

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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

SILLS CUMMIS & GROSS P.C.

Jack M. Zackin (JZ-2540)

Simon Kimmelman (SK-3654)

Charles N. Panzer (CP-6271)

Valerie Hamilton (VH-5697)

One Riverfront Plaza

Newark, New Jersey 07102

(973) 643-7000

*Attorneys for the Debtor and Debtor-in-Possession*

In re:

PASCACK VALLEY HOSPITAL ASSOCIATION,  
INC.,

Debtor.

Case No. 07-23686

Chapter 11

Judge: Honorable Rosemary Gambardella

**ORDER SHORTENING TIME FOR NOTICE OF HEARING ON DEBTOR'S MOTION SEEKING THE ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. § 364, AUTHORIZING THE DEBTOR TO ENTER INTO AN INSURANCE PREMIUM FINANCING AGREEMENT WITH AICCO, INC., PURSUANT TO 11 U.S.C. § 364, AUTHORIZING THE DEBTOR TO ENTER INTO AN INSURANCE PREMIUM FINANCING AGREEMENT WITH AICCO, INC.**

The relief set forth on the following pages, numbered two (2) through three (3) is hereby **ORDERED**.

Debtor: PASCACK VALLEY HOSPITAL ASSOCIATION, INC..  
Case No.: 07-23686  
Caption of Order: ORDER SHORTENING TIME PERIOD FOR NOTICE OF HEARING ON DEBTOR'S MOTION SEEKING THE ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. § 364, AUTHORIZING THE DEBTOR TO ENTER INTO AN INSURANCE PREMIUM FINANCING AGREEMENT WITH AICCO, INC.

Upon consideration of the application of Pascack Valley Hospital Association, Inc., the debtor and debtor-in-possession herein ("Debtor"), for an order, pursuant to Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure, shortening the time period for notice of the hearing (the "Hearing") on the Debtor's motion (the "Motion") seeking the entry of an order, pursuant to section 364 of chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtor to (a) enter into in an Insurance Premium Finance Agreement, Disclosure Statement and Security Agreement with AICCO, Inc. ("AICCO") with respect to certain of the Debtor's insurance policies (the "Premium Financing Agreement"); (b) grant AICCO security interests in certain of the Debtor's insurance-related assets and (c) grant AICCO an administrative expense claim with respect to any deficiency claim of AICCO remaining in the event that AICCO must proceed against the Debtor's collateral; and for good cause shown, it is hereby

**ORDERED**, that the time period required by D.N.J. LBR 9013-1(c) for notice of the Hearing be, and hereby is, shortened as set forth herein; and it is further

**ORDERED**, that the Hearing shall be conducted on October \_\_\_\_\_, 2007 at \_\_\_\_\_ .m., before the Honorable Rosemary Gambardella, United States Bankruptcy Judge in the United States Bankruptcy Court, 50 Walnut Street, Newark, New Jersey; and it is further

**ORDERED**, that true copies of this Order, the application seeking the entry thereof, and the papers in support of the Motion shall be served upon (i) the United States Trustee for Region

Debtor: PASCACK VALLEY HOSPITAL ASSOCIATION, INC..  
Case No.: 07-23686  
Caption of Order: ORDER SHORTENING TIME PERIOD FOR NOTICE OF HEARING ON DEBTOR'S MOTION SEEKING THE ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. § 364, AUTHORIZING THE DEBTOR TO ENTER INTO AN INSURANCE PREMIUM FINANCING AGREEMENT WITH AICCO, INC.

3, Newark, New Jersey; (ii) counsel for HFG Healthco-IV, LLC; (iii) counsel for Bank of New York, as Master Trustee; (iv) each of the Debtors' twenty (20) largest unsecured creditors; (v) the New Jersey Department of Human Services; (vi) the New Jersey Department of Health and Senior Services; (vii) the New Jersey Health Care Facilities Financing Authority; (viii) the Attorney General for the State of New Jersey; (ix) the State of New Jersey, Division of Taxation; (x) the Internal Revenue Service; (xi) the U.S. Attorney for the District of New Jersey; (xii) Health Professionals and Allied Employees, ATL/AFL-CIO Local 5029; (xiii) Pension Benefit Guaranty Corporation; (xiv) the Affiliates; and (xv) all parties requesting notice pursuant to Fed. R. Bankr. P. 2002, via ECF electronic notice, fax or overnight delivery by October \_\_\_\_\_, 2007, which shall constitute good and sufficient notice of the relief requested in the Motion; and it is further

**ORDERED**, that any objections to the relief requested by the Motion may be raised at the hearing; and it is further

**ORDERED**, that the Court will require appearances of counsel to prosecute the Motion and any objections thereto.

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
KELLY BEAUDIN STAPLETON  
UNITED STATES TRUSTEE, REGION 3  
Mitchell B. Hausman, Esquire (MBH 1464)  
One Newark Center, Suite 2100  
Newark, NJ 07102  
Telephone: (973) 645-3014  
Fax: (973) 645-5993

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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In re:	:	
	:	Chapter 11
Pascack Valley Hospital	:	
Association, Inc.,	:	Case No. 07-23686(RG)
	:	
	:	
Debtor	:	Hearing Date:

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THE UNITED STATES TRUSTEE TO DESIGNATE 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 Application of the United States Trustee (“UST”), in support of her Motion for an Order Designating the Chapter 11 Case of Pascack Valley Hospital Association, Inc., (“Debtor”), as a Health Care Business, as 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:

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 (6<sup>th</sup> Cir. 1990)

(describing the UST as a “watchdog”).

2. The UST files the within motion 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.

5. The Debtor filed its voluntary petition under chapter 11 of Title 11 of the United States Code on September 24, 2007.

6. The voluntary petition indicates that the nature of the Debtor’s business is a “health care business”. The Debtor operates a 280-bed, acute-care, not-for-profit hospital located in Westwood, Bergen County, New Jersey. The Debtor’s Board of Trustees has determined that the Debtor cannot continue to operate because of its exceptionally poor financial performance and prospects. It is anticipated that the Debtor has or will be submitting an a Certificate of Need Application to the New Jersey Department of Health setting forth a plan for the expeditious closure of the hospital and the transfer of its patients to other hospitals and health care centers in the immediate vicinity.

7. 11 U.S.C. § 333 requires the appointment of a patient care ombudsman in cases where the debtor is designated as a “Health Care Business”.<sup>1</sup> Very generally, this term is defined in 11

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<sup>1</sup> The Bankruptcy Abuse and Consumer Protection Act provides for the appointment of a patient care ombudsman in accordance with 11 U.S.C. § 333, which provides in full as follows:

U.S.C. § 101(27A), as an entity that is “...primarily engaged...” in offering medical services or

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(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.

facilities to the general public, and includes any long-term care facility.<sup>2</sup>

8. The Debtor operates a hospital that will be in the process of shutting down due to poor financial performance. The shutting down of the hospital will involve the transfer of patients to other facilities.

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

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<sup>2</sup> 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

**(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.

for . . . the diagnosis or treatment of injury, deformity, or disease; and surgical, drug treatment, . . . or obstetric care. . . .”

10. 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. The fact that the hospital is shutting down should not negate the need for the appointment of an ombudsman. In fact it amplifies the need for an ombudsman considering the many issues of patient care that could arise when a facility is shutting down due to poor financial performance. The Debtor will be terminating services and transferring patients and an ombudsman is needed to ensure that patient care does not suffer during this process.

WHEREFORE, the United States Trustee respectfully requests an Order designating the Chapter 11 bankruptcy case of Pascack Valley Hospital Association, Inc., as a health care business, and directing the appointment a 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,

Dated: October 4, 2007

KELLY BEAUDIN STAPLETON  
UNITED STATES TRUSTEE

/s/ Mitchell B. Hausman  
Trial Attorney

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
KELLY BEAUDIN STAPLETON

UNITED STATES TRUSTEE

Mitchell B. Hausman, Esquire (MH 1464)

One Newark Center, Suite 2100

Newark, NJ 07102

Telephone: (973) 645-3014

Fax: (973) 645-5993

In Re:

Pascack Valley Hospital Association, Inc.,

Debtor

Case No.: 07-23686 (RG)

Chapter 11

Hearing Date:

Judge: The Honorable Rosemary Gambardella

**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 page, numbered two (2) is hereby **ORDERED**.

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**(Page 2)**

Pascack Valley Hospital Association, Inc.,

Chapter 11 Case No. 07-23686 (RG):

**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**

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Upon consideration of the Motion of the United States Trustee 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 and the Court having considered the Motion and any objections thereto, and notice of the motion having been given to Debtor's counsel and all electronic filing parties, and the Court having found cause for the appointment of a Patient Care Ombudsman Pursuant to 11 U.S.C. § 333 and for the reasons stated on the record 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.