

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

Edmond M. George, Esquire (EG-7810)
D. Alexander Barnes, Esquire (DB-0760)
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
20 Brace Road, Suite 300
Cherry Hill, NJ 08034
Phone: (856) 795-3300

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 GERALD F. KAPLAN,
M.D. AS MEDICAL OPERATIONS ADVISOR**

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"), 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 Gerald F. Kaplan, M.D. ("Kaplan"), as medial operations advisor for the Ombudsman. The facts and circumstances supporting this application (the "Application") are as set forth herein and in the Affidavit of Gerald F. Kaplan (the "Kaplan 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 Kaplan as his medical operations advisor. The Ombudsman has determined that Kaplan has the resources and experience necessary to assist him in the fulfillment of his duties as Ombudsman. Kaplan is a licensed physician and has substantial experience in the health care industry, and is also an attorney. Kaplan is well versed in patient care and quality of care issues. Given the nature of this case, including the specific duties of the Ombudsman required under § 333 of the Bankruptcy Code, the Ombudsman believes that retention of Kaplan is appropriate and necessary.

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

SCOPE OF EMPLOYMENT

8. The professional services that the Ombudsman expects that Kaplan may be called upon to render include, but shall not be limited to, assisting the Ombudsman with the following:

- (a) Conducting patient and hospital staff interviews as required;
- (b) Reviewing license and governmental permits;
- (c) Reviewing adequacy of staffing, supplies and equipment;
- (d) Reviewing safety standards;
- (e) Reviewing facility maintenance issues or reports;
- (f) Reviewing patient, family, staff or employee complaints from a medical standpoint;
- (g) Reviewing risk management reports;
- (h) Reviewing litigation which relates to the Debtor's patient care or which may effect the interests of patients;
- (i) Reviewing other information , including, without limitation, EMTALA violations, lists of death and hospital codes, in-patient and out-patient surgery schedules, surgery cancellations, patient satisfaction survey results, regulatory and/or JCAHO reports, utilization review reports, discharged and transferred patient reports, staff recruitment plan and nurse/patient/acuity staffing plans;
- (j) Reviewing, as needed, financial information, including, without limitation, current financial statements, cash projections, accounts receivable reports and accounts payable reports, insofar as it may affect the interests of patients; and
- (k) Assisting the Ombudsman with such other services as may be necessary or appropriate pursuant to Section 333 of the Bankruptcy Code.

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

KAPLAN DOES NOT HOLD OR REPRESENT ANY ADVERSE INTEREST

10. As set forth in greater detail in the Kaplan Affidavit, Kaplan has no conflicts with any Parties in Interest.

11. To the best of the Ombudsman's knowledge, based upon the Kaplan Affidavit, Kaplan (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.

12. To the best of the Ombudsman's knowledge, Kaplan, who will work on this matter, is not a relative of the Honorable Donald H. Steekroth, the Bankruptcy Judge presiding over the case, the Acting United States Trustee for the Region 2, or any other person employed in the Office of the United States Trustee for the District of New Jersey.

COMPENSATION AND REIMBURSEMENT OF EXPENSES

13. 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 Kaplan be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses that Kaplan incurs, including, but not limited to, photocopies, word processing, telecommunications, travel, and any other incidental costs advanced by Kaplan specifically for this matter, at the rates commonly charged by Kaplan. Kaplan agrees to be compensated in the same fashion as other professionals in the case.

14. Kaplan has advised the Ombudsman that his current hourly rate is \$450.00 per hour.

15. Other than as set forth above, there is no other proposed arrangement to compensate Kaplan in connection with the services to be provided to the Ombudsman.

BASIS FOR RELIEF

16. 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).

17. Other authority exists to grant this Application and approve the retention of professionals by 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.").

18. 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

19. 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.

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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 Kaplan in the case as his Medical Operations Advisor, and (c) granting such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: September 24, 2007

By: /s/ D. Alexander Barnes
Edmond M. George, Esquire
D. Alexander Barnes, Esquire
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
20 Brace Road, Suite 300
Cherry Hill, NJ 08034
Telephone: (856) 795-3300
Facsimile: (856) 795-8843

-and-

One Penn Center, 19th Floor
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895
Telephone: (215) 665-3000
Facsimile: (215) 665-3165

Proposed counsel to Charles M. Golden, Ombudsman

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Edmond M. George, Esquire (EG-7810)
D. Alexander Barnes, Esquire (DB-0760)
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
20 Brace Road, Suite 300
Cherry Hill, NJ 08034
Phone: (856) 795-3300

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

**AFFIDAVIT OF GERALD F. KAPLAN, M.D. PURSUANT TO BANKRUPTCY RULE
2014(a) AND IN SUPPORT OF THE APPLICATION OF THE PATIENT CARE
OMBUDSMAN FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF GERALD F. KAPLAN, M.D. AS MEDICAL OPERATIONS
ADVISOR**

STATE OF Pennsylvania)
) ss:
COUNTY OF Montgomery)

Gerald F. Kaplan, M.D., being duly sworn, deposes and says:

1. I am Gerald F. Kaplan, M.D., a licensed physician with offices located at 1432 Autumn Road, Rydal, PA 19046.

KAPLAN'S DISINTERESTEDNESS

2. To the best of my knowledge and information after due inquiry, I have no connections with the Debtor, its creditors, any other party-in-interest herein or their respective attorneys or professionals, and I do not hold, or represent any entity having an adverse interest in connection with the Debtor.

3. I am not related to any Judge of the United States Bankruptcy Court for the District of New Jersey, and have no connection with employees of the United States Trustee's Office in that district.

4. I have searched the names of (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, and the inquiry revealed no relationships between the listed parties, on the one hand, and the undersigned on the other.

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

- a. not a creditor, equity security holder or insider of the Debtor;
- b. 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. do 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.

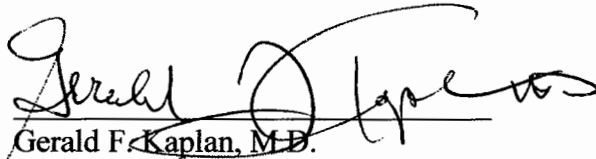
COMPENSATION AND REIMBURSEMENT OF EXPENSES

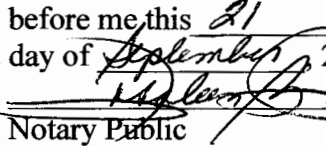
6. My hourly rate is \$450.00 for the services to be provided, plus customary expenses as detailed in the Application.

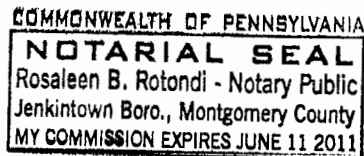
7. Other than as set forth herein, there is no proposed arrangement to compensate me. I have not shared, nor have I agreed to share (a) any compensation I have or may receive with any other party or person.

CONCLUSION

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


Gerald F. Kaplan, M.D.

Subscribed and sworn to
before me this 21
day of September, 2007.

Notary Public



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

Edmond M. George, Esquire (EG-7810)
D. Alexander Barnes, Esquire (DB-0760)
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
20 Brace Road, Suite 300
Cherry Hill, NJ 08034
Phone: (856) 795-3300

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

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF GERALD F.
KAPLAN, M.D. AS MEDICAL OPERATIONS ADVISOR**

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 Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of Gerald F. Kaplan, M.D. as Medical Operations Advisor

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 Gerald F. Kaplan, M.D. (“Kaplan”), as Medical Operations Advisor for the Ombudsman; and upon reviewing and considering the Affidavit of Kaplan (the “Kaplan 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 Kaplan Affidavit, Kaplan represents no interest adverse to the Debtor's estate or its creditors with respect to the matters upon which they are to be engaged, Kaplan is a disinterested person as that term is defined under Section 101(14) of the Bankruptcy Code, and Kaplan'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 Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of Gerald F. Kaplan, M.D. as Medical Operations Advisor

ORDERED AND DECREED that said Application is granted as follows:

1. The Ombudsman is authorized to retain Kaplan as his Medical Operations Advisor 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**

Edmond M. George, Esquire (EG-7810)
D. Alexander Barnes, Esquire (DB-0760)
OBERMAYER REBMANN MAXWELL & HIPPEL LLP
20 Brace Road, Suite 300
Cherry Hill, NJ 08034
Phone: (856) 795-3300

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

CERTIFICATE OF SERVICE

I, D. Alexander Barnes, an attorney of the law firm of Obermayer Rebmann Maxwell & Hippel LLP, do hereby certify that on September 24, 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 Gerald F. Kaplan, M.D. as Medical Operations Advisor was served United States first class mail, postage prepaid, upon the attached service list.

By: /s/ D. Alexander Barnes
D. Alexander Barnes, Esquire

SERVICE LIST

<p>Donald F. MacMaster, Esquire One Newark Center, Suite 2100 Newark, NJ 07102 Telephone: 973-645-3014 <i>United States Trustee's Office</i></p>	<p>David J. Adler, Esquire John G. Loughnane, Esquire Joseph Lubertazzi, Jr., Esquire McCarter & English, LLP Four Gateway Center 100 Mulberry Street Newark, NJ 07101 <i>Attorneys for Debtor</i></p>
<p>Warren J. Martin, Jr. Porzio, Bromberg & Newman 100 Southgate Parkway Morristown, NJ 07962-1997 <i>Attorney for Official Committee of Unsecured Creditors</i></p>	<p>Bruce D. Gordon, Esquire Bruce D. Gordon LLC 2050 Center Avenue, Suite 560 Fort Lee, NJ 07024 <i>Attorney for Columbia Bank</i></p>
<p>Robert M. Marshall, Esquire Marshall & Quentzel, L.L.C. 155 Willowbrook Boulevard Wayne, NJ 07470 <i>Attorney for Phoenix Health Care, Inc.</i></p>	<p>Mitchell Malzberg, Esquire Mitnick and Malzberg, P.C. P.O. Box 429 Frenchtown, NJ 08825 <i>Attorney for District 1199J, National Union of Hospitals & Health Care Employees</i></p>
<p>Scott A. Zuber, Esquire Day Pitney LLP P.O. Box 1945 Morristown, NJ 07962-1945 <i>Attorney for Cardinal Health</i></p>	<p>Warren J. Martin, Jr., Esquire Porzio, Bromberg & Newman, PC 100 Southgate Parkway Morristown, NJ 07962-1997 <i>Attorney for Bergen Community Regional Blood Center, d/b/a Community Blood Services</i></p>
<p>Richard P. Norton, Esquire Reed Smith LLP Princeton Forrestal Village 136 Main Street, Suite 250 Princeton, NJ 08540 <i>Attorney for The Bank of New York as Indenture Trustee</i></p>	<p>Claudia Z. Springer, Esquire Reed Smith LLP 2500 One Liberty Place 1650 Market Street Philadelphia, PA 19103 <i>Attorney for The Bank of New York as Indenture Trustee</i></p>
<p>Eric A. Schaffer, Esquire Reed Smith LLP 435 Sixth Avenue Pittsburgh, PA 15219 <i>Attorney for The Bank of New York as Indenture Trustee</i></p>	<p>William G. Wright, Esquire Farr, Burke, Gambacorata & Wright, P.C. 1000 Atrium Way, Suite 401 Mt. Laurel, NJ 08054 <i>Attorney for General Electric Capital Corporation</i></p>

<p>David Edelberg, Esquire Rick A. Steinberg, Esquire Nowell Amoroso Klein Bierman, P.A. 155 Polifly Road Hackensack, NJ 07601 <i>Attorneys for Armanti Financial Services and Nurses 24/7</i></p>	<p>Leslie A. Berkoff, Esquire Lee J. Mendelson, Esquire Moritt Hock Hamroff & Horowitz LLP 400 Garden City Plaza Garden City, NY 11530 <i>Attorneys for General Electric Capital Corporation</i></p>
<p>Brian W. Bisignani, Esquire Post & Schell, P.C. 17 North 2nd Street, 12th Floor Harrisburg, PA 17101-1601 <i>Attorney for Aon Consulting</i></p>	<p>Anthony J. LaBruna United States Attorney's Office 970 Broad Street, Suite 700 Newark, NJ 07102 <i>Attorney for United States Department of Housing and Urban Development</i></p>
<p>Glenn D. Gillett Commercial Litigation Department of Justice P.O. Box 875 Ben Franklin Station Washington, D.C. 20044-0875 <i>Attorney for United States Department of Housing and Urban Development</i></p>	<p>David Neier, Esquire Winston & Strawn LLP 200 Park Avenue New York, NY 10166 <i>Attorney for MBIA Insurance Corporation</i></p>
<p>James Richter, Esquire Winston & Strawn LLP The Legal Center One Riverfront Plaza, 7th Floor Newark, NJ 07102 <i>Attorney for MBIA Insurance Corporation</i></p>	<p>Judy D. Thompson, Esquire Poyner & Spruill LLP 301 South College Street, Suite 2300 Charlotte, NC 28202 <i>Attorney for Sodexo, Inc.</i></p>
<p>Joel R. Glucksman, Esquire Scarinci & Hollenbeck, LLC 1100 Valley Brook Avenue P.O. Box 790 Lyndhurst, NJ 07071-0790 <i>Attorney for Passaic Valley Sewerage Commissioners</i></p>	