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

In re:

HUDSON HEALTHCARE, INC.,

Debtor.

Case No. 11-33014 (DHS)

Chapter 11

**APPLICATION IN SUPPORT OF MOTION TO QUASH SUBPOENA SERVED ON
SILLS CUMMIS & GROSS P.C.**

Hoboken Municipal Hospital Authority (the "Authority"), a creditor and party-in-interest in the chapter 11 bankruptcy case (the "Bankruptcy Case") of the above-captioned debtor and debtor-in-possession (the "Debtor"), by and through its undersigned special counsel, hereby respectfully states as follows:

1. Late in the evening of Saturday, September 24, 2011, without any prior notice or discussion, JNESO District Council 1 ("JNESO"), a union representing several hundred nurses employed by the Debtor at the Hoboken University Medical Center (the "Hospital"),¹ issued a subpoena (the "JNESO Subpoena")² to Sils Cummis & Gross P.C., counsel for the Official

¹ The Authority has been informed that over ninety percent of the Debtor's employees who were offered employment by the proposed purchaser of the Hospital have already accepted those offers. Nevertheless, JNESO and its counsel appear to contravene the will of JNESO's constituents for some unknown reason, placing jobs and lives at risk.

² A copy of the JNESO Subpoena is annexed hereto as Exhibit A.

Committee of Unsecured Creditors of the Debtor (the "Committee")—of which JNESO itself is a member—seeking copies of (i) all deposition transcripts in the Bankruptcy Case and (ii) all documents produced to the Committee by the Debtor, the Authority, the proposed purchaser of the Hospital, or the City of Hoboken (the "City"). The return date of the JNESO Subpoena is Monday, September 26, 2011 at 9:00 a.m, just thirty-six hours after issuance and twenty-four hours after the JNESO Subpoena was provided to counsel for the Authority.

2. The JNESO Subpoena must be quashed because it would (a) require the Committee's counsel to disclose information that was provided to it by the Authority on a confidential basis pursuant to a nondisclosure agreement with the Committee and (b) impose an undue burden on the Authority by requiring the Authority to potentially re-review—in just one weekend day—nearly 200,000 pages of documents previously provided to the Committee before authorizing the Committee to produce any of those documents to JNESO. See Fed. R. Civ. P. 45(c)(3).

3. On August 26, 2011, the Committee executed a *Confidentiality and Non-Disclosure Agreement* (the "Confidentiality Agreement") setting forth the terms and conditions upon which the Authority would produce certain confidential materials to the Committee in response to the Committee's subpoena. In pertinent part, the Committee, its professionals, and its members agreed in the Confidentiality Agreement that "[t]he Committee will not use the Confidential Materials for any purpose whatsoever, except to exercise its rights and remedies of any kind or nature and/or discharges its obligations of any kind or nature **as a committee** pursuant to applicable law. . . ." See Confidentiality Agreement at ¶ 3(c) (emphasis added). It is thus irrefutable that Committee members are not permitted to use in their individual capacity any confidential information obtained in their capacity as members of the Committee.

4. In response to the Committee's demands for broad, expedited discovery, the Authority produced nearly 200,000 pages of responsive documents to the Committee's counsel in approximately two weeks' time. Given the incredibly short timing and sweeping scope of the Committee's requests, and in the interest of maintaining an open dialogue with the Committee, the Authority designated as confidential substantially all of the documents it produced, thereby enabling the Committee's professionals to review substantial volumes of financial data, meeting minutes, and electronic mail communications related to the Bankruptcy Case and the sale of the Hospital. However, under the unambiguous terms of the Confidentiality Agreement, the Committee's counsel cannot simply give those documents to a Committee member for use in its individual capacity.

5. JNESO is certainly not a newcomer to the Bankruptcy Case: JNESO's counsel entered an appearance³ just hours after the commencement of the Bankruptcy Case, JNESO sought and obtained a seat on the Committee, and JNESO has been actively involved in proceedings before the Court throughout the Bankruptcy Case and in the ongoing settlement discussions among the Committee, the Debtor, the Authority, and the City for the past two weeks. However, despite its extremely active role in the Bankruptcy Case, the JNESO Subpoena—issued just as those lengthy settlement talks appeared to be approaching a successful resolution—is the first time JNESO has made any attempt to take discovery. This timing is not a coincidence: if the Committee agrees to support to the proposed sale and settlement, JNESO will no longer be able to rely on the Committee and its professionals as its own mouthpiece to disrupt

³ See Docket No. 25. Curiously, JNESO's counsel also represents Apollo Health Street, Inc. ("Apollo"), a creditor of the Debtor that is not a member of the Committee, see Docket No. 43, but JNESO's counsel has not filed a verified statement pursuant to Fed. R. Bankr. P. 2019 disclosing the nature and amount of its multiple clients' claims. Upon information and belief, Apollo has not objected to the pending sale of the Hospital and has reached a resolution of its asserted claim against the Debtor. Apollo, therefore, presumably does not oppose the Debtor's pending motions seeking approval of the sale of its assets or the settlement among the Debtor, the City, and the Authority, making Apollo's position directly adverse to JNESO's apparent stance.

a process that is in the best interests of the Debtor and all of its stakeholders (including JNESO's own members).

6. By issuing the JNESO Subpoena to counsel for the Committee—of which JNESO itself is a member—JNESO is seeking to circumvent the Federal Rules of Civil Procedure (as made applicable by Fed. R. Bankr. P. 9016) to obtain documents from the Authority without actually issuing a subpoena to the Authority, because JNESO knows the Authority would not produce any documents without first entering into a nondisclosure agreement. If JNESO wants to take discovery from the Authority, JNESO must make specific requests of the Authority, see Fed. R. Civ. P. 45(a)(1)(A)(iii); afford the Authority a reasonable opportunity to object to those requests and preserve its rights, see Fed. R. Civ. P. 45(c)(2)(B), (d)(2); and negotiate confidentiality terms governing JNESO's use of the Authority's proprietary information or afford the Authority an opportunity to seek an appropriate protective order, see Fed. R. Civ. P. 26(c). The Court should not permit JNESO to make a disingenuous end run around the terms of the Confidentiality Agreement and the Federal Rules of Civil Procedure.

