

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-22840(RDD)

Debtors.
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**ORDER PURSUANT TO SECTIONS 105(A) AND 366
OF THE BANKRUPTCY CODE (A) PROHIBITING UTILITIES
FROM ALTERING, REFUSING OR DISCONTINUING SERVICE,
(B) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE
PERFORMANCE, AND (C) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion, dated May 28, 2013 (the “**Motion**”),¹ of Sound Shore Medical Center of Westchester (“**SSMC**”) and certain of its affiliates, as Chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**”),² in the above referenced Chapter 11 cases (the “**Chapter 11 Cases**”), for interim and final orders pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”) (a) prohibiting the Utility Providers (as hereinafter defined) from altering, refusing or discontinuing services to, or discriminating against, the Debtors; (b) determining that the Utility Providers have been provided with adequate assurance of payment; (c) approving the Debtors’ proposed procedures for determining Utility Providers’ requests for additional or different adequate assurance; and (d) scheduling a Final Hearing on the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to sections 28 U.S.C. §§ 157(a) and 1334(b) and

¹ Capitalized terms, not herein defined, shall have the meaning ascribed to them in the Motion.

² The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided as set forth in the Motion, including to the Utility Providers; and it appearing that no other or further notice is necessary except as expressly provided herein; and there being no objections to the relief granted herein; and upon the record of the hearing held by the Court on the Motion on June 25, 2013 (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion, the Spicer Affidavit and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Subject to the procedures described below, no Utility Provider may (i) alter, refuse, terminate, or discontinue utility services to, or discriminate against, the Debtors on the basis of the commencement of these Chapter 11 Cases or on account of outstanding prepetition invoices or (ii) require additional assurance of payment, other than the Proposed Adequate Assurance provided for in the next paragraph, as a condition to the Debtors receiving such utility services.

3. With respect to all Utility Providers, except Consolidated Edison, Inc. (“**Con Edison**”), the Debtors shall, if not already deposited, immediately deposit the amount of \$78,250 into a segregated account for the sole purpose of providing adequate assurance of payment (the “**Proposed Adequate Assurance**”) to the Utility Providers in respect of unpaid postpetition utility bills during the course of these chapter 11 cases (the “**Utility Reserve**”). The Utility Providers shall have an undivided interest in the Utility Reserve subject to the Additional Adequate Assurance Procedures set forth herein.

4. The Debtors shall also segregate the amount of \$181,750 (the “**Con Edison Reserve**”) for the benefit of Consolidated Edison, Inc. (“**Con Edison**”), to be held by Con Edison as an additional deposit for the Debtors’ accounts and applied solely upon closure of such accounts. The Con Edison Reserve shall be transferred directly to Con Edison within 5 days of the date of this Order. Con Edison reserves its rights to request additional adequate insurance to the extent: (i) the Debtors fail to consummate the proposed sale of their assets to MMC or (ii) the Debtors fail to make timely postpetition payments to Con Edison.

5. The Debtors are authorized to reduce the Utility Reserve to the extent any Utility Provider receives any value from the Debtors from another source under section 366 of the Bankruptcy Code, on account of adequate assurance. Upon closure or disposition of property or healthcare services where a Utility Provider provides utility services, the Debtors are authorized to reduce the Utility Reserve by an amount corresponding to such Utility Provider’s *pro rata* share of the Utility Reserve; provided, that such Utility Provider has no outstanding postpetition utility bills.

6. The Utility Reserve and the Con Edison Reserve, with the Additional Adequate Assurance Procedures, constitute sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code.

7. The following Additional Adequate Assurance Procedures are approved in full and in all respects, and all Utility Providers and the Debtors must abide by them:

- a. A Utility Provider desiring additional assurance of payment in excess of the Utility Reserve must serve a request (an “**Additional Assurance Request**”) so that it is received by the Debtors no later than 45 days after the Petition Date or at any later date if there is a material adverse change after such date, affecting the Utility Provider’s need for adequate assurance of payment under section 366 of the Bankruptcy Code (the “**Request Deadline**”) at the following addresses: (i) Sound Shore Medical Center of Westchester, 16 Guion Place, New Rochelle, New York, 10802, Attn: John Spicer; (ii) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York, Attn: Burton S. Weston, Esq. (iii) Alvarez & Marsal Healthcare Industry Group, LLC, 600 Madison Avenue, New York, New York 10022, Attn: Stuart McLean; and (iv) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq. and William E. Curtin, Esq. (collectively, the “**Service Parties**”).
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which utility services are provided; (iv) include a summary of the Debtors’ payment history relevant to the affected account(s), including a description of any deposits, prepayments, or other security held by the Utility Provider; and (v) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment. Any Utility Provider that fails to submit an Additional Adequate Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services.
- c. The Debtors shall have fourteen (14) days from the receipt of an Additional Assurance Request (the “**Resolution Period**”) to reach a consensual agreement with such Utility Provider resolving such Utility

Provider's Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider,

- d. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable.
- e. If the Debtors determine that the Additional Assurance Request is unreasonable and cannot reach a resolution with the Utility Provider during the Resolution Period, the Debtors or the Utility Provider, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code; provided, that nothing herein shall restrict any party's right to request expedited notice and a hearing under the Local Bankruptcy Rules and the Case Management Order.
- f. Pending resolution of any Additional Assurance Request at the Determination Hearing or by mutual agreement between the Debtors and the Utility Provider, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or any objections to the Proposed Adequate Assurance.
- g. Absent compliance with the procedures set forth herein, the Utility Providers are forbidden to discontinue, alter or refuse service, including on account of any unpaid prepetition charges, or if they require additional adequate assurance of payment other than the Proposed Adequate Assurance.

8. Each Utility Provider shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their discretion, agree to (i) an Additional Assurance Request or (ii) an alternative adequate assurance of payment with the Utility Provider during the Resolution Period, or (b) this Court enters an order requiring the Debtors to provide additional adequate assurance of payment.

9. The Debtors are authorized, in their discretion, to amend and supplement, as necessary, the Utility Providers listed on Exhibit B to the Motion (the “**Utility Service List**”), and this Order shall apply to any such Utility Company that is subsequently added to the Utility Service List; provided, that, with respect to any Additional Utility Provider, the period to file an Additional Assurance Request shall be 20 days after the date that the Debtors serve the Interim Order on such Additional Utility Provider. Any Additional Assurance Request by such Additional Utility Provider must otherwise comply with the requirements set forth in this Interim Order or shall be deemed an invalid Additional Assurance Request.

10. Nothing herein or on the Utility Service List constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

11. Any payment or transfer made or service rendered by the Debtors pursuant to the Interim Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or waiver of any other rights or remedies of the Debtors, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

13. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

14. Nothing in this Order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

15. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry pursuant to Bankruptcy Rule 6004(h).

16. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

Dated: June 27, 2013
New York, New York

By: /s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Utility Service List

Utility Provider	Address	Type of Service	Average Monthly Charge
Consolidated Edison	511 Theodore Fremd Avenue Rye, NY 10580	Electric	2,000
Cablevision of Southern Westchester	PO Box 9256 Chelsea, MA 02150-9256	Cable/TV	75
Con Edison- M. Palumbo	708 1 st Avenue New York, NY 10017	Electric	200,000
United Water New Rochelle	2525 Palmer Avenue New Rochelle, NY 10801	Water	16,000
Verizon	PO Box 15124 Albany, NY 12212-5124	Phone	6,180
Board of Water Supply	PO Box 271 Mt. Vernon, NY 10551	Water	18,000
Con Edison	4 Irving Place New York, NY 10150	Electric	160,000
Nextel Communications	10700 Park Ridge Blvd #600 Reston, VA 20190	Phone	27,580
Cablevision-CT	PO Box 9256 Chelsea, MA 02150-9256	Cable	160
Broadview Networks	PO Box 26021 New York, NY 10087-6021	Phone System	16,326
Verizon Wireless	PO Box 408 Newark, NJ 07101-0408	Phone	2,220
Con Edison for Wolf's Lane	40 Beechtree Lane Pelham, NY 10803	Electric	832
Cablevision Lightpath, Inc.	PO Box 360111 Pittsburgh, PA 15251-6111	Cable	62,551
Cablevision- Bethpage	1111 Stewart Avenue Bethpage, NY 11714-3581	Cable	1,476
Verizon (4820)	PO Box 4820 Trenton, NJ 08650-4820	Phone	760
Verizon Wireless (SPR)	PO Box 408 Newark, NJ 07101-0408	Phone	195
AT&T GA	PO Box 105068 Atlanta, GA 30348-5068	Phone	127
Cablevision	PO Box 371378 Pittsburgh, PA 15250-7378	Cable	160
Con Edison	JAF Station -PO Box 1702 New York, NY 10116-1702	Electric	661

Arch Wireless	555 Taxter Road, Suite 100 Elmsford, NY 10523	Phone	3,501
AT&T	1701 Golf Road, TWR 3 5 th FL 60008	Phone	
Grand Total			518,841