

1 GEORGE S. CARDONA
United States Attorney
2 LEON W. WEIDMAN
Assistant United States Attorney
3 Chief, Civil Division
CATHERINE E. BAUER (#121841)
4 Assistant United States Attorney
Room 7516, Federal Building
5 300 North Los Angeles Street
Los Angeles, California 90012-9834
6 Telephone: (213)894-3038
Fax: (213)894-7819

7 Attorneys for the United States
Department of Health and Human Services
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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION

12 In re:
13 PLEASANT CARE CORPORATION,
et al.,
14 Debtors.

15 _____
X Affects All Debtors
16

Case No. LA 07-12312-EC
Chapter 11
Jointly Administered with
Cases:
LA 07-12322-EC
LA 07-12319-EC
LA 07-12326-EC
LA 07-12316-EC

17 **JOINDER BY THE UNITED**
18 **STATES DEPARTMENT OF HEALTH**
19 **AND HUMAN SERVICES IN THE**
20 **MOTION OF THE UNITED STATES**
TRUSTEE FOR APPOINTMENT OF
CHAPTER 11 TRUSTEE

21 Date: May 2, 2007
Time: 1:30 p.m.
22 Courtroom: 1639, 255 East
Temple Street, Los Angeles,
23 CA

24 Hon. Ellen Carroll
Bankruptcy Judge
25

1 The United States Department of Health and Human Services
2 ("HHS") hereby joins in and supports the Motion For Appointment of a
3 Chapter 11 Trustee ("Motion") filed by the United States Trustee
4 ("UST") in these bankruptcy cases.

5 HHS submits the attached Memorandum of Points and Authorities
6 in support of the Motion.

7 Respectfully submitted,

8 DATED: April 6, 2007

9 GEORGE S. CARDONA
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
10 Chief, Civil Division

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12 _____
CATHERINE E. BAUER
Assistant United States Attorney

13 Attorneys for the
14 UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. INTRODUCTION

3 Pleasant Care Corporation, and its various related entities
4 (collectively "Debtor"), operate numerous skilled nursing facilities
5 in the State of California. Because of ongoing problems at these
6 nursing facilities, including but not limited to health and safety
7 deficiencies, the Debtor is operating under a Corporate Integrity
8 Agreement ("CIA") dated March 6, 2006 entered into between the
9 Debtor and HHS's Office of Inspector General ("OIG").

10 Under the CIA, the Debtor is required, among other things, to
11 engage an independent quality monitor to provide regulatory
12 oversight and monitoring at the Debtor's nursing facilities. To
13 this end, Debtor hired Long Term Care Institute ("LTCI") to act as
14 the independent quality monitor.

15 In its March 1, 2007 Independent Monitor Report (Attached as
16 part of Exhibit A to the Motion), on page 24, LTCI reported that
17 "(m)ajor care problems exist in many areas..." Consequently, HHS
18 believes it is imperative that a Chapter 11 Trustee be appointed as
19 soon as possible.

20 II. CORPORATE INTEGRITY AGREEMENT

21 A. Background

22 The Office of Inspector General ("OIG") often negotiates
23 compliance obligations with health care providers and other entities
24 as part of the settlement of federal health care program
25 investigations arising under a variety of civil false claims
statutes. A provider or entity consents to these obligations as

1 part of the civil settlement and in exchange for the OIG's agreement
2 not to seek an exclusion of that health care provider or entity from
3 participation in Medicare, Medicaid and other federal health care
4 programs. False claims submitted in violation of the False Claims
5 Act or Civil Monetary Penalties Law give rise to the OIG's
6 permissive exclusion authority under 42 U.S.C.1320a-7(b) (7).
7 Providers who settle these cases often deny that they were liable or
8 that they committed the alleged conduct.

9 The typical term of a comprehensive corporate integrity
10 agreement is five years (three years for national project cases).
11 These compliance measures seek to ensure the integrity of federal
12 health care program claims submitted by the provider. The more
13 comprehensive integrity agreements include requirements to:

- 14 (1) Hire a compliance officer/appoint a compliance committee;
- 15 (2) Develop written standards and policies;
- 16 (3) Implement a comprehensive employee training program;
- 17 (4) Review claims submitted to federal health care programs;
- 18 (5) Establish a confidential disclosure program;
- 19 (6) Restrict employment of ineligible persons; and
- 20 (7) Submit a variety of reports to the OIG.

21 While many CIAs have common elements, each agreement addresses,
22 in part, the specific facts of the conduct at issue, and is tailored
23 to comport with the existing capabilities of the provider. The
24 integrity agreements often attempt to accommodate and recognize many
25 of the elements of pre-existing voluntary compliance programs.

1 B. The Debtor's CIA

2 _____The Debtor's CIA was entered into on March 1, 2006. The CIA
3 arose as a result of OIG's allegations that the Debtor furnished
4 services that failed to meet professionally recognized standards of
5 health care with respect to the following: patient care planning
6 and assessments; nurses' signal systems; medications and treatments;
7 prescription orders; skin care protocols; resident supervision;
8 resident hygiene; monitoring of resident medical conditions; and
9 failures to observe required staffing levels at Pleasant Care
10 Convalescent-Napa, all of which formed the basis for criminal
11 charges in Napa County Superior Court Case No. CR120791, alleging
12 violations of California Penal Code § 368(c) and violations of
California Health and Safety Code § 1290(c).

13 Unfortunately, the March 1, 2007 Independent Monitor Report,
14 page 2, states that "(t)he results clearly show a very disturbing
15 pattern of decline in performance...the number of deficiencies,
16 health deficiency index and percent severe deficiencies have
17 increased substantially, while the percent of deficiency-free
18 surveys has dropped to zero." In aggravation, on page 7, the
19 following is noted: "The level of Pleasant Care's commitment to
20 meeting the CIA requirements and improving its performance is in
21 doubt after this first reporting period."

22 III. NECESSITY FOR APPOINTMENT OF A TRUSTEE

23 HHS believes that appointment of an disinterested Chapter 11
24 Trustee is clearly in the best interest of the patients living at
25 the Debtor's facilities, and that removal of Emmanuel Bernabe and

1 his friends and family members from any roles in managing or
2 controlling the facilities is the only option under the present dire
3 circumstances.

4 IV. CONCLUSION

5 For the foregoing reasons, HHS joins in the UST's Motion and
6 respectfully requests that the Motion be granted.

7 DATED: April 6, 2007

Respectfully submitted,

8 GEORGE S. CARDONA
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