

**FILED**

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**MAR 17 1999**

GRANT PRICE  
CLERK, U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA  
BY: \_\_\_\_\_, DEPUTY

IN RE:

QUALICARE, INC.,

Debtor.

CASE NO. BK- 97 - 16891 BH

CHAPTER 7

**APPLICATION FOR LEAVE  
TO EMPLOY PROFESSIONAL PERSON**

COMES NOW the Trustee, Lyle R. Nelson, and respectfully requests leave to employ John Mashburn and other attorneys of the firm of Garvin, Agee, Carlton and Mashburn, as legal counsel for the limited purpose set forth below. In support of the same, the Trustee represents and shows to the Court the following:

1. At the time the case was filed, there appeared to be no recoverable assets for the estate.
2. Subsequently, after the Debtor was audited by the Trustee's audit company, it was determined that there were significant monies due the company for services not billed but rendered. The These monies are owed contractually and arise from the Medicare Act.

3. The Trustee desires to pursue recovery of and from the U.S. Department of Health and Human Services, Palmetto Government Benefit Administrators or such other governmental or non-governmental entities as may be liable, upon such contract or other claims and causes as are supported by the facts hereafter discovered ( hereafter "The Litigation"). Based on various information received to date from Palmetto, and statement made by the United States Attorneys Office, Palmetto has no intention on paying these monies.

88

4. The Trustee has made inquiry of various firms as to their interest in pursuing this litigation. Many are not interested because based on the actions of the various government entities and administrators in litigating similar issues before this Court, it is a given that the litigation will be extensive, protracted and an appeal will result from any decision. The Trustee received two bids for the work, and based on those bids and other factors, desires to retain John Mashburn, and his firm, Garvin, Agee, Carlton and Mashburn, 2100 City Place Tower, 204 North Robinson, Oklahoma City, Oklahoma, 73102, as attorney for the limited purpose of pursuing the interests of the Debtor's Bankruptcy Estate in The Litigation.

5. The Debtor has selected John Mashburn for the reasons that he is familiar with the issues and law governing The Litigation, is experienced in appeals before and is admitted to the bars of the Tenth Circuit Court of Appeals and the United States Supreme Court, and he is well qualified to represent the Debtor's Bankruptcy Estate with respect to the issues involved in this matter.

6. The professional services John Mashburn is to render include:

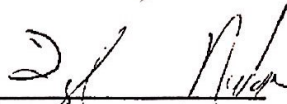
- a. Review available documentation, Investigate the actions of the various parties, and research legal issues in The Litigation;
- b. Communicate with and / or make demand upon the appropriate parties;
- c. Prepare the appropriate Complaint(s) or Petitions(s) to commence suit in this Court or any other court having jurisdiction over The Litigation;
- d. Provide ongoing legal advise to the Trustee regarding The Litigation; and
- e. Prosecute The Litigation through trial, appeal, judgment and collection or settlement to the extent said counsel and the Trustee determine is likely to be in the best interests of the Debtor's Bankruptcy Estate.

7. John Mashburn is a disinterested person as required by §327 of the Bankruptcy Code and Rule 2014 of the Federal Rules Of Bankruptcy Procedure and the affidavit required by said Rule 2014 is attached hereto.

8. John Mashburn's employment would be in the best interests of the estate.
9. The fee agreement between the Trustee and John Mashburn for professional services in this case is that The Estate agrees to reimburse litigation costs incurred and pay a hybrid hourly rate / contingent fee as follows:
  - a. The amount of \$75.00 per hour for John Mashburn or other partners of his firm (which is 60% of his regular hourly rate of \$125.00) plus;
  - b. A contingent fee based upon the gross amount recovered less costs and expenses, and after further deducting recovery of any attorney fees specifically attributable to services of John Mashburn or his firm;
  - c. Said contingent fee will be ten percent (10%) of the amount referenced in paragraph "b", until sufficient funds have been recovered to fully pay all timely filed allowed and allowed claims, other than the claim of Garvin, Agee et. al; and
  - d. Forty percent (40%) of all sums collected after sufficient funds have been recovered to fully pay all timely filed and allowed claims.
10. The employment of said counsel on a contingent fee basis is reasonable and in the best interests of the estate.
11. There is no understanding or agreement between John Mashburn and any other entity to share the compensation herein.
12. The fee to be charged herein is comparable with fees customarily charged for like services rendered by attorneys in the Oklahoma City area having comparable skills and experience.
13. The Trustee's Application contemplates the employment of John Mashburn for the performance of those services properly rendered by an attorney, and not for the performance of those tasks enumerated in 11 U.S.C. §§ 1302 and 704 as duties of the Trustee.
14. All final compensation requests will be submitted to the Court for approval after notice and hearing.

WHEREFORE, the Trustee requests authorization to employ John Mashburn, and the firm of Garvin, Agee, Carlton and Mashburn, as Counsel under the terms provided herein.

Respectfully submitted,



\_\_\_\_\_  
Lyle R. Nelson, Trustee, OBA# 10914  
LYLE R. NELSON, P.C.  
2100 City Place  
204 North Robinson  
Oklahoma City, OK. 73102  
(405) 232-4021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the U.S. Trustee only on March 17, 1999. The Application will be served with the Order once entered.

\_\_\_\_\_  
Lyle Nelson