Tampa Bay Bankruptcy Bar Association

The Cramdown

Newsletter for the Tampa Bay Bankruptcy Association

Editor-in-Chief, Angelina Lim
Johnson, Pope, Bokor, Ruppel & Burns, LLP

Winter 2023

PRESIDENT'S MESSAGE

by Barbara Hart
Stichter, Riedel, Blain & Postler, P.A.

The TBBBA Wins Grants for Pro Bono Legal Service and the C.A.R.E. Program

In tribute to our mentor, friend, and first president, Don Stichter, the TBBBA has focused much attention this year on improving service to *pro se* parties and to our Tampa Bay community. To assist in financing our efforts, the TBBBA made grant funding requests of the Bankruptcy Law Education Series (BLES) Foundation to support our C.A.R.E. Program (chaired by Dan Etlinger) and of the American College of Bankruptcy Foundation (ACBF) to support our *Pro Se* Assistance Clinic (chaired by Michael Barnett). I am delighted to report that the TBBBA has received grant funding from both BLES and the ACBF.

The C.A.R.E. Program-BLES Grant

BLES awarded the TBBBA a generous grant to assist in our efforts to promote financial literacy in the Tampa Bay community. The Credit Abuse Resistance Education Program, or C.A.R.E., for short, is a national, nonprofit financial literacy organization. It was created in 2002 by retired bankruptcy judge, John C. Ninfo, II (U.S. Bankruptcy Court, Western District of New York) and blossomed into approximately fifty-five (55) chapters nationwide with dedicated chapter volunteers serving in over half of the states, Washington D.C. and Puerto Rico. At its core, C.A.R.E. provides an opportunity for volunteers to address middle school, high school and college kids about the best practices and pitfalls regarding their credit in an attempt to start them off on the right path. Tampa's C.A.R.E. Program got off to a robust start in 2007 but went temporarily inactive due to the Covid-19 pandemic and other factors. Under the leadership of Dan Etlinger, Tampa has resumed its C.A.R.E. Program. So far this (fiscal) year, Tampa's C.A.R.E. Program has reached over 365 students in six (6) presentations with many presentations still to come.

If you have a connection with a school or youth organization in the Tampa Bay area, the TBBBA would love an introduction. Or, if you are interested in being one of our presenters, we are happy to get you involved. In either case, please contact the TBBBA's C.A.R.E. Program chair, Daniel Etlinger, at detlinger@jennislaw.com.

The *Pro Se* Service Clinic-ACBF Grant

The TBBBA also applied for a grant from the ACBF to support its work in the *Pro Se* Assistance Clinic. While the ACBF considered our grant application, we wasted no time and kept working hard on other improvements in our efforts to aide *pro se* parties. This fiscal year, the TBBBA has:

(i) reopened the in-person clinic on Wednesdays from 2-4 p.m. in Room 964 (the Attorney Resource Room) on the 9th Floor of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida;

(ii) streamlined noticing procedures for whole-case or trial pro bono opportunities enabling volunteers to locate and take on pro bono representation of their choosing;

(iii) partnered with Judge Brown and Judge Burgess as they kick-start a new district-wide virtual pro bono assistance platform; and

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(iv) showed our appreciation to our invaluable pro bono service volunteers by recognizing them in news blasts, CLEs, *The Cramdown*, and with monthly gift card raffles.

All of this hard work was rewarded when, in mid-November 2022, the TBBBA received notice that the ACBF approved its grant application. The funding will allow us to update the technology in our *Pro Se* Assistance Clinic, provide professional interpreter support when needed, and defray the costs associated with administering, marketing, and supplying the *Pro Se* Assistance Clinic.

Please consider taking at least one pro bono case this year or donating just one hour of pro bono time each month. In person opportunities are available in the TBBBA's *Pro Se* Assistance Clinic by emailing tbbbaprobonoclinic@gmail.com. Virtual opportunities are available by visiting the Middle District of Florida Bankruptcy *Pro Se* Assistance Clinic at bankruptcyproseclinic.com and following the link and instructions to register as a volunteer. Additionally, should you come in to contact with an unrepresented party in a bankruptcy case that could benefit from a consult with an attorney, please consider sharing this information with them. If you have any questions, please contact the Middle District's clinic administrator at info@bankruptcyproseclinic.com. We Love Our Pro Bono Volunteers!

The Cramdown is published four times per year. Advertising rates are as follows:

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In Memoriam

Charles "Chuck" G. Kilcoyne

December 6, 1948 - October 29, 2022

Memories of

Charles G. Kilcoyne

Chuck was the Deputy-in-Charge for our District from 1987-2015. Before the era of electronic filing, many will remember that attorneys tried to file documents after hours at Chuck's house. The theory being that the clerk's office was always open but you had to get someone to accept the filing. He would yell at attorneys to get off his property.

-Mike Markham

Charles G. Kilcoyne was a man of integrity and efficiency. I have known Chuck for the entire time of his tenure with the Tampa bankruptcy clerk's office and had the utmost respect and admiration for his dedication and desire to "get the job done." After I became the Asst. U. S. Trustee, we worked together on several projects, most importantly procedures to ensure the integrity of filings in the bankruptcy system and on the TBBBA Judicial Liaison Committee where we worked to improve the processes and procedures to assist bankruptcy practitioners. During our many years working in the bankruptcy system, he became someone I could rely on to help address problems with the inner workings of the bankruptcy system and a friend. I was very fortunate to have worked with Chuck and may he rest in peace.

-Cynthia Burnette

Another loss felt by the TBBBA is that of our long-time friend and colleague, Charles "Chuck" Kilcoyne. Chuck served his country in the United States Air Force, and then worked for several years for the Stichter Riedel firm. In 1987, Chuck joined the Bankruptcy Court as the Deputy in Charge. When Chuck started with the Court, there were 2 judges, paper files, and dozens of case managers. His responsibilities grew throughout his 28-year tenure with the Court as it expanded to 4 judges and ushered in CM/ECF. Through it all, Chuck was the consummate professional and maintained a steady and cool demeanor. After retirement, Chuck volunteered for the TBBBA Pro Bono Clinic. He is survived by his wife of 52 years, Deborah, and his son Jeffrey (Stephanie Polo) and two grandchildren. Chuck will be sorely missed.

-Beth Ann Scharrer

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Special Thanks! to our Pro Bono Volunteers

Winter 2023

We'd like to give a shoutout to the following participants who provided pro bono services to people in need

November Volunteers
Mark Robens
Michael Barnett
Scott Stichter
Peter Zooberg
Dan Fogarty
Elyssa Harvey Tenenblatt
Tim Sierra
Amy Denton Mayer
Kelly Petry
Angelina Lim

December Volunteers
Scott Stichter
Tim Sierra
Dan Fogarty
Peter Zooberg
Elyssa Harvey Tenenblatt
Maria Boudreaux
David Steen

Kudos to Steve Berman. He was recently showcased by our local ABC affiliate for his pro bono activities for veterans.

Congratulations to Cindy Burnette who won the St. Jude the Apostle Medal for her pro bono work. The medal is for distinguished and outstanding service to the recipients' church parish, the Sacred Heart Catholic Church in downtown Tampa.

Tampa Attorney Launching Database to Help Veterans in Financial Distress

By the end of September, the United States saw nearly 384,000 bankruptcy filings, according to the Administrative Office of the U.S. Courts. A 2019 study conducted by the Center for Economic Studies found veterans are more likely to file for bankruptcy. It said 14.7% of veterans file for chapter 7, and 15% file chapter 13, compared to 10.3% of the national population, ABCActionNews.com reported. Working beside the American Bankruptcy Institute (ABI) Task Force on Veterans and Servicemembers Affairs, the Business Law Section of The Florida Bar is creating a pilot-program to link Florida veterans in need of insolvency legal representation to lawyers who can help address their financial issues. "We just want to make sure that the resources are available and whatever needs are out there getting that," said Tampa attorney Steve Berman. Before an official launch, they need more lawyers to sign up as volunteers. The database connects veterans looking for a financial attorney to volunteer in three states with the most veterans: Florida, Texas, and California. "Sometimes reaching out to an insolvency lawyer means someone has financial distress. Sometimes that's a need that can be solved with some counseling with some budgeting with some negotiation. There are lots of non-bankruptcy options out there that bankruptcy lawyers employ as first steps. And so, we want to make sure that we have enough lawyers," he said.

To view the interactive website directory that was developed by the American Bankruptcy Institute's Veterans and Servicemembers Affairs Task Force, please go to https://veterans.abi.org/legal-resource-database. It is intended to assist veterans and servicemembers with locating low-cost, reduced-fee, and free legal services, programs, and other resources in their geographic area. Do you know of a legal services provider that should be listed here? Encourage them to sign up.

Special Thanks! to our Pro Bono Volunteers

continued

C.A.R.E. Experience by Andrea Bauman

After 35 years in a career focused on business and individual finances, I have seen the negative effects of ignorance of basic financial principals like budgeting, loans and taxes. Simple ignorance because people have never been guided by their family while growing up or have no basic financial education of any kind. So, when Dan sent a request for volunteers to give presentations for CARE I immediately volunteered. The CARE program is such a great opportunity for those of us who do have that experience and education to share fundamentals with groups of people who could use a nudge in the right direction. Even if the program attendees only remember one or two points, it can help set them up for a brighter financial future and provide them more control over their life. So far, I have given one budgeting presentation along with Katie B. Hinton at the University of Tampa. I loved it! Give it a try – you might love it too!

Thank You

Beth Ann Scharrer & Minerva Granger

For your assistance with this edition of the Cramdown!

Angelina

Imperfect Perfection: Florida Has Zero Tolerance for Creditors Who Misname Debtors in UCC-1 Financing Statements

By Charlisa R. Odom

"What's in a name? That which we call a rose by any other name would smell just as sweet." Not so fast, Juliet. While this sweet sentiment may have fared well in William Shakespeare's Romeo and Juliet, it does not fare so well in Florida. In Florida, identifying a debtor by a name other than its legal name on Uniform Commercial Code (UCC) financing statements can be detrimental for creditors seeking to enforce their security interests in a debtor's assets. The correct names of debtors on UCC-1 financing statements actually do matter, and there is no safe harbor protection for failing to do so, even for minor mistakes. For creditors, getting your debtor's name right on UCC-1 financing statements is critical in properly perfecting and protecting your security interests in a debtor's assets.

On September 29, 2022, the Eleventh Circuit Court of Appeals published a 12-page opinion addressing the conflict among some of the bankruptcy courts regarding Florida's safe-harbor protection for erroneously-named debtors in UCC-1 financing statements. The court focused on the importance of verifying the accuracy of a debtor's name on UCC-1 financing statements as a crucial step in achieving proper perfection of a security interest.

Background

In 1944 *Beach Boulevard, LLC v. Live Oak Banking Co.*, Live Oak Banking Co. ("Live Oak") filed two UCC-1 financing statements with the Florida Secured Transaction Registry (the "Registry") that identified the debtor as "1944 Beach Blvd., LLC" instead of its legal name "1944 Beach Boulevard, LLC." Debtor, 1944 Beach Boulevard, LLC (Beach Boulevard), challenged Live Oak's UCC-1 financing statements as "seriously misleading" because of the erroneous name and "ineffective to perfect Live Oak's security interest" under Florida Statute § 679.5061(2). Live Oak argued that its financing statements "fell under the 'safe harbor' of Florida Statute § 679.5061(3)" despite the erroneous name.

The bankruptcy court held that Live Oak's UCC-1 financing statements were "not seriously misleading and [were] effective to perfect [Live Oak's] security interest in all of [Beach Boulevard's] assets." Beach Boulevard then appealed to the district court, which then affirmed the bankruptcy court's order. Beach Boulevard further appealed to the Eleventh Circuit Court of Appeals.

Florida's Zero Tolerance Rule for "Seriously Misleading" UCC-1 Financing Statements

Under Florida Statute § 679.5061(2), "a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) [procedure for correctly naming a debtor that is a registered organization] is seriously misleading." This subsection of the statute creates a "zero-tolerance rule" for financing statements that fail to correctly name a debtor.

This means that Live Oak's error in abbreviating Beach Boulevard as "1944 Beach Blvd., LLC" in its UCC-1 financing statements triggered the zero-tolerance rule. Although this seems like a minor mistake, or even a common abbreviation that is accepted in written communications and documents, in Florida, any alteration to a debtor's correct name could render a financing statement "seriously misleading."

Florida's Safe-Harbor Protection for Errors in UCC-1 Financing Statements

You may be wondering, "What is this 'safe harbor' protection that Live Oak sought, and obtained in the lower courts, for erroneously naming "1944 Beach Boulevard, LLC" as "1944 Beach Blvd., LLC" on its UCC-1 financing statements?" Under Florida Statute § 679.5061(3), "a financing statement that fails sufficiently to provide the name of the debtor in accordance with s. 679.5031(1) . . . does not make the financing statement seriously misleading." This safe harbor, however, requires "a search of the records of the filing office under the *debtor's correct name*" and "using the filing office's *standard search logic*, if any" for it to apply. *Id.* (emphasis added).

In other words, if a search of the Florida Secured Transaction Registry's ("Registry") database, using the debtor's correct name and the Registry's standard search logic, discloses the financing statement with the erroneously-named debtor, then the erroneous name does not make the financing statement seriously

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misleading and the creditor is likely protected under the safe harbor. This "standard search logic" requirement is key for the safe harbor provision to apply. It is also key to the Eleventh Circuit's reversal of the district court's affirmance of the bankruptcy court's order.

Registry's Lack of "Standard Search Logic" Essentially Eliminates Safe Harbor Protection for UCC-1 Financing Statement Errors

The Eleventh Circuit focused its attention on the Florida Supreme Court's recent adoption of the "standard search logic" definition. The Florida Supreme Court adopted the "standard search logic" definition as "well understood within the industry" and "reasonably accepted to mean a procedure that identif[ies] the set of financing statements on file that constitute hits for the search'" or "produces an '[u]nambiguous identification of hits."

Applying this newly-adopted definition, the Eleventh Circuit held that the Registry does not have a standard search logic option because "the search option offered by the Registry, which returns the entire index, is not a 'standard search logic'" and "cannot rationally be treated" as such when it "returns as hits, for any search string, all financing statements in the filing office's database." A proper "standard search logic" option, in conformance with industry standards, "requires the search to identify specific hits, if any[.]"

To illustrate, a search for Live Oak's UCC-1 financing statements under Beach Boulevard's correct legal name, "1944 Beach Boulevard, LLC" returned an initial list of twenty search hits that match or closely match the name entered. Notably, the initial list of search hits did not disclose Live Oak's financing statements erroneously naming "1944 Beach Blvd., LLC" as the debtor. The initial list also includes navigation arrows to "navigate forward and backward through all of the names indexed in the Registry." While the initial list of search hits did not disclose Live Oak's financing statements, if a user were to navigate backwards from the initial list of search hits, Live Oak's UCC-1 financing statements erroneously naming "1944 Beach Blvd., LLC" would "appear on an immediately preceding page." As the Florida Supreme Court and the Eleventh Circuit held, this navigation function of the Registry's database is fatal to the safe harbor provision.

The Eleventh Circuit held that the Registry's lack of a "standard search logic" rendered Live Oak's financing statements "seriously misleading" since it improperly named Beach Boulevard, and the financing statements were "therefore ineffective to perfect a security interest in Beach Boulevard's assets under Florida law."

Recommendations for Creditors Filing UCC-1 Financing Statements in Florida

The Eleventh Circuit and Florida Supreme Court have made it clear that it is unforgiving towards creditors who, like Juliet, call a debtor by any other name than its legal name. Until the Registry implements a "standard search logic" that returns a list of "unambiguous identification of hits" or similar procedure that is in line with industry standards, creditors should not rely on safe harbor protection for erroneously-named debtors in UCC-1 financing statements. Creditors should be vigilant in properly naming debtors, or otherwise risk losing secured lien status for even the slightest mistake in a debtor's legal name. It is imperative that creditors ensure the accuracy of a debtor's name in each UCC-1 financing statement that is filed with the Registry. Creditors should verify a debtor's name by reviewing its articles of organization filed with the Florida Secretary of State.

Eleventh Circuit Holds That Post-Petition Transfers Cannot Reduce the New Value Defense

By Nancy Erikson, *Candidate for Juris Doctor*
Stetson University College of Law

Emphasizing the importance of reading provisions of the Bankruptcy Code in context, the Eleventh Circuit ruled on a matter of first impression in *Auriga Polymers Inc. v. PMCM2*. Addressing whether post-petition § 503(b)(9) administrative expense payments can reduce the new value exception to a trustee's avoidance power, *Auriga* held that "for purposes of § 547(c)(4)(B), 'otherwise unavoidable transfers' made after the debtor has filed for bankruptcy do not affect a creditor's new value defense." *Auriga Polymers Inc. v. PMCM2*, 40 F. 4th 1273, 1277 (11th Cir. 2022).

As a preliminary matter, the *Auriga* court noted that § 547(c)(4)(B) does not explicitly restrict "otherwise unavoidable transfers" to the pre-petition period. But the court declined to find the statute's silence dispositive. Instead, *Auriga* recognized that "the Supreme Court has encouraged courts to take a broader, contextual view when examining provisions of the Bankruptcy Code" and relied on context to hold that post-petition transfers do not diminish the new value defense. *Id*. at 1284.

First, the court noted that the word "transfer" is used three times in the same sentence in § 547(c)(4). *Id*. at 1286. Because the first two uses refer to pre-petition transfers, the third "transfer" must be pre-petition as well. *Id*. Second, the title—"Preferences"—indicates that the whole section is cabined to the pre-petition period. *Id*. Third, post-petition extensions of new value do not add to the new value defense, so it follows that post-petition transfers would not reduce the defense. *Id*. Fourth, because the statute of limitations for avoidance actions begins running on the petition date, it makes sense to calculate avoidance as of that date. *Id*.

The respondent argued that use of the phrase "as of the petition date" in § 547(c)(5) showed that Congress knew how to impose temporal limitations when it wanted to do so. *Id*. But the *Auriga* court reasoned that the phrase was necessary in that section inasmuch as it compares two points in time. *Id*. Further, the Auriga court did not find the statute's legislative history enlightening. *Id*.

Auriga ends with a discussion of policy. While § 547(b) seeks to prevent the proverbial race to the courthouse, § 547(c) encourages creditors to work with troubled debtors. *Id*. The Eleventh Circuit will not second guess "how Congress has balanced the Bankruptcy Code's sometimes competing policies." *Id*. Instead, the court will look to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" to glean a provision's meaning. *Id*. at 1285 (*citing K Mart Corp v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)).

Useful Advice When Faced With Disposing Medical-Related Items

By Jessica Andrews, *Esq., M.S., M.P.H.*
& Angelina E. Lim, *Esq.*
Johnson, Pope, Bokor, Ruppel & Burns, LLP

We were recently faced with the troubling question of what to do for a landlord client when a debtor-tenant pharmacist abandons its inventory at the premises. The Chapter 7 trustee immediately acted wisely and filed a notice of abandonment. Unfortunately, for the landlord and the tenant's secured creditor, they had to grapple with the legal means to dispose of the inventory. Ultimately, the pharmacist realized it was in his best interest and the best interest of his license to dispose of the inventory and medical records, and the landlord was spared from further responsibility. However, after researching the disposal issues in this case, we thought it would be useful to collect the websites and summaries of what to do when faced with such a dilemma – disposal of a debtor-tenant's medical records, drugs and medical waste.

Patient Records

Patient records are a common problem for trustees and landlords. At both the state and federal level, the provider is required to keep patient files confidential and protected from unlawful disclosures. Should a pharmacy file bankruptcy and close, among other things, the pharmacy permittee is required to inform the Florida Board of Pharmacy of the closure date, return their pharmacy permit, inform the Florida Board of Pharmacy of the pharmacy or pharmacist who will take custody of the patient files, and physically deliver prescription files to the custodian pharmacy or pharmacist within a reasonable distance who will take responsibility for the patient files. *See* Fla. Admin. Code R.64B16-28.202. Failure to abide by such rules can result in revocation of the pharmacist's license, significant fines, as well as other disciplinary actions at the state level, while failure to abide by Health Insurance Portability and Accountability Act ("HIPAA") regulations can lead to significant civil and/or criminal penalties. *See* Fla. Admin. Code R. 64B16-30.001(2); 45 C.F.R. Part 160, Subparts C, D, and E (the "Enforcement Rule").

If the debtor-tenant is a health care provider instead, Section 456.057(12), F.S. similarly requires that record owners, often times the provider, take certain steps when the provider will no longer be available to the patient, such as in the case of termination of the practice, retirement, or relocation. In such cases, in addition to what the specific practice acts for the profession require, this Section provides that record owners are required to place advertisements in the local newspaper or to notify patients, in writing, that they are terminating, retiring, or relocating. Specific practice acts require that notices be published weekly, or copies of notices be submitted to boards overseeing the practices., e.g., Rule 64B8-10.002, F.A.C. (outlining the requirements of allopathic physicians when relocating or terminating a practice). The record owners must also notify the appropriate boards of who the new records owner is and where the medical records can be found when terminating the practice, retiring, or relocating.

Although landlords (and trustees) are not subject to HIPAA as they are not health care providers, clearinghouses, or health plans, trustees and landlords of properties where patient records have been abandoned should be careful in how they dispose of the records. Such patient records often contain confidential information including full names, addresses, contact information, social security numbers, and medical health histories. Placing such records in dumpsters may expose patients to their identity being stolen or compromised.

Furthermore, bankruptcy law dictates what trustees are required to do if they can no longer afford to store patient records as required by federal or state law. In such cases, 11 U.S.C. §351 states that trustees are required to promptly publish notice in at least one appropriate newspaper that patients or an insurance provider must claim the records within 365 days of the publication or the records will be destroyed; must promptly notify each patient subject to the patient records and appropriate insurance carriers by mail regarding the notice to claim their records or such records will be disposed of; and provide the appropriate federal agency with a request to provide the agency with the patient records. All these requirements have mandated timelines. Even after these actions, the bankruptcy law further states that if after 365 days, the records are not claimed, the trustee must destroy the records by shredding or burning written record or if the records are magnetic, optical, or electronic, by destroying those records so they cannot be retrieved.

Ideally, the bankruptcy motion to abandon personal property and subsequent order should also contain stipulations that outline that the pharmacist or medical provider must transfer or dispose of patient pharmacy and medical records in a manner compliant with HIPAA,

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other federal laws, and state law. However, landlords and trustees can also contact the Florida Department of Health, which oversees the licensing of pharmacies for further information. Landlords can also file a complaint at https://www.flhealthcomplaint.gov/ for state level violations or at https://www.hhs.gov/hipaa/filing-a-complaint/index.html for HIPAA violations. Note that filing such reports can lead to lengthy investigations, which may include interviews with Florida Department of Health investigators who may want to inspect the property or temporarily close the property for investigations.

For further information on what constitutes a patient record, where such records may be found (including on USB drives, hard drives, copiers, and fax machines), and general steps a trustee or landlord should take when patient records are involved, *see* William L. Jansen, *Medical Record Considerations during Bankruptcy*, American Bankruptcy Trustee Journal (Spring 2020).

Pharmaceuticals and Controlled Substances

When a pharmacy closes, regardless of whether it is because of bankruptcy or otherwise, the principal and sole responsibility to properly dispose of the debtor-tenant pharmacist's inventory is the licensed pharmacist. Fla. Admin. Code R. 64B16-28.202; Fla. Admin. Code R. 64B16-28.203; Fla. Admin. Code R. 64B16-27.1001. Failure to properly dispose of the inventory may have serious professional consequences for the licensed pharmacist, including revocation of license as well as significant fines. § 465.016, Fla. Stat.; Fla. Admin. Code R. 64B16-30.001; Fla. Admin. Code R. 64B16-30.002(1)(a); Fla. Admin. Code R. 64B16-30.003. Part of the penalties are disciplinary actions which will depend on whether controlled substances or non-controlled prescriptions are abandoned. The following includes steps that a landlord or trustee can take when a pharmacist debtor-tenant abandons medications as well as hazardous wastes.

In the event that a medical provider, instead a pharmacy, has an inventory of controlled substances or non-controlled medications, the registrant provider is responsible for ensuring the disposal or destruction of the medications. 21 C.F.R. 1317. The Drug Enforcement Administration ("DEA") requires that practitioners dispose of controlled substances by either destroying them through an on-site destruction method within regulatory parameters, delivering the controlled substances to a reverse-distributor's registered location by common or contract carrier, or for returns or recalls, promptly delivering the controlled substances through contract or common carrier to the registered manufacturer of the substances or another registered manufacturer authorized to accept returns or recalls. Medical providers may also request assistance from local DEA Special Agents.

A. Controlled Substances

The first question when faced with disposal of such items is the classification. A subset and problematic classification of drugs is "controlled substances" as defined under § 893.03, Fla. Stat. If the registered pharmacist or pharmacy abandons "controlled substances," the DEA may be contacted. *See* 21 C.F.R. 1317.05. The DEA can help guide the landlord through the process of disposing of abandoned controlled substances as the possession of controlled substances is illegal unless the controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice. *See* Section 893.13, Fla. Stat. Violation of the relevant Florida Statutes can be a third-degree felony. *Id*. This is not to say that contacting the DEA is not without risk, as the DEA may choose to seize the property to take possession of the controlled substance or to conduct an investigation. This seizing of the property may last for long periods of time, preventing the landlord from quickly re-letting the property to a new tenant (or the trustee from quickly closing the case).

To no longer be in possession of the controlled substances and to not have the DEA involved, landlords or trustees may be tempted to mail the controlled substances to the licensed pharmacists or medical provider's home or debtor's new address. Although mail carriers are allowed to legally possess controlled substances in the performance of their usual duty, there is a possibility that the mail carrier will deliver the controlled substance packages to the wrong address, or an unintended person may access the packages. *See* Section 893.13(9)(f), Fla. Stat. The landlord could face potential liability because of any adverse consequences of a delivery to the wrong address or a child or other person accessing the controlled substances. *See* Section 893.13, Fla. Stat; 893.147, Fla. Stat.

Landlords and other parties are also discouraged from attempting to dispose of medications, whether controlled substances or otherwise, by throwing them in the garbage or dumpster. These methods could result in minors or others accessing controlled substances, which may ultimately place landlords at risk of liability. Landlords and other parties should also not dispose of medications

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through toilets or sinks. Disposal through toilets or down drains could result in contamination of water and soil supplies. *See* Environmental Protection Agency, *How to Dispose of Medicines Properly* (April 2011), https://archive.epa.gov/region02/capp/web/pdf/ppcpflyer.pdf.

Another option is to contact the Florida Board of Pharmacy, which can also provide directions on how to properly dispose of controlled substances. However, similar to the DEA, the Florida Board of Pharmacy may attempt to "seize" the property for removal of the controlled substances as well as to conduct an investigation. Similarly, these investigations and removal of controlled substances may prevent the landlord from quickly re-letting to a new tenant or a trustee from timely closing the case.

Instead, it is beneficial to have the bankruptcy court include within its order some instructions that the pharmacist debtor-tenant must take possession of the abandoned controlled substances and properly dispose of the controlled substances within a specified time period. This reduces the likelihood of seizing of the property and increases the ability of the landlord to quickly re-let the property to a new tenant.

The landlord or trustee can also contact local permanent collection sites who will accept unused medications and controlled substances and destroy or otherwise dispose of the medications in a safe and secure manner. The DEA provides a permanent collection site locator at: https://apps.deadiversion.usdoj.gov/pubdispsearch/spring/main;jsessionid=Rz7_wYs9OJ0UKgzuGbQfbmHK40sl09WzLd-Bld5m.web2?execution=e1s1. The locator provides contact information so that landlords can ensure that the collection sites are actively taking medications and can request further information regarding how to safely deliver the medications to the collection site.

Similarly, if the debtor-tenant is a medical provider, the landlord can utilize the above steps to safely dispose of abandoned controlled substances.

B. Other Non-Controlled Prescription Drugs

Like controlled substances, pharmacists are responsible for the disposal or transfer of non-controlled medications when a pharmacy is closing. Fla. Admin. Code. 64B16-28.203. As with controlled medications, non-controlled medications can be reported to the DEA or Florida Board of Pharmacy, whether they are abandoned by a pharmacist or medical providers. Alternatively, the landlord can request that the bankruptcy orders include stipulations that the pharmacist or medical provider is required to dispose of or transfer all non-controlled medications as well. Otherwise, the permanent collection sites will also take non-controlled medications.

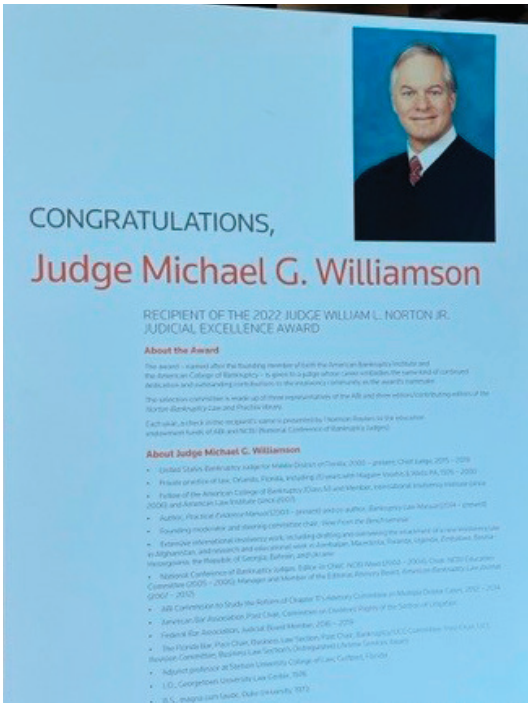
C. Biohazardous Materials

Another consideration of abandoned pharmacies are biohazardous materials that may be left by a pharmacist debtor-tenant. This can include both used and unused needles as well as other materials used in the usual course of business within the pharmacy. According to the Florida Department of Environmental Protection, health care facilities are prohibited from disposing of hazardous waste pharmaceuticals by disposing of them down the toilet. *See* Florida Department of Environmental Protection ("DEP"), *Pharmaceutical Waste Management for Businesses and Homeowners*, Oct. 14, 2022, available at: https://floridadep.gov/waste/permitting-compliance-assistance/content/pharmaceutical-waste-management-businesses-and.

The DEP also suggests that health care providers should not dispose of such items in the trash either as humans may misuse such substances. *Id*. Although landlords are not subject to the same laws as licensed health care professionals, it is important that landlords know how to dispose of such hazardous wastes as to not harm themselves or others. If left in dumpsters or on the premises for periods of time, minors and others may access such hazardous items and the landlord or trustee may be subject to liability. The Florida Department of Health can be contacted to aid in the disposal of biohazardous wastes as it has multiple designated sites for the public to drop-off such items, including those in "red box" or sharps containers. For more information, see: https://www.floridahealth.gov/environmental-health/biomedical-waste/needle-collection-programs.html.

Ultimately, it is important for landlords, trustees and secured creditors to understand the hazards of an abandoned pharmacy. While bankruptcy orders can be effective and efficient at resolving the issues of disposal or transfer of inventory, there are other options. Although investigations and removal by state and federal agencies may prevent quick re-letting of a premises (or for the trustee, the quick closing of the chapter 7 case), landlords (and trustees) can turn to such agencies to reduce their risks of possessing patient records, controlled substances, non-controlled medications, and biohazardous materials.

View From The Bench
November 3, 2022



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U.S. Trustee's Office - Chapter 11 Practice Pointers
November 15, 2022

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Everything You Wanted to Know about TBE
December 13, 2022

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Franklin Lea "1111b Election"
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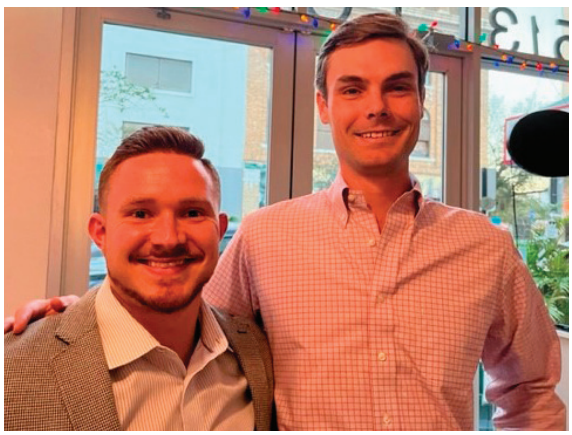
TBBBA Holiday Party

December 7, 2022



Save the Date

View from the Bench
2023 Alexander L. Paskay
Memorial Bankruptcy Seminar
February 21-22
JW Marriott Tampa Water Street

Honorable Paul M. Glenn Memorial
Golf Tournament
May 5, 2023
Bay Palms Golf Course, MacDill Airforce Base

"Roadways to the Bench:
Who Me? A Bankruptcy or Magistrate Judge?" April 3, 2023
Chester H. Ferguson Law Center, Tampa

Third Annual Clay Shoot
February 24, 2023