IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)

ORDER APPOINTING FEE EXAMINER
AND ESTABLISHING RELATED PROCEDURES FOR
THE REVIEW OF FEE APPLICATIONS OF RETAINED PROFESSIONALS

Upon the certification of counsel of Vyaire Medical, Inc. and affiliated debtors (the "**Debtors**") in the above-captioned case (the "**Chapter 11 Case**"), regarding the appointment of a fee examiner (the "**Fee Examiner**") in the Chapter 11 Case in accordance with the *General Order Regarding Fee Examiners in Chapter 11 Cases with Combined Assets and/or Liabilities in Excess of $50,000,000 before Judge Brendan Linehan Shannon* (the "**General Order**"); and it appearing that (a) the Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and (b) this is a core proceeding under 28 U.S.C. § 157(b)(2); and, in accordance with the General Order, the Debtors, the Official Committee of Unsecured Creditors (the "**Committee**") and the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") having conferred with respect to the appointment of a fee

1 The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

examiner in this Chapter 11 Case and the establishment of related procedures set forth in this Order; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. On June 9, 2024, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

B. The Fee Examiner's purpose will be to assist the Court in its determination of whether the Applications (as defined below) submitted by the Retained Professionals[2] are compliant with the Bankruptcy Code, all applicable Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), and the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and (II) Granting Related Relief* [Docket No. 218] (as may be amended or modified, the "**Interim Compensation Order**").

C. David M. Klauder, Esq. of Bielli & Klauder, LLC ("**B&K**"), the proposed Fee Examiner, is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code. Mr. Klauder's declaration of disinterestedness is attached hereto as **<u>Exhibit 1</u>**.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court hereby appoints David M. Klauder, Esq. of B&K as the Fee Examiner.

2. Unless otherwise ordered by the Court, this Order shall apply to all Retained Professionals except: (i) any professional asserting claims for reimbursement of professional fees and expenses under section 503(b)(4) of the Bankruptcy Code to the extent permitted by the Court;

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Interim Compensation Order (as defined herein).

(ii) any professional in this Chapter 11 Case employed or to be employed pursuant to section 363 of the Bankruptcy Code; and (iii) ordinary course professionals employed by the Debtors in accordance with the *Order Authorizing Debtors to Employ Professionals Used in the Ordinary Course of Business* [Docket No. 225] (the "**OCP Order**"), except to the extent an ordinary course professional is required, pursuant to the terms of the OCP Order, to file a fee application for any amounts in excess of the Monthly Fee Cap (as defined in the OCP Order).

3. This Order shall remain in effect unless and until this Court orders otherwise.

4. The Fee Examiner shall ensure that the fees and expenses requested by the Retained Professionals are reasonable, actual, and necessary as required by section 330 of the Bankruptcy Code by monitoring, reviewing, and, where appropriate, objecting to Applications filed by Retained Professionals. The Fee Examiner shall conduct his duties in compliance with (i) the Bankruptcy Code (specifically, sections 328, 329, 330, and 331, and, as applicable, pursuant to each Retained Professional's retention order), (ii) Bankruptcy Rule 2016, (iii) Local Rule 2016-2, (iv) all other applicable rules and (v) the Interim Compensation Order.

5. The terms and conditions of the Interim Compensation Order shall not be modified by this Order, except that: no later than three (3) business days after the filing of each Monthly Fee Application, each Interim Fee Application, and each final fee application (each, an "**Application**" and, collectively, the "**Applications**"), the Retained Professional shall send to the Fee Examiner via electronic mail the Application, including the fee detail containing the time entries and the expense detail ("**Fee Detail**") in Adobe Acrobat (pdf) format and the searchable electronic format (such as Excel or LEDES) requested by the Fee Examiner. For the avoidance of doubt, nothing in this Order modifies, delays or otherwise affects the ability of a Retained

Professional to be paid 80% of its fees and 100% of its expenses requested in a Monthly Fee Application in accordance with the Interim Compensation Order. A Retained Professional need not send to the Fee Examiner the electronic-formatted Fee Detail for any (i) Interim Fee Application if such Retained Professional has previously submitted the relevant Fee Detail with the applicable Monthly Fee Applications or otherwise, or (ii) final fee application if such Retained Professional has previously submitted the relevant Fee Detail with the applicable Monthly Fee Applications and/or Interim Fee Applications or otherwise. If any Retained Professional cannot reasonably convert its Fee Detail to one of the electronic formats described above, the Fee Examiner will work with such Retained Professional to find an appropriate electronic format.

6. All previously filed Applications and related Fee Details shall be provided to the Fee Examiner by each Retained Professional within twenty (20) days of entry of this Order. All previously filed Applications, all future Applications, and all other documents, notices, or pleadings required to be sent to or served upon the Fee Notice Parties under the Interim Compensation Order on and after the date hereof, shall be served upon the Fee Examiner via email at the following address: dklauder@bk-legal.com.[3]

7. The Fee Examiner shall:

(a) review and assess all Applications (and related Fee Detail) filed by each Retained Professional in this Chapter 11 Case for compliance with the following: (i) Sections 328, 329, 330, and 331 of the Bankruptcy Code, as may be applicable under each Retained Professional’s retention order; (ii) Bankruptcy Rule 2016; (iii) Local Rule 2016-2; (iv) the Interim Compensation Order; and (v) to the extent the Retained Professional is an attorney, the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013* (the “**U.S. Trustee Guidelines**”);

[3] The Fee Examiner shall also be deemed to have filed a request for notice of papers filed in the Chapter 11 Case under Bankruptcy Rule 2002 and the Fee Examiner shall be served with all such papers via email.

(b) to the extent practicable, the Fee Examiner shall avoid duplicative review when reviewing (i) Interim Fee Applications comprised of Monthly Fee Applications; and (ii) final fee applications comprised of Interim Fee Applications and Monthly Fee Applications that have already been reviewed by the Fee Examiner;

(c) during the course of his review of an Application, consult, as it deems appropriate, with each Retained Professional concerning such Application;

(d) during the course of his review of an Application, review, to the extent appropriate, any relevant documents filed in this Chapter 11 Case and to be generally familiar with this Chapter 11 Case and the docket;

(e) within twenty-eight (28) days after a Retained Professional files an Interim Fee Application or final fee application, serve an initial report (the "**Initial Report**") on the Retained Professional designed to quantify and present factual data relevant to whether the requested fees, disbursements, and expenses meet the applicable standards of section 330 of the Bankruptcy Code and Local Rule 2016-2. The contents of the Initial Report shall be maintained in confidence by such parties until such time as the Fee Examiner incorporates all or any portion of the Initial Report into a Final Report (as defined below);

(f) within fourteen (14) days after service of the Initial Report, engage in communication with each Retained Professional, the objective of which is to resolve matters raised in the Initial Report and endeavor to reach consensual resolution with each Retained Professional with respect to that Retained Professional's requested fees and expenses. The Fee Examiner may also use the resolution process to revise findings contained in the Initial Report. Each Retained Professional may provide the Fee Examiner with supplemental information that the Retained Professional believes is relevant to the Initial Report;

(g) following communications between the Fee Examiner and the Retained Professional, and the Fee Examiner's review of any supplemental information provided by such Retained Professional in response to the Initial Report, conclude the resolution period by filing with the Court a report with respect to each Application (the "**Final Report**"), within twenty-one (21) days after the service of the Initial Report, subject to paragraph 11 below. The Final Report shall be in a format designed to quantify and present factual data relevant to whether the requested fees and expenses of each Retained Professional meet the applicable standards of section 330 of the Bankruptcy Code and Local Rule 2016-2. The Final Report shall also inform the Court of any proposed consensual resolutions of the fee or expense reimbursement request for each Retained Professional and the basis for such proposed consensual resolution; and

(h) serve each Final Report on counsel for the Debtor, the U.S. Trustee, and each Retained Professional whose fees and expenses are addressed in the Final Report.

8. A Retained Professional subject to a Final Report may (i) file with the Court a response (a "**Final Response**") to such Final Report no later than twenty-one (21) days after the Fee Examiner's service of a Final Report and request a ruling with respect to any fees or expenses to which an objection was made (the "**Incremental Amount**") at the next interim fee hearing or the final fee hearing or, in the alternative, (ii) defer filing the Final Response and request a ruling at any subsequent fee hearing, so as to allow continuing discussions with the Fee Examiner. Any Final Response shall be served upon those parties served with the Final Report, and the Fee Examiner.

9. The Fee Examiner, the Retained Professionals, and the Debtors shall use best efforts to have the undisputed portion of Applications allowed by the Court and paid as soon as reasonably practicable, even if the Incremental Amount remains disputed and subject to the procedures set forth above.

10. Subject to further order of the Court (on notice to the Fee Examiner), an Application shall not be considered by the Court prior to review by the Fee Examiner and the submission to the Court of a Final Report specific to such Application, unless the Fee Examiner has expressly stated that such hearing should go forward without the Final Report being filed. If applicable, hearings on the Applications shall be scheduled by the Court in consultation with the Debtor's counsel after the filing of the applicable Final Reports by the Fee Examiner. The Fee Examiner may conduct discovery in connection with any contested Application.

11. Any of the periods set forth above may be extended with the consent of the Fee Examiner, the applicable Retained Professional, and the Debtor's counsel. Should a Retained Professional fail to meet one or more deadlines set forth herein for the review of an Application, and in the reasonable discretion of the Fee Examiner, the Retained Professional's failure to meet these deadlines does not allow sufficient time for the review process to be completed, such Application shall be heard at a subsequent hearing date. Nothing herein shall be construed or interpreted to require the filing of Final Reports on all Applications prior to any Application and the Final Report specific thereto being considered by the Court, and the delay or adjournment of consideration of an Application shall not affect the timing of hearings on the Applications of other Retained Professionals.

12. The Fee Examiner is authorized to take, defend, or appear in any appeal regarding an Application and to conduct and respond to discovery, including making himself available for depositions, consistent with Rule 706 of the Federal Rules of Evidence.

13. The Debtors and all Retained Professionals shall cooperate with all reasonable requests made by the Fee Examiner in the discharge of his duties and shall respond as soon as practicable to any such reasonable request for information or meetings with the Fee Examiner. The Fee Examiner may request that Retained Professionals provide budgets, staffing plans, or other information to the Fee Examiner. Any such budgets provided by a Retained Professional shall not constitute a limit on the amount of fees or expenses that may be allowed or restrict the extent or scope of services that a Retained Professional may, in its professional discretion, determine are necessary for such Retained Professional to fulfill its professional responsibilities.

14. If a Retained Professional or its client provides privileged or work product information to the Fee Examiner and identifies the nature of such information to the Fee Examiner, the Fee Examiner shall treat such information as confidential. The disclosure of such information to the Fee Examiner shall not be deemed to be a waiver by the disclosing party of any applicable work product, attorney client, or other privilege. For the avoidance of doubt, no Retained Professional (or any Retained Professional's client) is under any obligation to provide privileged or work product information to the Fee Examiner.

15. The Fee Examiner may retain an attorney to assist it in the discharge of his duties. The Fee Examiner's retention of professionals shall be subject to Court approval under standards equivalent to section 327 of the Bankruptcy Code. The requirements pursuant to Local Rule 9010-1(c) and (d) shall be waived with respect to the Fee Examiner and any attorneys retained by the Fee Examiner, and the Fee Examiner shall not be required to obtain representation by or associate with a member of the Bar of the District Court of Delaware.

16. The Fee Examiner, and any professionals retained by the Fee Examiner, shall be entitled to compensation from the Debtors' estate for their reasonable and documented fees and expenses. The fees and expenses of the Fee Examiner, and any professionals retained by the Fee Examiner, shall be subject to application and review under standards equivalent to section 330 of the Bankruptcy Code, Bankruptcy Rule 2016, Local Rule 2016-2, to the extent applicable, the U.S. Trustee Guidelines, and the Interim Compensation Order, and shall be paid from the Debtor's estate as an administrative expense under section 503(b)(2) of the Bankruptcy Code. The total fees paid to the Fee Examiner for his services in accordance with this Order shall be charged at the ordinary hourly rate of the Fee Examiner for services of this nature and shall not include any

contingency or success fees. The Fee Examiner's expenses shall be subject to the information detail requirements set forth in Local Rule 2016-2(e).

17. Counsel for the Debtors shall promptly serve a copy of this Order, in accordance with the Local Rules, on (i) the U.S. Trustee and (ii) each Retained Professional in this Chapter 11 Case.

18. This Order does not limit the statutory rights and obligations of interested parties in this Chapter 11 Case, including, but not limited to, the rights of parties-in-interest to object to Applications. Nothing herein shall (i) affect the exemptions and waivers granted to, and the standard of review applied to the Retained Professionals as established under any orders previously entered by this Court; or (ii) affect any party's right, if any, to request a waiver of the requirements of Local Rule 2016-2 (to the extent it applies) or any other applicable rules or guidelines.

19. The Fee Examiner is hereby appointed as an officer of the Court with respect to the performance of his duties as Fee Examiner and shall be provided the maximum immunity permitted by law from civil actions for all acts taken or omitted in the performance of his duties and powers. No person or entity shall seek discovery from the Fee Examiner, subpoena the Fee Examiner as a witness, or commence an action against the Fee Examiner in connection with his duties and powers hereunder except in this Court, and with the prior approval of this Court (or, with respect to discovery, the Fee Examiner's consent), which retains jurisdiction therefor.

20. The Debtors and the Fee Examiner are authorized and empowered to take any and all actions necessary to implement and effectuate the terms of this Order.

21. Notwithstanding any applicability of Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

22. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order. Notwithstanding any provisions of this Order to the contrary, the Court shall retain the ultimate authority to determine whether fees and expenses requested are necessary and reasonable under section 330 of the Bankruptcy Code.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: October 30th, 2024
Wilmington, Delaware