

approved provider of Medicare/Medicaid prescription medicine was revoked effective January 1989. Medicare/Medicaid reimbursement formerly had provided the vast majority of Debtor's revenue and his inability to act as a provider destroys the viability of his business.

3) Debtor has also been indicted for Medicare fraud and pled guilty to numerous counts of fraud, resulting in an obligation to make restitution to the State of Georgia for sums in excess of \$19,000.00.

4) Claims for administrative expense priority have been filed for sums in excess of \$70,000.00 by Debtor's parents and a pharmacist all of whom have not been paid wages or salaries for many months during the pendency of this case. These expenses (which should have been paid on a current basis if legitimate) if allowed by subsequent Court order, will be paid ahead of the claims of pre-petition unsecured creditors.

5) Debtor has failed to remit the quarterly fees due to be paid to the United States Trustee by 28 U.S.C. Section 1930.

6) Debtor failed to maintain a checking account or other minimal accounting records for many months. Following a

prior order of this Court he opened a checking account but has written checks totalling over \$7,500.00 for "cash" for the months of November 1988, December 1988 and January 1989. He has not provided documentation that these funds were used for proper business expenditures.

7) During the time that administrative expenses have accrued to the detriment of unsecured creditors in his case, Debtor has himself drawn a salary from time to time. From November 1988 to January 1989 alone he drew over \$8,000.00 for his personal use and benefit.

8) The periodic business reports Debtor has filed are not accurate, properly documented or sufficiently reliable for the United States Trustee, creditors or the Court to use in analyzing the status of Debtor's business. Clearly, however, Debtor was operating at a loss even before his provider status was revoked.

9) Due largely to the efforts of the Examiner appointed in this case, Debtor received nearly \$200,000.00 in Medicare/Medicaid reimbursement between May 1988 and the date of this hearing. These sums represented current claims as well as old claims which Debtor had failed to process for many months.

10) Of that amount, approximately \$139,800.00 is being held in the Registry of this Court. By previous orders Debtor was allowed to draw the balance of sums collected with which to fund his business operations. Many of his disbursements from those sums were appropriate. However, his payment of substantial sums to himself while "employees" were not being paid were not.

11) Debtor filed a new Disclosure Statement and Plan on March 7, 1989. In approximate figures, it reveals secured claims of \$4,800.00; taxes of \$38,000.00, excluding penalties and interest; unsecured (and undersecured) claims of \$206,000.00, of which the Georgia Department of Medical Assistance claims \$96,000.00; administrative claims of \$101,000.00 (of which \$48,000.00 is owed to insiders, none of which has as yet been allowed by the Court.)

12) If all secured, tax and administrative claims are paid as filed there will be no dividend to unsecured creditors from this estate.

CONCLUSIONS OF LAW

11 U.S.C. Section 1112(b) permits conversion

"for cause" including (in part):

- "1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- 3) unreasonable delay by the debtor that is prejudicial to creditors;
- 10) nonpayment of any fees or charges required under chapter 123 of title 28."

Certainly on the facts outlined above there has been a showing sufficient to warrant my ordering that this case be converted to a case under Chapter 7. Conversion is not mandatory, however. In this case conversion would not preserve the possible benefit available if Debtor's business can be sold as a "going concern". Conversion would possibly result in greater expenses of administration by the Trustee and professionals employed by the Trustee than would accrue if this case proceeded as a liquidation under Chapter 11.

Conversion would, however, insure replacement of the management of the business and the debtor-in-possession by a more competent, reliable fiduciary. Based on the disregard of the debtor-in-possession for basic accounting, his paying himself in preference to current expenses of his business, his criminal conviction, and his loss of provider status it is clear that he should not continue as debtor-in-possession.

To insure this change and yet avoid the possible increased expense of conversion which would harm the unsecured creditors, I decline to convert the case, but will replace the debtor-in-possession with the Examiner whose authority will be expanded.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that all rights and powers of Debtor to act as debtor-in-possession are hereby revoked in their entirety pursuant to 11 U.S.C. Section 1107. Debtor is relieved of all debtor-in-possession duties and is prohibited from exercising any function as debtor-in-possession effective immediately.

FURTHER ORDERED that in his stead, pursuant to 11 U.S.C. Section 1106(b) the Examiner, W. Jan Jankowski, is granted all powers and ordered to perform all duties of a Trustee under 11 U.S.C. Section 704, 11 U.S.C. Section 1106, 11 U.S.C. section 1108 and other applicable provisions of the Bankruptcy Code and Rules.

Without in any way limiting the generality of the foregoing the Examiner is specifically directed to undertake to perform the duties set forth in 11 U.S.C. Section 704(4), (5) and (6) and 11 U.S.C. Section 1106(a)(3) and (5). The Examiner is directed to take or recommend such further action against Debtor, or creditors or for the benefit of the estate as may be supported by his investigation.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 14th day of March, 1989.