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Proposed counsel for David Knowlton, Ombudsman

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

In re:	:	Hon. Rosemary Gambardella
	:	
PASCACK VALLEY HOSPITAL	:	Case No. 07-23686
ASSOCIATION, INC.	:	
	:	Chapter 11
Debtor.	:	

**APPLICATION OF PATIENT CARE OMBUDSMAN FOR ENTRY OF AN ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF CARELLA, BYRNE, BAIN,
GILFILLAN, CECCHI, STEWART & OLSTEIN, P.C. AS COUNSEL *NUNC PRO TUNC* TO
NOVEMBER 2, 2007**

David Knowlton, the Patient Care Ombudsman (the "Ombudsman") appointed in the Chapter 11 bankruptcy estate of Pascack Valley Hospital Association, Inc. (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 Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, P.C. ("Carella Byrne"), as counsel for the Ombudsman. The facts and circumstances supporting this application (the "Application") are as set forth herein and in the Affidavit of Jeffrey A. Cooper, Esq. (the "Cooper Affidavit"), submitted herewith 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 September 24, 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 October 31, 2007, this Court entered a consent order Authorizing the U.S. Trustee To Appoint Patient Care Ombudsman pursuant to 11 U.S.C. §333 Of The Bankruptcy Code.

5. On November 2, 2007, the Office of the United States Trustee for District of New Jersey appointed David Knowlton as the Patient Care Ombudsman (the "Ombudsman") in the Case.

Relief Requested

6. The Ombudsman desires to retain and employ Carella Byrne as his counsel *nunc pro tunc* to the day of Knowlton's appointment as Ombudsman, on November 2, 2007. The Ombudsman has determined that Carella Byrne has the resources and experience necessary to represent him. Carella Byrne'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 Carella Byrne is appropriate and necessary.

7. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing him to employ and retain Carella Byrne 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 Carella Byrne 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, Carella Byrne has indicated that it is willing to serve as the Ombudsman's counsel in the Case to perform the services described above.

Carella Byrne Does Not Hold Or Represent Any Adverse Interest

10. As set forth in greater detail in the Cooper Affidavit, Carella Byrne has conducted a conflicts check based on the information provided by the Debtor including the following names: (a) the Debtor; (b) the Debtor's largest secured creditor; (c) the Debtor's twenty (20) largest unsecured creditors; (d) the Debtor's professionals in the case; and (e) the Debtor's Schedules and Statement of Financial Affairs. To the best of the Ombudsman's knowledge, based upon the Cooper Affidavit and except as set forth herein, Carella Byrne (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.

11. The foregoing notwithstanding, Carella Byrne is counsel to the Archdiocese of Newark, New Jersey (the "Archdiocese"), which, at this time, has an unsecured pre-petition claim and post petition administrative claim in connection with certain Hospital chaplain ("Chaplain") that

it provides for the Debtor and its patients. Carella Byrne intends to file a proof of claim on the Archdiocese's behalf in connection with its pre-petition debt.

12. Specifically, the Debtor has scheduled the Archdiocese has having an undisputed unsecured claim for \$60,000.00. Carella Byrne intends to file a proof of claim on behalf of the Archdiocese in the total amount of \$89,022.30.

13. The services rendered by the Chaplain are unrelated to the duties of the Ombudsman.

14. Accordingly, given the limited scope of the representation of the patient care ombudsman, Carella Byrne believes that its retention should be permitted.

15. Carella Byrne respectfully submits that notwithstanding its representation of the Archdiocese, that this representation is not in of itself an automatic disqualification pursuant to 11 U.S.C. §327(c).

Compensation And Reimbursement Of Expenses

16. 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 Carella Byrne be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses that Carella Byrne 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 Carella Byrne specifically for these matters, at the rates commonly charged for such costs to other Carella Byrne clients.

17. Carella Byrne has advised the Ombudsman that in order to accommodate the Ombudsman, Carella Byrne will offer a blended hourly rate of \$334.88 for attorneys and \$95.00 for paralegals and law clerks. Carella Byrne understands that it is subject to the terms of the Consent

Order dated October 31, 2007 (Docket No. 168) limiting compensation to, *inter alia*, the Ombudsman's professionals.

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

Basis For Relief

19. 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: Beth Israel Hospital Association of Passaic* (District of New Jersey, Case No. 06-16186 (NLW)) and *In re: Nathan and Miriam Barnert Memorial Hospital Association* (District of New Jersey, Case No. 07-21631 (DHS)); *See also In re Bayonne Medical Center*, (District of New Jersey, Case No. 07-15195 (MS)).

20. So too, this 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.

Waiver Of Memorandum Of Law

21. 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.

22. 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 Carella Byrne in the case *nunc pro tunc* to November 2, 2007, and
(c) granting such other and further relief as this Court may deem just and proper.

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Proposed Attorneys for David Knowlton, Ombudsman

By: Jeffrey A. Cooper
Jeffrey A. Cooper, Esq.

- and -

By: Marc D. Miceli
Marc D. Miceli, Esq.

DATED: November 9, 2007
#331372v2

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 Marc D. Miceli, Esq.
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 5 Becker Farm Road
 Roseland, New Jersey 07068
 (973) 994-1700
 Proposed counsel for David Knowlton, Ombudsman

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

In re:	:	Hon. Rosemary Gambardella
	:	
PASCACK VALLEY HOSPITAL ASSOCIATION, INC.	:	Case No. 07-23686
	:	
Debtor.	:	Chapter 11
	:	

**AFFIDAVIT OF JEFFREY A. COOPER 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 CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART &
 OLSTEIN, P.C. AS COUNSEL *NUNC PRO TUNC* TO NOVEMBER 2, 2007**

STATE OF NEW JERSEY)
)
 COUNTY OF ESSEX) **ss.**

JEFFREY A. COOPER, being duly sworn, deposes and says:

1. I am a partner of the law firm of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, P.C. ("Carella, Byrne"), which maintains an office at 5 Becker Farm Road, Roseland, New Jersey 07068. I am a member of the Bar of the State of New Jersey and New York. I submit this affidavit (the "Affidavit") on behalf of Carella, Byrne in support of the Application (the "Application") of David Knowlton as Patient Care Ombudsman (the "Ombudsman") appointed in Pascack Valley Hospital Association, Inc. (the "Debtor"), for entry of an Order, pursuant to Sections 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 Carella, Byrne as

counsel for the Ombudsman.

2. To the best of my knowledge and information after due inquiry, Carella, Byrne 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. Carella, Byrne maintains a computer database (the "Database") containing, inter alia, the names of all of Carella, Byrne'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 largest secured creditor; (c) the Debtor's twenty (20) largest unsecured creditors; (d) the Debtor's professionals in the case and (e) the Debtor's Schedules and Statement of Financial Affairs.

4. Except as stated below, this inquiry revealed no relationships between the listed potentially interested parties, on the one hand, and Carella, Byrne or the undersigned on the other. Carella, Byrne 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, Carella, Byrne, 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 Carella, Byrne is to be engaged. To the best of my knowledge, information and belief, and except as set forth herein, Carella, Byrne is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code in that Carella, Byrne:

- 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.

6. The foregoing notwithstanding, Carella Byrne is counsel to the Archdiocese of Newark, New Jersey (the "Archdiocese"), which, at this time, has an unsecured pre-petition claim and post petition administrative claim in connection with certain Hospital chaplain ("Chaplain") that it provides for the Debtor and its patients. Carella Byrne intends to file a proof of claim on the Archdiocese's behalf in connection with its pre-petition debt.

7. Specifically, the Debtor has scheduled the Archdiocese has having an undisputed unsecured claim for \$60,000.00. Carella Byrne intends to file a proof of claim on behalf of the Archdiocese in the total amount of \$89,022.30.

8. The services rendered by the Chaplain are unrelated to the duties of the Ombudsman.

9. Accordingly, given the limited scope of the representation of the Patient Care Ombudsman, Carella Byrne believes that its retention should be permitted.

10. I have reviewed 11 U.S.C. §327(c) and I believe that this representation will not automatically disqualify Carella Byrne from serving as counsel to the Ombudsman.

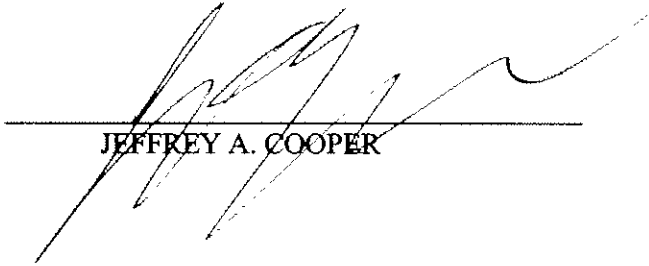
11. Carella, Byrne's blended hourly rate is \$334.88 for professionals and \$95.00 for paralegals and law clerks.

12. I understand that Carella, Byrne's retention is subject to the terms of the Consent Order dated October 31, 2007 (Docket No. 168) limiting compensation to, *inter alia*, the Ombudsman's professionals.

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

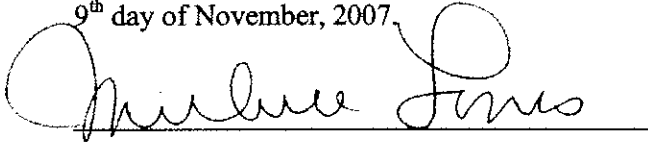
14. Carella Byrne intends to bill for its legal services in the case in accordance with its normal business practices by applying its customary hourly rates for matters of this type and charging for all disbursements customarily billed to its clients and necessarily incurred.

15. Other than as set forth herein, there is no proposed arrangement to compensate Carella, Byrne. Carella, Byrne 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 Carella, Byrne, or (b) any compensation another party or person has received or may receive.



JEFFREY A. COOPER

Subscribed and sworn to before me this
9th day of November, 2007.



#331409v2

MICHELE LOUIS
A Notary Public Of New Jersey
My Commission Expires February 8, 2008

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

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

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Proposed counsel for David Knowlton,
Ombudsman

In re:

PASCACK VALLEY HOSPITAL ASSOCIATION,
INC.

Debtor.

Hon. Rosemary Gambardella

Case No. 07-23686 (RG)

Chapter 11

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART &
OLSTEIN, P.C. AS COUNSEL FOR THE PATIENT CARE_
OMBUDSMAN NUNC PRO TUNC TO NOVEMBER 2, 2007**

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

ORDERED.

Debtor: Pascack Valley Hospital Association, Inc.
Case No.: 07-23686 (RG)
Caption of Order: Order Granting Application of David Knowlton, Patient Care Ombudsman of Pascack Valley Hospital Association, Inc. to Employ Carella, Byrne, P.C. as Counsel

THIS MATTER, having been opened to the Court upon the application (the "Application") of David Knowlton, the Patient Care Ombudsman (the "Ombudsman") appointed in the Chapter 11 bankruptcy estate of Pascack Valley Hospital Association, Inc. (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 Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, P.C. ("Carella, Byrne"), as counsel for the Ombudsman *nunc pro tunc* to November 2, 2007; and upon reviewing and considering the Affidavit of Jeffrey A. Cooper (the "Cooper 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 Cooper Affidavit, Carella, Byrne represents no interest adverse to the Debtor's estate or its creditors with respect to the matters upon which they are to be engaged, Carella, Byrne is a disinterested person as that term is defined under Section 101(14) of the Bankruptcy Code, and Carella, Byrne'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: Pascack Valley Hospital Association, Inc.
Case No.: 07-23686 (RG)
Caption of Order: Order Granting Application of David Knowlton, Patient Care Ombudsman of Pascack Valley Hospital Association, Inc. to Employ Carella, Byrne, P.C. as Counsel

ORDERED AND DECREED that said Application is granted as follows:

1. The Ombudsman is authorized to retain Carella, Byrne as his counsel *nunc pro tunc* to November 2, 2007, 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.

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