

Hearing Date: August 2, 2013 at 10:00 a.m.

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

	X	
In re:	:	Chapter 11
	:	
	:	Case No. 13-22840 (RDD)
SOUND SHORE MEDICAL CENTER OF	:	
WESTCHESTER, et al.,	:	(Jointly Administered)
	:	
Debtors.	:	
	X	

**RESPONSE OF PATIENT CARE OMBUDSMAN  
TO DEBTORS' SALE MOTION**

Daniel T. McMurray, the Patient Care Ombudsman appointed herein by the United States Trustee on June 21, 2013 (the "Ombudsman"), while not objecting, submits the following response to the debtors' motion (the "Motion") for, inter alia, an order authorizing them to sell substantially all of their assets to entities which are, upon information and belief, affiliated with Montefiore Medical Center (such entities being referred to hereinafter, collectively, as "Montefiore").

1. The Ombudsman notes that the disposition of the debtors' patient files and records is an expensive and exceedingly complex undertaking.
2. The debtors own and are selling two hospitals, a nursing home and several ambulatory care facilities. There is a lack of uniformity in the handling of patient records

among the debtors' various health care facilities. Patient records are maintained in a variety of locations, and their storage and handling are subject to various different contracts with different storage companies.

3. The organizing of the patient records, the transfer of certain records to Montefiore, and the providing of prompt future access to patient records to former patients and/or their new providers in a practical and efficient manner (collectively, the "Records Transfer Process") require substantial human and financial resources and a substantial time period for completion.

4. The Ombudsman does not know whether all of the resources which are necessary to effect the Records Transfer Process are available to the debtors, although he has been informed that the debtors, postpetition, have engaged additional personnel to participate in the Records Transfer Process and to augment existing personnel, who do not appear to have extensive experience in records transfer or other disposition.

5. The debtors' asset purchase agreement with Montefiore (the "APA") lists among the Acquired Assets, as defined in Section 2.1 of the APA, "only those medical records for (i) in-patients of [the debtors] as of the Closing Date, and (ii) outpatients undergoing an active course of treatment during the three (3) month period prior to the Closing Date," subject to Montefiore's compliance with a Medical Records Custody Agreement between it and the debtors (the "Custody Agreement").

6. The converse to the time periods for those patient records which will be Acquired Assets is that the debtors may be required to bear the responsibility and cost of storing and providing access to the patient records of, inter alia, all patients who were hospitalized in the debtors' facilities at any time during a period of several years prior to

the closing except for those who were hospitalized on the Closing Date itself. Records of the former patients which remain on the premises will likely be shipped at the debtors' expense to a commercial off-site storage facility, which the former patients, their new providers and/or government agencies will be required to identify and contact in order to obtain access to such records, even if a patient is hospitalized again in the same facility in the near future.

7. As a practical matter, some of the effects of a truncated time period for in-patient records that will become Acquired Assets could be mitigated by the realistic possibility that the full disposition of records will not be completed until up to two months after the Closing Date, maybe longer, and that all or a substantial portion of the debtors' recent patient records will, therefore, remain on-site until then. Even under that scenario, however, the debtors will nevertheless eventually bear the financial cost of storing the records of all former in-patients except those patients who were in-patients on the Closing Date, and former patients and/or new providers will eventually be required to request any necessary records from someone other than the entity which is operating a hospital at the debtors' former premises.

8. Electronic records may pose additional complications. In particular, it may not be practical to separate those records which are Acquired Assets from those which are not. Among other possible problems, Montefiore, therefore, may find itself in possession of records which are not Acquired Assets. It is unclear whether such records would be governed by the Custody Agreement, as such agreement is not yet attached to the APA and, to the Ombudsman's understanding and belief, has not yet been generated.

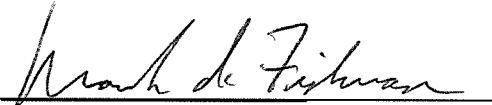
9. Finally, the Custody Agreement can have a significant effect upon the parties,

including patients, in several ways. It can affect, inter alia, both patient privacy rights and the ability of patients and new providers to access the patients' records. For these reasons as well as the fact that the Custody Agreement is incorporated in the APA, the Ombudsman requests that any order granting the Motion include a provision that the Custody Agreement be subject to approval of this Court upon adequate notice to the Ombudsman.

Dated: July 29, 2013

Respectfully submitted,

NEUBERT, PEPE & MONTEITH, P.C.

By: 

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