centers have closed or

transferred operations to other entities. The medical records of all the patients have gone to the separate entities or with the individual physicians except for Sport Orthopedic and Rehabilitation (SOAR).

In the case of SOAR, the Debtors are the custodian of medical records. As indicated to the PCO, the Debtors will remain as custodian of the medical records until the patients' physicians take control of the medical records.

Debtors continue to operate four acute care hospital centers and one hemodialysis center. Debtors' maintain facilities in Northern and Southern California. These include the following:

A. HOSPITALS (4)

St. Vincent's Medical Center

St. Francis Medical Center

Seton Coastside

Seton Medical Center

B. DIALYSIS CENTER (1)

St. Vincent's Dialysis Center

## III. METHODOLOGY AND MEDICAL STANDARD APPLIED BY THE PCO

The PCO continues to monitor patient care provided by the Debtors by applying the principles and structure of evidence-based review outlined in the PCO's first Report.

### A. Sixth Report Review Strategy

The PCO continued to address and review previous ongoing items of concern and maintain appropriate follow-up. Since the last PCO report, significant patient care related events have developed and identified by CMS, that the PCO has been aware of through Dr Del Junco, CMO. (see Conclusions).

The concentration of this Report will specifically address the suspension of St. Vincent's Medical Center Liver Transplant Service and the impact to patient care.

The PCO spent the last 2 months investigating the potential suspension of SVMC's Liver Transplant Service and the potential patient harm inherent in the suspension.

The PCO had several meetings and telephonic discussions with Dr. Del Junco, Verity CMO, Dr. Annamalai, the liver transplant medical director, Dr. Julio Hernandez, Liver Transplant Hepatologist, and the Deputy Attorney General's office. In addition, the PCO attended and was heard during the Attorney General's public hearing on the sale of the Debtor's remaining hospitals.

In addition, through dialogue with the Debtors' management leaders, the PCO was well-informed on the status of all events (positive or negative), corrective action plan progress, results of CDPH investigations, State Board of Pharmacy and Joint Commission surveys.

The diligence of the Debtors to manage the E-Data room punctually assisted the PCO in performing his duties. In addition, administrative and medical staff professional relationships have developed with the PCO that encourage contemporaneous exchange of information allowing the PCO to address problems and collaboratively develop solutions with the Debtors' management leaders in real time.

**B. Documents Reviewed in Data Room (One Drive) and at Debtors' Locations**.

The data room documents were requested from Debtors and could only be reviewed in read only format. The following items will continue to be included in our evaluation process:

CALL PANEL

CDPH-California Department of Public Health reports

CMS-deemed status report

JOINT COMMISSION SURVEY

MEDICAL EXECUTIVE COMMITTEE (MEC)

PHARMACY SHORTAGE

PROFESSIONAL LIABILITY (settled and pending)

QUALITY ASSURANCE PERFORMANCE IMPROVEMENT COMMITTEE

MINUTES

RISK MANAGEMENT DATA

VENDORS

LEAPFROG DATA

CALIFORNIA STATE BOARD OF PHARMACY SURVEY

## IV. REVIEW OF DEBTORS BY INDIVIDUAL LOCATION

### 1. HOSPITALS

#### 1. St. Vincent's Medical Center (SVMC)

##### a. Site Visit

###### i. CMS Validation Survey

Centers for Medicare and Medicaid services (CMS) performed a hospital wide survey on July 8, 2019, that continued thru July 11, 2019, in response to a complaint filed by SVMC regarding an abrupt higher than normal rate of surgical infections.

The survey covered the review of surgical services, infection control, nursing services, quality assurance, performance improvement and Governing Board responsibilities as to conditions of participation.

The PCO was notified by SVMC and conducted an on-site visit to discuss the complaint, initial findings from the survey, and the proposed corrective action plan with the administrative team.

The CMS validation survey results were submitted to SVMC after the initial meeting with the PCO. The survey conditions were carefully reviewed by the PCO.

The findings of the CMS validation survey reflect the findings of the California Department of Public Health, licensing and certification, during a complaint validation survey for complaint number CA 00640313.

**Findings**

1. Failure of the governing board to supervise and take responsibility for and assume full responsibility for determining, implementing, and monitoring policies governing the facility's total operation. The governing body failed to ensure that the facility:

A. Implemented and maintain ongoing data-driven quality assessment and performance improvement program that is proactive, comprehensive, to improve both quality and safety.

B. Implemented an infection control program: guidelines for infection prevention and control.

C. Provide a functional and sanitary environment for the provision of surgical services and acceptable standards of practice.

D. Document direct consultation between the governing body and the chief of the medical staff.

E. Maintained a list of all services provided under contract.

2. The hospital failed to ensure that policies and procedures were implemented when intravenous tubing and intravenous sites were not labeled.

3. The hospital failed to maintain a list of all contracted services, including the scope and nature of the services provided.

4. The hospital failed to ensure that a sample patient received care in a safe setting when fall precautions the facility created an unsafe hospital environment and had the potential to

cause additional loss, injury or adverse consequences to the patient. Fall precautions were not fully implemented while receiving care in the intensive care unit.

5. The hospital failed to maintain and demonstrate evidence of its quality assurance and performance improvement program for review by CMS.

6. The facility failed to evaluate the safety and effectiveness of contracted services which had the potential to expose patients to ongoing substandard care. The governing board lacked information relative to the quality of care being provided to patients in the facility.

7. The facility failed to follow its policies and procedure for reporting critical tests and diagnostic procedures. The hospital failed to ensure critical lab values were reported to the patient's physician within the 60-minute notification window. This could result in delay in treatment and place patients in jeopardy due to potential life-threatening conditions.

8. The facility failed to individualize care plans for four sampled patients.

9. The hospital failed to administer stat medications within the 30-minute window allowed in the emergency department. Pain was not assessed according to policies and procedures after pain medication administered.

10. The hospital failed to ensure the telephone order for vasopressor medication support was signed by an authorized practitioner within 48 hours. This failure had a potential to pose an increased risk of miscommunication that could contribute to medication error and could result in a patient adverse event.

11. The facility failed to ensure documentation of patient controlled analgesia was accurately completed for one sample patient during the survey.

12. The facility failed to ensure the accuracy of the medical record for one sample patient. The facility failure had the potential to impair continuity of care.

13. The facility failed to abide by the policies and procedures in medical by-laws that regulate suspended practitioners from performing elective procedures while the practitioner is on suspension for medical record deficiencies.

14. The facility failed to ensure informed consent was properly executed. The facility failure has the potential for the patient not receiving accurate information regarding the treatment that is being consenting to.

15. The facility failed to keep medication secured in a locked anesthesia cart in the operating room. The failure had the potential for medication tampering, removal by unauthorized individuals, and unavailability of the medication for surgical cases.

16. The facility failed to ensure that expired medications were removed from circulation.

17. The facility failed to safely maintain the physical plant.

18. The facility failed to ensure their supplies and equipment were maintained when preventive maintenance was not performed timely on the automated endoscope preprocessor. Preventive maintenance was not performed timely and the light source for the gastrointestinal lab endoscope equipment. Sterile culture swabs were expired. Sterile femoral artery compression device packages were expired. Preventive maintenance was not performed timely on cardiac Cath Lab equipment. Supplies were stored close to the ceiling in the soiled utility room. Oxygen canisters were not stored safely. These facility failures have the potential to alter the safe delivery of patient care.

19. The hospital failed to implement the infection control program guidelines for infection prevention and control when gastrointestinal endoscopes were stored with the distal tip touching the drying cabinet walls. Terminal cleaning in the sterile processing department was not performed according to policy and procedure. Temperature and humidity were not monitored daily in the operating room or the operating room sterile supply rooms. Operating rooms were not

cleaned between cases according to Association of Operating Room Nurses Guidelines. Temperature and humidity were not monitored daily in the cardiac Cath Lab. A wire rack lacked a solid surface on the bottom shelf where sterile instruments sets were stored. Environmental services personnel did not gown when entering a contact isolation room and wore the gloves from the isolation room into the hallway. Intensive care unit staff did not perform hand hygiene according to policy and procedures. Expired sterile supplies were contained in a trash cart in one unit. Policies and procedures were not followed when obtaining blood cultures. EVS equipment was stored in the medication room. Isolation personal protective equipment was not removed prior to exiting the room. Workstation on wheels and vital sign machines were not clean according to policies and procedure. Dirty patient care equipment was stored in clean patient rooms. Patient shower floors were observed to be unsanitary. Suction tubing was not properly stored in clean patient rooms. Bottles of enteral feedings were stored improperly. Soiled linen hampers contained overflowing linens. Intravenous tubing and IV insertion sites were not labeled with changed dates. A sterilized surgical trade exceeded 25 pounds in weight. These failures had the potential to result in contamination and/or cross-contamination of infectious microorganisms to patients, staff, and visitors.

20. The facility failed to provide a functional and sanitary environment for the provision of surgical services and acceptable standards of practice.

21. The facility failed to ensure an operative report was prepared immediately after surgery for a patient that underwent neurosurgery which had the potential to obscure clinical information relevant to the patient's immediate postoperative and future health care.

22. The hospital failed to educate staff to manage a neonatal resuscitation that had the potential to result in the death of a compromise newborn.

SVMC has subsequently submitted corrective action plans for each deficiency found during the survey. CMS is expected to provide feedback and acceptance of the corrective action plans in the next 10 to 14 days from the date of this Report. As a result of the CMS Validation Survey, the PCO will submit a follow-up Report to the court after the CMS response to the corrective action plan is received, and compliance can be verified.

**ii. Leapfrog and HCAHPS**

During the on-site visit, the PCO and administration discussed progress on clinical quality measures. Many of the variables that contribute to scoring relate to an electronic medical record system that the current healthcare system is lacking.

The PCO discussed Leapfrog Data with administration in detail. The overall acquired infection rates remain low. The infection rates in the area of Central Line Acquired Infections (CLAI) vary between the facilities. Administration continues to aggressively monitor and act on any increase in CLAI.

**iii. Liver Transplant Unit**

**Background**

St. Vincent's Medical Center liver transplant service provides services for a vulnerable population of patients that have difficulties in access to care. The population of patients that reside in the catchment area of St. Vincent's Medical Center are of lower socioeconomic status, predominantly utilize Medicaid services for their health care, and are often immigrants with limited access to care.

The current number of liver transplant centers available in the Los Angeles area have a difficult time serving the needs of the population. Wait times are long and patients often succumb while waiting to be seen, or are delayed so long that transplant is no longer an option. The SVMC liver transplant service was developed to help serve these patients. Many of these patients do not

have the logistic capability of reaching other liver transplant centers in the area, even if they could get an appointment. Thus, the liver transplant service was adopted by St. Vincent's Medical Center to provide needed services to the community, add value to the business model of the hospital, and to establish a center for clinical excellence.

The liver transplant team has successfully performed 13 liver transplants and "LISTED" 40 other patients for liver transplants with approval from the United Network for Organ Sharing (UNOS), The "LISTING" Agency, UNOS, is a private, non-profit organization contracted with the federal government to manage all aspects of the nation's transplant services.

In addition, the transplant program runs an active outpatient clinic that supports numerous patients in the community that have liver and biliary diseases.

The PCO was notified by the Liver Transplant Team and Verity's Chief Medical Officer, Dr. Del Junco, that the Liver Transplant Service was in jeopardy of suspension. Dr. Del Junco shared concern that the current liver transplant service patients need to be transferred to accepting Liver Transplant Centers as per the UNOS rules. Therefore, the PCO believes that a transfer of care plan must be in place before completion of the sale of the hospital which will result in the closure of the liver transplant service.

The PCO immediately performed an on-site visit and met with the liver transplant clinic personnel, surgeons, hepatologist, Dr. Del Junco, and most importantly, the patients in the clinic and hospital.

After the on-site visit and multiple conversations with the liver transplant director, it is the PCO's opinion that closure or suspension of the liver transplant service at St. Vincent's Hospital will cause harm to current patients by potentially extending their time to evaluation by other liver transplant centers for critical transplant and jeopardizing those patients currently on SVMC LTS list.

Liver transplant patients need to be evaluated and followed closely for both their impending transplant as well as those patients who have already been transplanted with a donor liver. The lack of follow-up in terms of frequency could potentially lead to significant morbidity or mortality.

The PCO feels that there is inherent risk to current and future patients in terminating the Liver Transplant Service at SVMC.

a) Services provided by the Liver Transplant Clinic

First, the transplanted patients need close follow-up and monitoring for organ rejection. It is the obligation of St. Vincent's Medical Center to safely place these patients at nearby liver transplant centers for continuity of care. As stated earlier, liver transplant service at St. Vincent's Medical Center provide services to vulnerable populations who do not necessarily have the logistics or financial ability to travel to other facilities outside the catchment area of St. Vincent's Medical Center.

Second, there are at least 40 patients on the waiting list for transplant that need continuous care and evaluation. These patients also must be placed at accepting nearby liver transplant centers capable of providing continuity of care. There is a real possibility that these patients may have to be reevaluated for transplant by the designated Liver Transplant Centers. Subsequent to the evaluation these patients may be removed off the transplant list, some based on their improvement or based on the individual Liver Transplant Center's criteria for transplant.

Finally, the development of St. Vincent's Medical Center liver transplant center does not only pertain to established patients but to those patients in the SVMC catchment area that need Liver and Biliary services yet to been identified. SVMC serves a population of patients that are socioeconomically hindered both by income and ability to travel long distances. Many of these patients depend on working family members to provide transportation to the clinic and hospital. Many of these patients and family will have difficulty with logistics of getting to outside centers.

b) The PCO contacted the Deputy Attorney General, Scott Chan, assigned to the Verity bankruptcy case, to discuss his concern for patient safety related to the suspension and closure of SVMC LTS. In addition, the PCO attended and spoke to his concerns for patient safety regarding the suspension of the Liver Transplant Service at the Attorney General's public hearing held at SVMC.

c) Despite the efforts of the PCO and Liver Transplant Team, SVMC administration sent the required documentation to UNOS to suspend the SVMC Liver Transplant Service.

**b. Review: California Department of Public Health Reports**

The PCO will report on any new CDPH reports as they become available following an investigation.

**c. Critical Vendor Evaluation**

All vendors are currently providing services and equipment under their contractual agreements. Critical vendors continue to operate and supply critical equipment to the hospital without delay.

**d. Pharmacy Shortages**

All pharmacy shortages were reviewed and found to be unrelated to the bankruptcy or vendor contract termination. The shortages listed are consistent with national or local shortages.

**e. Joint Commission Accreditation Report findings:**

The last certification from Joint Commission was performed and completed on January 8th, 2019. There have not been any new events that triggered a follow-up visit from Joint Commission.

**2. St. Francis Medical Center (SFMC)**

No new events have occurred at SFMC. Any new items of concern will be reported to the court after a through discussion with administration and investigation.

**a. California Department of Public Health**

The PCO will report on any new CDPH reports as they become available following an investigation.

**b. Trauma Certification**

Administration has made significant changes to their trauma service in accordance with the recommendations of the American College of Surgeons (ACS). Administration is confident that the next ACS trauma verification scheduled for November 7th, 2019, will be successful.

SFMC continues to provide trauma services and is certified by Los Angeles City Emergency Medical Services and serves as a designated trauma facility.

**c. Leapfrog Data and Ratings**

SFMC Compass Data were reviewed by the PCO and show small improvements in benchmark metrics.

SFMC Leapfrog status has increased from an F grade to a C grade. Leapfrog are nationally recognized standards that corelate to quality healthcare delivery. Unfortunately, considerable amount of capital is needed to obtain high Leapfrog grades and to maintain the grades over time. For example, Computerized Physician Order Entry (CPOE), Bar Code medication administration, Surgical Volume, and ICU Physician staffing require financial support to increase the Leapfrog scores.

SFMC administration believes that after the institution of an electronic medical records system Leapfrog statistics will continue to rise. The PCO concurs.

**3. Seton Coastside**

**a. Administration Discussions**

The PCO discussed and was updated on several ongoing items by Dr. Mark Fratzke DNP, CEO, via phone conference.

**b. CDPH**

The PCO reviewed all CDPH reports with the corrective actions in detail. It does not appear that the incidents were related to the bankruptcy. There were no global patient safety concerns identified.

**c. Lawsuits**

The PCO did not find any new lawsuits or professional liability reports filed.

**4. Seton Medical Center (SMC)**

**a. Administration Discussions**

The PCO discussed and was updated on several ongoing items by Dr. Mark Fratzke DNP, CEO, via phone conference.

No new issues are noted. Administration continues to work diligently on quality measures.

The new CT scanner remains on schedule for implementation after CAL-OSHA has approved the construction plans. The alternative CT scanners remain operational and provide adequate care to the patients.

SMC continue to perform well on several quality metric indicators including computerized order entry and geometric length of stay.

The Hospitalist contracts were terminated on September 30st, 2019. The Hospitalist continue to staff the hospital. No other physician staffing changes were noted during this reporting cycle.

**b. CMS Findings**

Reflected in the last PCO report, SMC is no longer under surveillance of CMS. All corrective actions related to past immediate jeopardy events were corrected to the satisfaction of CMS.

**c. California Department of Public Health**

All California Department of Public Health findings were initially reviewed in the E-data room discussed with administration. Corrective actions were implemented by SMC and are being monitored by the PCO for compliance.

**d. Leapfrog Data**

SMC leapfrog grade increased to a B rating. Contributing to the increase in the Leapfrog grade is the close relationship with the Hospitalist team and their willingness to adhere to the CMO demands for CPOE compliance.

SMC has the highest leapfrog rating in the healthcare system. Administration continues to accent and reinforce positive performance that led to the B rating.

**B. St. Vincent's Dialysis Center**

The unit is incorporated in St. Vincent's Hospital and continues to function normally. No reported or identified adverse events were discovered during this reporting cycle.

## V. CONCLUSIONS

The issues that deserve attention are the effects that the Debtors' finances have and will have in relation to the recent CMS survey deficiencies that require remediation, and the consequences of the Debtors placing the UNOS certified liver transplant program on suspension.

**SVMC CMS Survey**

SVMC underwent an exhaustive and thorough review by a multitude of CMS reviewers. There were many deficiencies discovered that impact patient care and safety. Subsequently a Corrective Action Plan was put in place by the Debtors (aided by highly qualified consultants). This Plan is currently being validated by CMS and will be returned to the Debtors in the next week.

Rather than duplicate the efforts already put forth by CMS and the Debtors, the PCO will review the compliance of SVMC with the plan in the next two weeks and report subsequently.

**Liver Transplant Program**

SVMC began the difficult certification process with UNOS, the transplant certifying agency, long before the Debtors filed. Transplant services are the most rigorously monitored programs in health care.

SVMC hired a transplant surgeon, a board-certified transplant anesthesiologist, a hepatologist, along with a large number of support personnel. A special clinic was set up.

It is well known that the liver transplant patients are the most critically ill of all patient subtypes, both pre and post operatively. Post-operative liver transplant patients require weekly close follow upon hospital discharge. The patients are initially seen weekly and then every two weeks. Their medication adjustment is aided by a dedicated transplant pharmacist. Any interruption of this process, albeit small, can result in rejection of the organ and death.

SVMC began its liver transplant program prior to filing for bankruptcy protection but did not do its first transplant until months after filing. The addition of a functioning second transplant service, with kidney-pancreas already in place, would create a "Center of Excellence". This Center of Excellence status would improve reimbursement to the hospital and allow private insurance carriers to contract with the hospital.

The Liver Transplant Program was viewed as an asset and thus was allowed to thrive, despite losing money initially. Note that by CMS rules, the first ten transplants are not reimbursed until the program's results have been validated.

It was not until one month ago that either the Debtors or the buyer would verify that they would continue the Liver Transplant Program. The buyer viewed the loss associated as being too great for the hospital to remain viable. This asset became a liability. The Debtors suspended the

liver transplant program with UNOS and terminated, effective November, 2019, the physician employees and the liver transplant staff via Verity Medical Group (not a Debtor, but funded by the Debtor).

The Attorney General did not impose maintenance of the liver transplant program as a condition to approving the sale, but did note that the patients should be transferred to other liver transplant programs. In practice this is very difficult to accomplish. The Debtors' emergency motion verifies that they will not and cannot continue the liver transplant program as they cannot even close the sale with any of the imposed conditions.

**Liver Transplant Clinic Patients**

These patients can be divided into four groups from least critical to most critical:

1. Those patients without medical record numbers.

These patients are in the Liver Transplant program's catchment area and rely on the Program to follow them when needed.

There are also those patients that have not been seen by the clinic, but have had labs ordered by the clinic. The doctor patient relationship attaches here and there is continued responsibility for the patient

2. Those patients followed by the clinic but not listed for transplant (i.e, not part of the national data bank).

These patients are the most easily transferred, but need an appointment with a liver center, and not just a referral. Wait time in the community can be up to 6 months. The clinic is responsible for these lives. Verity is working on this transition.

3. Those patients that are listed for transplant.

These patients will not lose their place in line even if transferred, but must be evaluated by the accepting center. Thus far, the PCO is not aware of any center that will accept these patients.

These patients must be seen frequently. Any change in their status that goes unnoticed could result in their demise. Verity is working on this transition, but it must be rapid.

4. The 13 patients that are post liver transplant.

As discussed above, without very close follow up, these patients will certainly die! They must have transition to an accepting center that they can physically get to, with their detailed medical records, within 7 -14 days of their last clinic visit.

If not, they will surely die. Transferring these patients to other centers is very difficult. Thus far there is no accepting center or centers. Verity is working on this too.

It is now up to the Debtors to make sure that these patients do not fall between the cracks. The clinic cannot be allowed to close until every single listed or post-transplant patient has close follow up, without interruption, just as if their clinic had simply moved down the street. The other patients need timely appointments, e.g., 30 to 90 days, based on their individual conditions.

The Debtors decided to embark on the venture of Liver Transplant because it was viewed as an asset. Now it is viewed as a liability. The Debtors argue that the Liver Transplant Service cannot be the liability of the buyer. The buyer cannot and will not voluntarily take on the liability. The court cannot allow the Debtors to avoid this liability because it will result in the death of many patients.

Each and every one of the at-risk patients must be transitioned to an accepting facility in a timely manner. The only alternative is that the liver transplant clinic, along with all needed personnel, should remain in place until such time as they are safely transitioned. This could take months.

To remain within the boundaries of Bankruptcy Code Section 333, not a single patient should be sacrificed for the benefit of the estate.

Dated this 4th day of October, 2019

Jacob Nathan Rubin, MD, FACC, Patient Care Ombudsman

# PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **SUBMISSION OF SIXTH REPORT BY PATIENT CARE OMBUDSMAN, JACOB NATHAN RUBIN, MD, FACC, PURSUANT TO 11 U.S.C. §** 333(b)(2) will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1**. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 4, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL**:
On October 4, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on October 4, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service
The Honorable Ernest M. Robles
United States Bankruptcy Court, #1560
255 E. Temple Street
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

| October 4, 2019 | Jason Klassi | /s/ Jason Klassi |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

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