

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. No.

MAURA HEALEY, ATTORNEY GENERAL
OF THE COMMONWEALTH OF MASSACHUSETTS

v.

BEDFORD GARDENS CARE AND
REHABILITATION CENTER LLC, BEDFORD VILLAGE
CARE AND REHABILITATION CENTER LLC,
HALLMARK CARE AND REHABILITATION CENTER
LLC d/b/a ROCKDALE CARE AND REHABILITATION
CENTER, DIGHTON CARE AND REHABILITATION
CENTER LLC, and HIGHLAND MANOR CARE AND
REHABILITATION CENTER LLC.

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APR 29 2015

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

**ATTORNEY GENERAL'S EX PARTE PETITION
FOR THE APPOINTMENT OF A RECEIVER**

Attorney General Maura Healey respectfully petitions this Court, pursuant to G.L. c. 111, §§ 72M & 72N, for the appointment of a temporary receiver for the following five nursing homes in order to protect more than 200 of their residents from imminent danger of death or serious physical injury: Bedford Gardens Care and Rehabilitation Center LLC ("Bedford Gardens"); Bedford Village Care and Rehabilitation Center LLC ("Bedford Village"); Hallmark Care and Rehabilitation Center LLC d/b/a Rockdale Care and Rehabilitation ("Rockdale"); Dighton Care and Rehabilitation LLC ("Dighton Care"); and Highland Manor Care & Rehabilitation Center LLC ("Highland Manor") (collectively "Respondents," or the "Facilities").

A receiver is necessary: (a) to protect the immediate health and safety of the Facilities' residents by ensuring that they receive the care and support they need, (b) to protect the health

and safety of the residents during the coming weeks by taking measures to ensure that the Facilities retain adequate vendors and staff, and (c) to ensure the implementation of orderly and safe closure of the Facilities and resident transfers over the coming weeks.

The Facilities are at risk of dangerous understaffing because Respondents have not paid some staff their wages and they may not make payroll this Friday (May 3, 2019). The nursing homes are also without critical supplies, because the current operators are not paying their vendors. At least one facility has been put on notice that its food service vendor will no longer deliver food starting tomorrow (April 30, 2019) due to nonpayment. Another facility has run out of milk for its residents. Staff at the Facilities do not have access to Respondents' bank accounts and administrators in charge of paying wages and vendors' bills for critical services have not responded to the Commonwealth or their own staff. The appointment of a receiver would address these issues and ensure the health and safety of residents of the Facilities.

In further support of the Petition, the Attorney General relies on the Affidavit of Sherman Lohnes, Director of the Division of Health Care Facility Licensure and Certification, Affidavit of Whitney Moyer, Chief of the MassHealth Office of Long-Term Services & Supports, Affidavit of Lauren G. Moran, Deputy Chief of the Attorney General's Fair Labor Division, and the accompanying Memorandum of Law.

The Attorney General asks that the Court enter the enclosed Proposed Order for the Appointment of Receiver, pursuant to the Patient Protection Receivership Act, G.L. c.111, § 72M et seq., immediately appointing a receiver for Respondents.

JURISDICTION

1. Jurisdiction is conferred upon this Court by G.L. c. 111, § 72N.

VENUE

2. Venue is proper pursuant to G.L. c. 223, § 5.

PARTIES

3. The Petitioner is Attorney General Maura Healey. Pursuant to G.L. c. 111, § 72N, the Attorney General is authorized to bring an action requesting the appointment of a receiver to operate a long-term care facility as defined by G.L. c. 111, § 71, whenever grounds for receivership exists, as set forth in G.L. c. 111, § 72M.

4. Bedford Gardens Care and Rehabilitation Center LLC is the holder of a license issued by the Massachusetts Department of Public Health ("DPH") to operate a 123-bed long term care facility located at 4586 Acushnet Ave., New Bedford, Massachusetts. See Lohnes Aff. ¶4. According to Bedford Gardens' filings with the Secretary of the Commonwealth, Joseph Schwartz is the registered agent and manager.

5. Bedford Village Care and Rehabilitation Center LLC is the holder of a license issued by DPH to operate a 73-bed long term care facility located at 9 Pope St., New Bedford, Massachusetts. Lohnes Aff. ¶4. According to Bedford Villages' filings with the Secretary of the Commonwealth, Michael Schwartz is the registered agent and manager.

6. Hallmark Care and Rehabilitation Center LLC d/b/a Rockdale Care and Rehabilitation is the holder of a license issued by DPH to operate a 107-bed long term care facility located at 1123 Rockdale Ave., New Bedford, Massachusetts. Lohnes Aff. ¶4. According to Rockdale's filings with the Secretary of the Commonwealth, Joseph Schwartz is the registered agent and manager.

7. Dighton Care and Rehabilitation Center LLC is the holder of a license issued by DPH to operate a 30-bed long term care facility located at 907 Center St., Dighton, Massachusetts. Lohnes Aff. ¶4. According Dighton Care's filings with the Secretary of the Commonwealth, Michael Schwartz is the registered agent and Joseph Schwartz is the manager.

8. Highland Manor Care and Rehabilitation Center LLC is the holder of a license issued by DPH to operate a 26-bed long term care facility located at 761 Highland Ave., Fall River, Massachusetts. Lohnes Aff. ¶4. According to Highland Manor's filings with the Secretary of the Commonwealth, Michael Schwartz is the registered agent and Joseph Schwartz is manager.

FACTUAL BACKGROUND

9. DPH is the state agency responsible for licensing long term care facilities pursuant to G.L. c. 111, §73. Lohnes Aff. ¶3.

10. The Division of Health Care Facility Licensure and Certification ("Division") is a division of DPH and is responsible for the licensure of long-term care facilities under G.L. c. 111, § 71 as well as the protection for the safety of residents who reside in those facilities. *Id.* ¶3.

11. The Facilities are nursing homes licensed by DPH to operate a long-term care facility, each of which is an affiliate of Skyline Healthcare LLC ("Skyline"). Lohnes Aff. ¶4.

12. Massachusetts law requires that any licensed nursing home, including Respondents, must have a licensed Nursing Home Administrator.

The Respondent Nursing Homes

13. DPH became aware of Skyline's difficulties in other states in 2018. DPH then contacted Respondents and Skyline to discuss their plans for the five Massachusetts Facilities. *Lohnes Aff.* ¶5.

14. At that time, Skyline told DPH that a third party was negotiating to purchase all five facilities and that the unaffiliated third-party to which the potential purchaser intended to lease the facilities was managing the facilities during the negotiation process. *Id.* ¶5.

15. Yet, by March of 2019, negotiations for the proposed sale of the Skyline facilities had broken down and the sale did not occur. *Id.* ¶7.

16. When the sale fell through, the Facilities brought in a new manager to oversee the Facilities. *Id.* ¶8.

17. On March 27, 2019, Respondents' Administrators raised serious concerns related to ongoing issues at the facilities, including

- a. The inability to order supplies due to outstanding liabilities to vendors for critical services;
- b. Concerns about whether payroll would be fully funded; and
- c. Inability of facility personnel, including the Administrators, to communicate with representatives of Respondents who could address concerns at the facilities. *See Lohnes Aff.* ¶¶9, 11.

18. On April 5, 2019, administrators at the Facilities told DPH that the facilities may not meet payroll due to a lack of funding and ongoing issues with Respondents' payroll company. *Id.* ¶14.

19. The Administrators were concerned that missing payroll could cause staff to miss their shifts, which would result in insufficient staffing to provide care to the facilities' residents. *Id.* ¶14.

20. Due to the ongoing concerns with staffing levels, resulting from the payroll issues, DPH initiated onsite visits at each of the facilities on April 6th and 7th to monitor staffing levels, supplies, and the provision of critical services, and to determine whether residents were receiving adequate care. Local ombudsmen from the Executive Office of Elder Affairs also visited the facilities on April 6th and 7th to monitor resident safety and care. *Id.* ¶16.

21. Based on Respondents' cumulative, ongoing operational issues, which created a disruptive environment that could adversely impact resident care in these five nursing homes, on April 8, 2019, the DPH sent written notification to Skyline (on behalf of Respondents) prohibiting new admissions to all five facilities, effective April 9, 2019. *Id.* ¶19.

22. On April 11, 2019, Bedford Village residents' personal needs accounts could not be accessed due to a levy on the account. *Id.* Aff. ¶20.

23. DPH met with Respondents, the interim manager for the Facilities, and their attorneys on April 11, 2019 to discuss Respondents' plans to stabilize operations. Respondents did not provide a stabilization plan and the interim manager reported that although he had a plan, he would not provide it unless DPH lifted the limitation on admissions. DPH reiterated that the limitation on admissions could not be lifted unless operations were stabilized and it saw a written plan for accomplishing that. DPH has not received a stabilization plan for the facilities. *Id.* ¶21.

24. On April 12, 2019, staff expressed concern that payments were not being made to temporary nurse staffing agencies or waste management companies at Bedford Gardens, both

providing essential services. Id. ¶22.

25. The Attorney General's Office received multiple complaints from workers at the Facilities regarding late payments, non-payment of wages, bounced checks, non-payment of overtime and failure to provide a proper pay stub. Moran Aff. ¶¶ 4,7,11,13,17, 19,21.

26. Staff at all of Respondents' facilities were due to be paid on Friday, April 19, but many staff were concerned they would not be paid. Lohnes Aff. ¶24; Moran Aff. ¶¶ 11, 12.

27. DPH staff again visited Respondents' facilities on April 20th and 21st to monitor staffing levels, supplies, and provision of critical services, and to see whether residents were receiving adequate care. Local ombudsmen from the Executive Office of Elder Affairs also visited the facilities those days to monitor resident safety and care. Id. ¶24.

The Ongoing Emergency at Respondents' Nursing Homes

28. On Sunday, April 21, 2019, Bedford Gardens moved nineteen residents from the third floor to the first and second floors of the facility, effectively closing the third floor, because the facility did not have enough staff to operate three floors. Id. ¶26.

29. Staff were not paid by direct deposit, as scheduled, on Friday, April 19. Then, on Monday, April 22, 2019, staff at all five Facilities received paper checks without taxes and employee benefits deducted, and without payment for overtime. Id. ¶¶23,25.

30. Multiple vendors have shut off, and threatened to shut off, services to the facilities including:

- a. Highland Manor and Dighton Care phone service was shut off, which the impacted access to patients' electronic medical records and forced staff to rely on paper records (Id. ¶28);

- b. Internet and/or phones at all facilities will be terminated on within the next few days (Id. ¶30);
- c. Employee health, dental and vision benefits will be terminated if premiums are not paid by tomorrow (April 30, 2019) (Id. ¶32);
- d. The delivery of nursing supplies from Twin Med had placed on hold on at the time (Id. ¶29);
- e. Separate phone lines for Bedford Village and Dighton Care required to connect the facilities' fire alarms to the local fire department would be turned off on within the next few days (Id. ¶31);
- f. Aflac has not been paid for three months for the 100% employee paid benefits (Id. ¶33);
- g. Point Click, the electronic medical record service had a balance of over \$50,000 not paid and wanted a payment plan (Id. Aff. ¶34);
- h. Norton, a temporary staffing agency, demanding immediate payment (Id. ¶35);
- i. RNC Nursing, another temporary staffing agency, was owed over \$180,000 for staffing provided to Bedford Gardens, Bedford Village, Dighton and Highland Manor (Id. ¶36);

31. Respondents regularly billed and have been receiving payment from the Commonwealth for services provided to residents who are members of the Massachusetts Medicaid Program, MassHealth. See Moyer Aff. ¶5.

32. MassHealth directed \$528,754 in payments to Respondents by electronic funds transfer that was scheduled to arrive in the facilities' bank accounts on April 22, 2019 to cover services provided from March 1, 2019 to March 31, 2019. Moyer Aff. ¶6.

33. The table below provides a break down of the amount MassHealth transferred to the bank accounts of each of the Skyline Facilities and the bank accounts to which the payments were directed via EFT:

ID/SL	Tax ID	4/23/19 Payment Amount	Bank Name	Last 4 Account	Billing Provider Name
100009617A	474046477	\$62,824.74	CAPITAL ONE, NATIONAL ASSOCIATION	87637	HIGHLAND MANOR CARE AND REHABILITATION CENTER LLC
100009622A	474033739	\$93,874.87	M S FINANCIAL BANK	89181	BEDFORD VILLAGE CARE AND REHABILITATION CENTER LLC
100009628A	474056792	\$26,149.19	CAPITAL ONE, NATIONAL ASSOCIATION	87646	DIGHTON CARE AND REHABILITATION CENTER LLC
10010598A	404021324	\$175,145.47	CAPITAL ONE, NATIONAL ASSOCIATION	87649	ROCKDALE CARE AND REHABILITATION CENTER
100120507A	833793096	\$171,000.52	CAPITAL ONE, NATIONAL ASSOCIATION	87643	BEDFORD GARDENS CARE AND REHABILITATION CENTER LLC
	Total:	\$528,754.79			

Id. ¶ 7.

34. Administrators of Respondents' facilities were not able to access those payments and, in some cases, not able to pay their direct care staff and/or essential vendors as a result of not being able to access these funds. Id. ¶8.

35. On April 23, 2019, staffing at Bedford Gardens was critically low; there were only 3 Certified Nursing Assistants scheduled to care for 75 residents that evening. Lohnes Aff. ¶37.

36. That same day, counsel for Respondents contacted DPH and offered to voluntarily surrender the facility licenses for all five facilities. The same day, DPH sent written notification to Respondents outlining the orderly closure process and the dates by which such closures needed to be effectuated. Id. ¶38., Ex. 2.

37. As of April 24, 2019, more than fifteen staff at the facilities had not received paychecks that were due to be paid April 19, 2019. *Id.* ¶41.

38. DPH developed an expedited closure timeline for each of the five Respondent facilities to limit the possibility that the ongoing operational issues would adversely impact resident care. *See Lohnes Aff.* ¶38, Ex. 1. All five facilities were to be closed no later than May 24, 2019. Bedford Gardens and Rockdale, the two largest, were to close by May 3, 2019. *Lohnes Aff.* ¶38.

39. Respondents cannot provide many critical services to their residents:

- a. Respondents' administrators received a notice from Sysco, the food vendor, that services would end on April 30 due to an overdue balance of \$135,570. *Id.* ¶43.
- b. Bedford Gardens is relying entirely on staffing agencies for its licensed nursing staff and the staffing agency is no longer provide staffing as of today (April 29, 2019 due to non-payment. *Id.* ¶44.
- c. Bedford Gardens and Rockdale have no social workers. *Id.* ¶46.
- d. Administratoes from Bedford Gardens, Bedford Village, and Dighton Care have stated that if staff is not paid on May 3, 2019 few, if any, employees would continue to work. *Id.* ¶50.
- e. Bedford Gardens has no more than one person remaining on its housekeeping staff and only has one laundry worker. *Id.* ¶47.
- f. Only one of two stoves working is working at Dighton Care and there are no funds to cover repairs. *Id.* ¶48.

g. Dighton Care's milk supplier will no longer deliver milk products due to the overdue balance on the account. *Id.* ¶49

40. As of April 28, 2019, there are 203 residents living at the facilities as follows: Bedford Gardens 50, Rockdale 62, Bedford Village 46, Dighton Care 24, and Highland Manor 21. *Id.* ¶¶51-56.

Appointment of a Receiver

41. Based on its investigation, the Department of Public Health believes it is necessary to immediately appoint a receiver to prevent harm to the residents of the facilities. Lohmes Aff. ¶¶57-58. Without a receiver, there is an imminent danger of death or serious physical harm to patients at the facilities. *Id.* Aff. ¶58.

42. Respondents are unable to provide adequate supervision and care to their residents to ensure their health, safety and welfare. Further, Respondents have been unable to come up with a plan to stabilize their operations, effectuate orderly transfers of their residents to other facilities, and an orderly closure of their facilities. The immediate appointment of a receiver is necessary to prevent harm to the facilities' residents.

43. DPH proposes that the Court appoint KCP Advisory Group LLC ("KCP"), by and through Paul Valentine, as receiver for the facilities.¹ A copy of the curriculum vitae for KCP and Mr. Valentine is attached as Exhibit 1. DPH has spoken with Mr. Valentine, who has agreed to accept the appointment if made by the Court. Lohmes Aff. ¶59.

¹ During the past week, KCP and its counsel, Casner & Edwards, had informal discussions with Skyline representatives about KCP potentially providing advisory services to Skyline. Skyline did not retain KCP and there does not appear to be a conflict of interest, but the Attorney General discloses this prior contact out of an abundance of caution.

44. In extraordinary circumstances, MassHealth can and does make advance payments to MassHealth-enrolled nursing facilities for services provided or expected to be provided to MassHealth members. It typically takes four business days for such an advance payment to be processed by the state system and the receiving bank. Moyer Aff. ¶9.

45. Based on the facts and circumstances known to MassHealth at this time, and provided that the Court appoints a receiver for the Skyline Facilities with the authority to open a new bank account or accounts on behalf of the facilities and make payments to direct care staff and essential vendors on behalf of the facilities, MassHealth believes there is a sufficient basis to make an advance payment or payments to the Skyline Facilities in order to ensure continued access to care for MassHealth members. Moyer Aff. ¶11.

CAUSE OF ACTION
For Appointment of a Receiver
G.L. c. 111, § 72M

46. The Attorney General realleges the foregoing paragraphs as if each were fully set forth herein.

47. An emergency exists as each of the Respondent facilities because there is a situation or condition which presents imminent danger of death or serious physical harm to patients, including but not limited to imminent or actual abandonment of an occupied facility.

48. The attached affidavits show that immediate appointment of the receiver, on an ex parte basis, is necessary to prevent harm to the residents living at the Respondent facilities.

49. The emergency exists because Respondents are unable to ensure the health, welfare and safety of their residents, primarily due to a lack of funds resulting in shortages for staffing, food, supplies, and critical services.

50. If the Facility is abandoned by its staff it will have a devastating impact on the health and safety of the Facility's residents and patients, presenting an imminent danger of death or serious physical harm.

51. Appointing a receiver will allow the receiver to access payments previously made to the Respondents and, if necessary, to work with MassHealth to open a new bank account in order to receive funds to help ensure that the residents of the Facilities receive the care they need.

52. With the Court's order, the receiver will have authority to access funds in the Facilities bank accounts as described in paragraph 33 that have MassHealth funds in them to pay for care for the residents.

WHEREFORE, the Court should enter the enclosed Proposed Order For The Appointment Of A Receiver, which among other things, appoints KCP Advisory Group LLC, by and through Paul Valentine, receiver for the Respondents pursuant to G.L. c. 111, § 72M, and make such other orders as are just and proper.

Dated: April 29, 2019

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL


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About KCP Advisory Group, LLC

KCP Advisory Group is a leading provider of financial advisory, corporate restructuring, litigation support, and business performance improvement services to lender, investor, legal and corporate stakeholders. KCP is recognized for providing innovative and creative solutions, with a focus on turnaround and crisis management in financially distressed situations. Based in Massachusetts, with offices in Chicago and New York, the firm serves clients in engagements nationwide.

KCP and its professionals have broad industry expertise, including healthcare, manufacturing, retail, real estate, multifamily housing and financial services.

KCP regularly serves in a fiduciary role – such as receiver or trustee – and in interim management roles including CEO, CFO, and Chief Restructuring Officer.

Selected healthcare engagements include:

- Synergy Healthcare: Receivership of 8 skilled nursing facilities in Massachusetts pending before five courts in NY and MA. Engagement includes closure of two facilities, and financial and operational stabilization of six, preparing them for sale to new owners/operators.
- Legacy Estates: Receivership of an assisted living facility and an independent living facility, both in Memphis, TN.
- Radius Specialty Hospital: Receivership of shuttered specialty hospital in Roxbury, MA
- Sleep Healthcenters: Receivership and orderly windup of this provider of sleep testing and sleep therapy equipment, with locations in New England and the Southwest.

About Paul Valentine

Paul Valentine is Senior Managing Director of KCP Advisory Group. He will lead KCP's engagement as Receiver.

Mr. Valentine specializes in the management, development and operation of high-quality, fast-growth, small-to-mid-size organizations. Mr. Valentine brings a diverse industry background to KCP, including roles in healthcare services, medical devices, retail products and manufacturing. His formal education in accounting and finance is further enhanced by his corporate roles in sales, operations and product development, as well as a number of officer roles including the chief executive position. Mr. Valentine focuses his case matters on Performance Improvement and Corporate Renewal, providing his clients with strategic and marketing advice, while maintaining a solid focus on financial structure and operational efficiencies.

Mr. Valentine has deep executive and consulting experience in healthcare. Currently, he leads KCP's engagement as Receiver of eight skilled nursing facilities in Massachusetts formerly managed by Synergy Healthcare.

Prior to joining KCP, Mr. Valentine held a number of executive positions, including: CEO of Sleep HealthCenters, a multi-center provider of sleep testing and sleep therapy equipment; COO, CFO and President, Children's Medical Ventures, a developer of products and educational services for neonatal intensive care units; CFO of Cape Cod Potato Chips; and CFO of Boston Popcorn. Mr. Valentine holds a Bachelor of Science degree in Accounting and a Master of Business Administration degree in Finance and Entrepreneurship, both from Babson College, Wellesley, MA. He is a member of the Turnaround Management Association.