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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	
	:	
	:	Chapter 11
Nathan and Miriam Barnert	:	
Memorial Hospital Association d/b/a	:	
Barnert Hospital	:	Case No. 07-21631 (DHS)
	:	
Debtor(s)	:	Hearing Date:
	:	

**APPLICATION OF THE UNITED STATES TRUSTEE IN SUPPORT OF THE ENTRY
OF A CONSENT ORDER DESIGNATING CASE AS HEALTH CARE BUSINESS AS
DEFINED IN 11 U.S.C. § 101(27A) AND FOR THE APPOINTMENT OF PATIENT
CARE OMBUDSMAN PURSUANT TO 11 U.S.C. § 333**

The United States Trustee (“UST”), in support of her Application for an order designating the chapter 11 bankruptcy case of Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital (“Barnert” or “Debtor”) as a health care business, as that term is defined in 11 U.S.C. § 101(27A), and for the appointment of a patient care ombudsman pursuant to 11 U.S.C. § 333, represents as follows:

Jurisdiction and Venue

1. The UST's duties include the overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d. Cir. 1994) (noting that UST has "public interest standing" under 11 U.S.C. § 307 which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the UST as a "watchdog").

2. The UST files the within application pursuant to 28 U.S.C. § 586(a)(3), 11 U.S.C. § 333, Interim Federal Rule of Bankruptcy Procedure 1021(b) and Interim Federal Rule of Bankruptcy Procedure 2007.2.

3. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1334, 151 and 157. Venue in this district and of this proceeding and this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. An Official Unsecured Creditors' Committee has not yet been appointed by the UST.

Background

5. Barnert commenced its case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code on August 15, 2007. The Debtor is a New Jersey non-profit corporation that owns and operates a 256 bed general acute care hospital ("Hospital") located at 680 Broadway, Paterson, New Jersey.¹ *See* Affidavit of Peter J. Betts filed in support of Debtor's Various "First Day Motions" ("Betts Aff."), p. 4. The Debtor was established and

¹ According to the Betts Aff., the Debtor owns several additional parcels of real property in the City of Paterson and surrounding areas.

operates to serve the public interest by providing health care services to the citizens of northern New Jersey. The Debtor provides a full complement of vital medical and community services to the citizens of northern New Jersey. The debtor is the only hospital in the state of New Jersey that provides services to the hearing impaired and is the only area hospital capable of providing a full range of services for women's reproductive rights. *Betts Aff.*, p. 4. In 2006, the Debtor treated approximately 118,500 patients, including 6,500 in-patients and 112,000 outpatients. The Debtor has approximately 635 full-time employees. *Id.*

Designation as Health Care Business²

6. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") adopted the following definition for the term "health care business," codified at 11 U.S.C. § 101(27A) --

(27A) The term "health care business"--

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for--

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes--

(i) any--

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

² The Debtor appropriately designated its case as a "Health Care Business" on its petition.

(V) other health care institution that is similar to an entity referred to in subclause(I), (II), (III), or (IV); and

(ii) any long-term care facility, including any--

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

7. Interim Bankruptcy Rule 1021(b) provides that “[t]he United States trustee or a party in interest may file a motion for a determination as to whether the debtor is a health care business.”

8. The Debtor operates a hospital that provides, among other services, inpatient and outpatient emergency and other medical care.

9. The Debtor is a “health care business” within the meaning of § 101(27A) in that it is a private entity that is “primarily engaged in offering to the general public facilities and services for . . . the diagnosis or treatment of injury, deformity, or disease; and surgical, drug treatment, . . . or obstetric care. . . .”

Appointment of Patient Care Ombudsman

10. BAPCPA provides for the appointment of a patient care ombudsman in accordance with 11 U.S.C. § 333, which provides in full as follows:

(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the

commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

(b) An ombudsman appointed under subsection (a) shall—

(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such

ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.

11. Interim Bankruptcy Rule 2007.2(a) provides that “[i]n a . . . chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under § 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed not later than 20 days after the commencement of the case or within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary for the protection of patients under the specific circumstances of the case.”

12. The UST submits that there is no basis for the Court to find “that the appointment of [an] ombudsman is not necessary for the protection of patients” within the meaning of § 333. To the contrary, to ensure that the patients of the Debtor are subject to proper care and to ensure the protection of confidential patient records and property, a patient care ombudsman should be appointed to monitor the quality of patient care and to represent the interests of patients.³

WHEREFORE, the United States Trustee respectfully requests an Order designating the chapter 11 bankruptcy case of Barnert as a health care business, directing the appointment of a

³ The Debtor, through its counsel, has expressed its support for the appointment of a health care ombudsman and has agreed to the entry of a consent order to that effect.

patient care ombudsman pursuant to 11 U.S.C. § 333, and granting any and all further relief as may be equitable and just.

Respectfully Submitted,

KELLY BEAUDIN STAPLETON
UNITED STATES TRUSTEE

/s/ Donald F. MacMaster
Donald F. MacMaster
Trial Attorney

Dated: August 27, 2007

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re:

NATHAN AND MIRIAM BARNERT MEMORIAL
HOSPITAL ASSOCIATION, d/b/a BARNERT
HOSPITAL

Debtor

Case No.: 07-21631 (DHS)

Chapter 11

Hearing Date:

Judge: The Honorable Donald H. Steckroth

**CONSENT ORDER DESIGNATING CASE AS HEALTH CARE BUSINESS AS DEFINED IN 11
U.S.C. § 101(27A) AND DIRECTING THE APPOINTMENT OF A PATIENT CARE OMBUDSMAN
PURSUANT TO 11 U.S.C. § 333**

The relief set forth on the following pages, numbered two (2) is hereby **ORDERED**.

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Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital

Chapter 11 Case No. 07-21631 (DHS):

Consent Order Designating case as Health Care Business as Defined in 11 U.S.C. § 101(27A) and Directing the Appointment of a Patient Care Ombudsman Pursuant to 11 U.S.C. § 333

THIS MATTER having been consensually opened to the Court and agreed upon by and between Kelly Beaudin Stapleton, United States Trustee for Region 3, by and through counsel (Donald F. MacMaster , Esquire appearing), and Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital by and through counsel McCarter & English, LLP (Joseph Lubertazzi, Esquire, appearing), and for other good cause shown, it is hereby

ORDERED that this case is designated a health care business case within the meaning of 11 U.S.C. § 101(27A); and it is further

ORDERED that the United States Trustee shall appoint a patient care ombudsman in accordance with 11 U.S.C. § 333.

The form and entry of the order is hereby acknowledged and agreed to:

Without Objection:

Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital

Kelly Beaudin Stapleton
United States Trustee, Region 3

By: /s/ Joseph Lubertazzi, Jr.
Joseph Lubertazzi, Jr.
McCarter & English, LLP
Attorney for the Debtor

By: /s/ Donald F. MacMaster
Donald F. MacMaster
Trial Attorney