

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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D. Alexander Barnes, Esquire (DB-0760)  
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*Proposed Counsel for Charles M. Golden, Ombudsman*

**In Re:**

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

**Debtor.**

Chapter 11

Case No. 07-21631 (DHS)

Honorable Donald H. Steekroth

**APPLICATION OF PATIENT CARE OMBUDSMAN FOR ENTRY OF AN ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF OBERMAYER  
REBMANN MAXWELL & HIPPEL LLP AS COUNSEL**

Charles M. Golden, the Patient Care Ombudsman (the "Ombudsman") appointed in Chapter 11 bankruptcy estate of Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital (the "Debtor"), submits this application for entry of an Order, pursuant to §§ 105, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the retention and employment of the law firm of Obermayer Rebmann Maxwell & Hippel LLP ("Obermayer"), as counsel for the Ombudsman. The facts and circumstances supporting this application (the "Application") are as set forth herein and in the Affidavit of Edmond M. George (the "George Affidavit"), which is annexed hereto as Exhibit "A" and incorporated herein by reference. In further support of this Application, the Ombudsman respectfully represents as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are §§ 105, 330 and 333 of the Bankruptcy Code and Bankruptcy Rule 2014.

## **BACKGROUND**

3. On August 15, 2007 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. In its petition, the Debtor designated itself a "Health Care Business."

4. On September 7, 2007, this Court entered an order directing the appointment of a Patient Care Ombudsman under § 333(a) of the Bankruptcy Code.

5. On September 12, 2007, the Office of the United States Trustee for District of New Jersey appointed Charles M. Golden as Patient Care Ombudsman (the "Ombudsman") in the Case.

## **RELIEF REQUESTED**

6. The Ombudsman desires to retain and employ Obermayer as his counsel. The Ombudsman has determined that Obermayer has the resources and experience necessary to represent him. Obermayer's attorneys have substantial experience with complex reorganization cases and health care cases. Given the nature of this case, including the specific duties required under § 333 of the Bankruptcy Code, the Ombudsman believes that retention of Obermayer is appropriate and necessary.

7. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing him to employ and retain Obermayer as his attorneys, pursuant to §§ 105, 330 and 333 of the Bankruptcy Code.

**SCOPE OF EMPLOYMENT**

8. The professional services that the Ombudsman expects that Obermayer will be called upon to render include, but shall not be limited to, the following:

- (a) Representing the Ombudsman in any proceeding or hearing in the Bankruptcy Court, and in any action in other courts where the rights of the patients may be litigated or affected as a result of the Case;
- (b) Advising the Ombudsman concerning the requirements of the Bankruptcy Code and Bankruptcy Rules and the requirements of the Office of the United States Trustee relating to the discharge of his duties under § 333 of the Bankruptcy Code;
- (c) Advising and representing the Ombudsman concerning potential reorganization or sale of the Debtor's assets; and
- (d) Performing such other legal services as may be required under the circumstances of the Case in accordance with the Ombudsman's powers and duties as set forth in the Bankruptcy Code.

9. Subject to this Court's approval of this Application, Obermayer has indicated that it is willing to serve as the Ombudsman's counsel in the Case to perform the services described above.

**OBERMAYER DOES NOT HOLD OR REPRESENT ANY ADVERSE INTEREST**

10. As set forth in greater detail in the George Affidavit, Obermayer has conducted a conflicts check based on the information provided by the Debtor including the following names:

(a) the Debtor; (b) the Debtor's two (2) largest secured creditors; (c) the Debtor's forty (40) largest unsecured creditors; and (d) the Debtor's professionals in the case. Obermayer will complete its conflict check of other disclosed parties once the Debtor files its Schedules of Assets and Liabilities and Statements of Financial Affairs, and additional information is provided to Obermayer.

11. To the best of the Ombudsman's knowledge, based upon the George Affidavit and except as set forth herein, Obermayer (a) does not hold or represent any interest adverse to the Debtor or its Chapter 11 estate, its creditors, or any other party in interest and (b) is a "disinterested person" as that term is defined in § 101(14) of the Bankruptcy Code.

**COMPENSATION AND REIMBURSEMENT OF EXPENSES**

12. Subject to this Court's approval and in accordance with § 330 of the Bankruptcy Code, the Bankruptcy Rules, the U.S. Trustee Guidelines, orders of this Court and the rules and other procedures that may be fixed by this Court, the Ombudsman requests that Obermayer be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses that Obermayer incurs, in accordance with the ordinary and customary rates which are in effect on the date the services are rendered, including, but not limited to, photocopies, word processing, courier service, computer assisted research, docket and court filing fees, telecommunications, travel, court reporting charges, and any other incidental costs advanced by Obermayer specifically for these matters, at the rates commonly charged for such costs to other Obermayer clients.

13. Obermayer has advised the Ombudsman that in order to accommodate the Ombudsman, Obermayer will offer a blended hourly rate of \$450.00 for attorneys and \$100.00 for paralegals.

14. Other than as set forth above, there is no other proposed arrangement to compensate Obermayer in connection with its representation of the Ombudsman. Obermayer would be compensated along with and in the same fashion as others in the case and shall file monthly fee applications.

## **BASIS FOR RELIEF**

15. Courts, including this Court, have approved the engagement of professionals by the court appointed Patient Care Ombudsman pursuant to §§ 330 and 333 of the Bankruptcy Code. See In re New York Westchester Square Medical Center, Chapter 11 Case No. 06-13050 (SMB)(Bankr. S.D.N.Y., February 26, 2007); In re Atlantic Health Services, Inc., Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md., March 11, 2006); In re Upland Surgical Institute, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal., September 29, 2006).

16. Other authority exists to grant this Application and approve counsel for the Ombudsman. The appointment of a Patient Care Ombudsman is analogous to the appointment of an examiner, and, in many cases, courts have routinely authorized examiners to employ professionals notwithstanding the absence of express authorization in the Bankruptcy Code for such employment, pursuant to Section 105. See e.g., In re Enron, Case No. 01-16034 Bankr. S.D.N.Y. 2001(allowed examiner to retain professionals); In re Southmark Corp., 113 B.R. 280, 283 (Bankr. N.D. Tex 1990)(allowing examiner to retain professionals where appropriate to carry out subjective provisions of the Code); In re Tighe Mercantile, Inc., 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986)(“This Court holds that in appropriate circumstances, a bankruptcy court may rely on § 105(a) to authorize examiners to employ professional persons”); 7 COLLIER ON BANKRUPTCY, ¶ 1104.03[5], at 1104-49-50 (15th ed. rev. 2006)(Recognizing that, although the Bankruptcy Code does not expressly authorize examiners to retain professionals to assist in investigations, "it may be preferable to authorize an examiner to retain professionals when necessary for a complete investigation.").

17. Thus, the Application should be granted by this Court to allow the Ombudsman to employ counsel to assist him in the fulfillment of his duties in the case. See generally, 3

COLLIER ON BANKRUPTCY, ¶ 333.05[1], at 333-01 (15th ed. rev. 2006)("If the healthcare business is large or complicated, the ombudsman could be expected to retain professionals to assist in the discharge of the ombudsman's duties.").

**WAIVER OF MEMORANDUM OF LAW**

18. Because this Application does not present any novel issues of law, and the statutory provisions and authorities relied upon are set forth herein, the Ombudsman requests that the Court waive and dispense with the requirement set forth in Local Bankruptcy Rule 9013-(b) that a separate memorandum of law be filed in support of this Application.

19. No previous motion or application for the relief sought herein has been made to this or any other court.

WHEREFORE, based upon the foregoing, the Ombudsman respectfully requests that the Court enter an order substantially in the form annexed hereto (a) granting this Application, (b) authorizing the Ombudsman to retain and employ Obermayer in the case, and (c) granting such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: September 18, 2007

By: /s/ D. Alexander Barnes

Edmond M. George, Esquire

D. Alexander Barnes, Esquire

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

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-and-

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*Proposed counsel to Charles M. Golden, Ombudsman*

Exhibit “A”



of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the retention and employment of Obermayer as counsel for the Ombudsman.

### **OBERMAYER'S DISINTERESTEDNESS**

2. To the best of my knowledge and information after due inquiry, Obermayer has no connections with the Debtor, its creditors, any other party-in-interest disclosed to date or their respective attorneys or professionals, and does not hold, or represent any entity having an adverse interest in connection with the Debtor.

3. Obermayer maintains a computer database (the "Database") containing, inter alia, the names of all of Obermayer's current and former clients. In connection with preparing this Affidavit, I caused to be submitted to, and checked against, that Database all of the following: (a) the Debtor; (b) the Debtor's two (2) largest secured creditors; (c) the Debtor's forty (40) largest unsecured creditors; and (d) the Debtor's professionals in the case.

4. This inquiry revealed no relationships between the listed potentially interested parties, on the one hand, and Obermayer or the undersigned on the other. Obermayer will further supplement this Affidavit after a more exhaustive search following the filing of the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs.

5. Based on the foregoing, Obermayer, insofar as I have been able to ascertain based on the information currently available to me, does not represent any interest adverse to the Debtor or its estate in the matters upon which Obermayer is to be engaged. To the best of my knowledge, information and belief, Obermayer is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code in that Obermayer:

- a. is not a creditor, equity security holder or insider of the Debtor;
- b. is not and was not, within two years before the date of the filing of the Debtor's Chapter 11 petition, a director, officer, or employee of the Debtor; and
- c. does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor or for any other reason.

#### **COMPENSATION AND REIMBURSEMENT OF EXPENSES**

6. Obermayer's blended hourly rate is \$450.00 for professionals and \$100.00 for paralegals.

7. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions.

8. It is Obermayer's practice to charge its clients in all areas of practice for direct expenses incurred in connection with the client's case. The expenses charged to clients may include, among other things, telephone and facsimile charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, and transcription costs, as well as non-ordinary overhead expenses such as overtime for secretarial personnel and other staff.

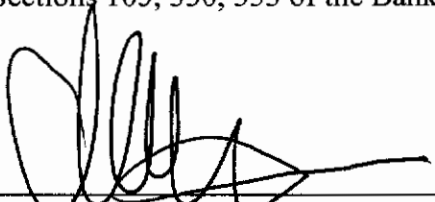
Obermayer will charge the Debtor's estate for these expenses in a manner and at rates consistent with the Local Rules and U.S. Trustee Guidelines.

9. Other than as set forth herein, there is no proposed arrangement to compensate Obermayer. Obermayer has not shared, nor agreed to share (a) any compensation it has received

or may receive with any other party or person, other than regular attorneys within Obermayer, or  
(b) any compensation another party or person has received or may receive.

**CONCLUSION**

10. By reason of the foregoing, I believe that Obermayer is eligible for employment and retention by the Ombudsman pursuant to Sections 105, 330, 333 of the Bankruptcy Code and the applicable Bankruptcy Rules.



Edmond M. George, Esquire

Subscribed and sworn to  
before me this 18th  
day of September, 2007.  
/s/ Michele Coyle  
Notary Public

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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D. Alexander Barnes, Esquire (DB-0760)  
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*Proposed Counsel for Charles M. Golden, Ombudsman*

**In Re:**

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HOSPITAL ASSOCIATION, d/b/a BARNERT  
HOSPITAL,**

**Debtor.**

Chapter 11

Case No. 07-21631 (DHS)

Honorable Donald H. Steekroth

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF OBERMAYER  
REBMANN MAXWELL & HIPPEL LLP AS COUNSEL FOR THE PATIENT CARE  
OMBUDSMAN**

The relief set forth on the following pages numbered two (2) and three (3) are hereby

**ORDERED.**

Debtor: Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital

Case No.: 07-21631 (DHS)

Caption of Order: Order Granting Application of Charles M. Golden, Patient Care Ombudsman of Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital to Employ Obermayer, Rebmann, Maxwell & Hippel, LLP as Counsel

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THIS MATTER, having been opened to the Court upon the application (the “Application”) of Charles M. Golden, the Patient Care Ombudsman (the “Ombudsman”) appointed in the Chapter 11 bankruptcy estate of Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital (the “Debtor”), for entry of an Order pursuant to §§ 105, 330 and 333 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the retention and employment of the law firm of Obermayer Rebmann Maxwell & Hippel LLP (“Obermayer”), as counsel for the Ombudsman; and upon reviewing and considering the Affidavit of Edmond M. George (the “George Affidavit”) and the Application; and it appearing that the Court has jurisdiction over the Application pursuant to 28 U.S.C. § 157(b)(2); and due and adequate notice of the Application having been given; and it appearing that no other or further notice need be given; and this Court having determined that, based upon the representations in the Application and the George Affidavit, Obermayer represents no interest adverse to the Debtor's estate or its creditors with respect to the matters upon which they are to be engaged, Obermayer is a disinterested person as that term is defined under Section 101(14) of the Bankruptcy Code, and Obermayer's employment is in the best interest of the Debtor's estate and creditors; and after due deliberation and sufficient cause appearing therefore; it is hereby

Debtor: Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital

Case No.: 07-21631 (DHS)

Caption of Order: Order Granting Application of Charles M. Golden, Patient Care Ombudsman of Nathan and Miriam Barnert Memorial Hospital Association, d/b/a Barnert Hospital to Employ Obermayer, Rebmann, Maxwell & Hippel, LLP as Counsel

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ORDERED AND DECREED that said Application is granted as follows:

1. The Ombudsman is authorized to retain Obermayer as his counsel, pursuant to Sections 105 and 333 of the Bankruptcy Code to perform the services set forth in the Application.

2. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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HOSPITAL,**

**Debtor.**

Chapter 11

Case No. 07-21631 (DHS)

Honorable Donald H. Steekroth

**CERTIFICATE OF SERVICE**

I, Michele Coyle, paralegal of the law firm of Obermayer Rebmann Maxwell & Hippel LLP, do hereby certify that on September 18, 2007, a true and correct copy of the foregoing Application of Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of Obermayer Rebmann Maxwell & Hippel LLP as Counsel was served United States first class mail, postage prepaid, upon the attached service list.

*/s/ Michele Coyle* \_\_\_\_\_  
Michele Coyle, Paralegal

**SERVICE LIST**

|   |  |
|---|--|
| <p>Donald F. MacMaster, Esquire<br/>One Newark Center, Suite 2100<br/>Newark, NJ 07102<br/>Telephone: 973-645-3014<br/><i>United States Trustee's Office</i></p>  | <p>David J. Adler, Esquire<br/>John G. Loughnane, Esquire<br/>Joseph Lubertazzi, Jr., Esquire<br/>McCarter &amp; English, LLP<br/>Four Gateway Center<br/>100 Mulberry Street<br/>Newark, NJ 07101<br/><i>Attorneys for Debtor</i></p> |
| <p>Warren J. Martin, Jr.<br/>Porzio, Bromberg &amp; Newman<br/>100 Southgate Parkway<br/>Morristown, NJ 07962-1997<br/><i>Attorney for Official Committee of Unsecured Creditors</i></p>                      | <p>Bruce D. Gordon, Esquire<br/>Bruce D. Gordon LLC<br/>2050 Center Avenue, Suite 560<br/>Fort Lee, NJ 07024<br/><i>Attorney for Columbia Bank</i></p>   |
| <p>Robert M. Marshall, Esquire<br/>Marshall &amp; Quentzel, L.L.C.<br/>155 Willowbrook Boulevard<br/>Wayne, NJ 07470<br/><i>Attorney for Phoenix Health Care, Inc.</i></p>                                    | <p>Mitchell Malzberg, Esquire<br/>Mitnick and Malzberg, P.C.<br/>P.O. Box 429<br/>Frenchtown, NJ 08825<br/><i>Attorney for District 1199J, National Union of Hospitals &amp; Health Care Employees</i></p>                             |
| <p>Scott A. Zuber, Esquire<br/>Day Pitney LLP<br/>P.O. Box 1945<br/>Morristown, NJ 07962-1945<br/><i>Attorney for Cardinal Health</i></p>   | <p>Warren J. Martin, Jr., Esquire<br/>Porzio, Bromberg &amp; Newman, PC<br/>100 Southgate Parkway<br/>Morristown, NJ 07962-1997<br/><i>Attorney for Bergen Community Regional Blood Center, d/b/a Community Blood Services</i></p>     |
| <p>Richard P. Norton, Esquire<br/>Reed Smith LLP<br/>Princeton Forrestal Village<br/>136 Main Street, Suite 250<br/>Princeton, NJ 08540<br/><i>Attorney for The Bank of New York as Indenture Trustee</i></p> | <p>Claudia Z. Springer, Esquire<br/>Reed Smith LLP<br/>2500 One Liberty Place<br/>1650 Market Street<br/>Philadelphia, PA 19103<br/><i>Attorney for The Bank of New York as Indenture Trustee</i></p>                                  |
| <p>Eric A. Schaffer, Esquire<br/>Reed Smith LLP<br/>435 Sixth Avenue<br/>Pittsburgh, PA 195219<br/><i>Attorney for The Bank of New York as Indenture Trustee</i></p>  | <p>William G. Wright, Esquire<br/>Farr, Burke, Gambacorata &amp; Wright, P.C.<br/>1000 Atrium Way, Suite 401<br/>Mt. Laurel, NJ 08054<br/><i>Attorney for General Electric Capital Corporation</i></p>                                 |

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|---|---|
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| <p>James Richter, Esquire<br/> Winston &amp; Strawn LLP<br/> The Legal Center<br/> One Riverfront Plaza, 7<sup>th</sup> Floor<br/> Newark, NJ 07102<br/> <i>Attorney for MBIA Insurance Corporation</i></p>                                   | <p>Judy D. Thompson, Esquire<br/> Poyner &amp; Spruill LLP<br/> 301 South College Street, Suite 2300<br/> Charlotte, NC 28202<br/> <i>Attorney for Sodexo, Inc.</i></p>   |
| <p>Joel R. Glucksman, Esquire<br/> Scarinci &amp; Hollenbeck, LLC<br/> 1100 Valley Brook Avenue<br/> P.O. Box 790<br/> Lyndhurst, NJ 07071-0790<br/> <i>Attorney for Passaic Valley Sewerage Commissioners</i></p>                            |   |