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WEST CONTRA COSTA HEALTHCARE
DISTRICT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:
WEST CONTRA COSTA HEALTHCARE
DISTRICT.

Debtor.

Tax ID: 94-6003145

Case No. 16-42917

Chapter 9

**MOTION FOR ORDER AUTHORIZING
DISPOSAL OF PATIENT RECORDS**

Date: January 11, 2017
Time: 1:30 p.m.
Place: 1300 Clay Street, Courtroom 201
Judge: Hon. Roger L. Efremsky

TO THE UNITED STATES TRUSTEE, THE HOLDERS OF THE TWENTY LARGEST
UNSECURED CLAIMS IN THIS CHAPTER 9 CASE, U.S. BANK, THE COUNTY OF
CONTRA COSTA, AND ALL PERSONS HAVING FILED AND SERVED REQUESTS FOR
NOTICE IN THIS CHAPTER 9 CASE

The West Contra Costa Healthcare District, a California Local Health Care District and the
debtor in the above-captioned Chapter 9 case (the "District"), hereby seeks an order pursuant to
Section 351 of the Bankruptcy Code: (i) authorizing the District to dispose of its patient records

(collectively, the “Patient Records”) in the manner prescribed herein; and (ii) granting to the District such other relief as the Court deems just and proper under the circumstances. In support of this Motion, the District relies upon the *Declaration of Kathy D. White in Support of Statement of Qualifications Under 11 U.S.C. § 109(c)* filed on October 20, 2016 [Docket No. 5] (the “White Declaration”) and respectfully states as follows:

RELIEF REQUESTED

Section 351 of the Bankruptcy Code authorizes the District to destroy its Patient Records in the manner described therein in the event the District does not have sufficient funds to pay for the storage of those records in the manner required under applicable federal or state law. As discussed herein, the District lacks sufficient funds to store its Patient Records in the manner required by applicable law and therefore should be permitted to destroy those records in the manner prescribed under Section 351 of the Bankruptcy Code.

STATEMENT OF FACTS

In support of this Motion, the District represents as follows:

1. The District filed its voluntary petition under Chapter 9 of the United States Bankruptcy Code on October 20, 2016 (the “Petition Date”). The District filed this Chapter 9 case in order to obtain relief from creditor collection actions and access to certain revenues needed to operate to provide the District with time to effect a Plan of Adjustment of the District’s debts. The District is a special health care district created in accordance with California’s Local Health Care District Law.

2. As set forth in more detail in the White Declaration, the District has historically operated a hospital known as Doctor’s Medical Center (the “Hospital”) and provided other healthcare-related services to the community. In April 2015, following almost two decades of losses at the Hospital and multiple attempts to reorganize its operations or refinance its indebtedness, the District made the difficult decision to shut down operations at the Hospital. The Hospital property is now protected and maintained by a skeleton crew but is no longer actively in operation.

1 3. During the period in which it operated the Hospital, the District collected and
2 maintained Patient Records in the ordinary course of its business. Under applicable California
3 law, the District is required to maintain these Patient Records for a period of seven years following
4 discharge of each patient. See CAL. CODE REGS. tit. 22 § 70751(c). Further, under a 2012
5 amendment to the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”), when
6 a patient or a patient representative requests their Patient Records, the District must produce those
7 records within 30 days of receiving the request.

8 4. As set forth in detail in the White Declaration, the District is under severe financial
9 distress. The District has been losing money for years and has very tight working capital. The
10 District anticipates that this Chapter 9 case will involve the sale of the Hospital, after which the
11 District will propose a Plan of Adjustment.

12 5. The continued maintenance of the District’s Patient Records costs the District
13 approximately \$250,000 per year. Because the District is operating under severe financial distress
14 and has limited working capital, and because the District is no longer treating patients and plans to
15 sell the Hospital, the District believes that continued maintenance and retention of their Patient
16 Records is not in the best interest of the District or its creditors.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 6. “Duties that arise when a health care business is ceasing operations, such as proper
19 destruction or retention of patient records . . . are covered under § 351 . . . of the Bankruptcy Code
20 . . . and allow the Trustee to carry out such functions.” *In re Banes*, 355 B.R. 532, 536 (Bankr.
21 M.D.N.C. 2006). Section 351 of the Bankruptcy Code specifically provides that “[i]f a healthcare
22 business commences a case under chapter . . . 11, and the trustee does not have a sufficient amount
23 of funds to pay for the storage of the patient records in the manner required under applicable
24 Federal or State law,” then subject to certain specified requirements the trustee may “destroy those
25 records” by “shredding or burning the records” if they are written or by “otherwise destroying
26 those records so that those records cannot be retrieved” if they are “magnetic, optical, or other
27 electronic records.” 11 U.S.C. §§ 351, 351(3); *accord In re LLSS Mgmt. Co., Inc.*, No. 07-02678-
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1 5-ATS, 2008 WL 395184, *2 (Bankr. E.D.N.C. Feb. 11, 2008) (“Section 351 of the Bankruptcy
2 Code provides that if a chapter 7 trustee does not have sufficient funds to pay for the storage of
3 patient records in the manner required under applicable Federal or State law, certain requirements
4 must be met.”); *Banes*, 355 B.R. at 536; *In re 7-Hills Radiology, LLC*, 350 B.R. 902, 903 n.2
5 (Bankr. D. Nev. 2006) (noting that “health care business[es] are restricted in the way in which
6 they may dispose of patient records” under 11 U.S.C. § 351).

7 7. Section 351 provides that, before the trustee or debtor is authorized to destroy a
8 debtor’s patient records, he or she must first publish notice in one or more appropriate newspapers
9 that if the patient’s records are not claimed by the patient or an insurance provider within 365 days
10 after the date of the notification, then the trustee will destroy the patient’s records. *See* 11 U.S.C.
11 § 351(1)(A). Section 351 further provides that during the first 180 days of the 365 day period
12 following the published notices, the trustee must properly attempt to notify each patient and
13 insurance carriers, where applicable, concerning the patient records by mailing to the most recent
14 known address of: (1) the patient, or a family member or contact person for that patient and (2) the
15 appropriate insurance carrier an appropriate notice regarding the claiming or disposing of the
16 patient records. *See id.* at § 351(1)(B). Section 351 further provides that if the patient records are
17 not claimed within 365 days of the date of the published notices, the trustee shall send by certified
18 mail a written request to each appropriate federal agency to request permission to deposit the
19 patient records with that agency. *See id.* at § 351(2). Only after the 365 day period following the
20 published notices has elapsed and the patient records have not been claimed by a patient or
21 insurance provider, and a request to deposit the patient records with the appropriate federal agency
22 has not been granted, may the trustee destroy the patient records. *See id.* at § 351(3); *see also*
23 *LLSS Mgmt. Co.*, 2008 WL 395184, at *2.

24 8. Here, the District’s financial situation establishes that it should be authorized by the
25 Court to destroy its Patient Records in the manner set forth under Section 351 of the Bankruptcy
26 Code. The District has insufficient funds to pay for the storage of Patient Records in the manner
27 required under applicable federal or state law. The District is subject to record retention policies
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1 mandated by federal law under HIPPA. *See LLSS Mgmt.*, 2008 WL 395184, at *2 (listing HIPPA
2 as example of federal statute mandating records retention by health care businesses seeking to
3 destroy patient records under section 351 of the Bankruptcy Code). Additionally, the District
4 operated the Hospital in California and is obligated under California law to maintain the Patient
5 Records for seven years after the discharge of each patient. *See CAL. CODE REGS. tit. 22*
6 *§ 70751(c)*. The cost of maintaining the Patient Records is substantial, costing the District over
7 \$250,000 per year.

8 9. The District intends to comply with all requirements under Section 351 of the
9 Bankruptcy Code, including the publication of a notice in a newspaper of general circulation in
10 west Contra Costa County (collectively, the “Published Notice”). Further, the District intends to
11 promptly notify all patients and appropriate insurance carriers concerning their intention to destroy
12 the Patient Records within 180 days of the Published Notice consistent with Section 351(1)(B) of
13 the Bankruptcy Code. Finally, if the Patient Records have not been claimed within 365 days of
14 the Published Notice by patients or the appropriate insurance carrier, the District intends to notify
15 the United States Department of Health and Human Services (“DHHS”) to request permission to
16 deposit the Patient Records with DHHS. Only after the Patient Records have not been retrieved
17 by a patient or the appropriate insurance carrier within 365 days of the Published Notice and if
18 DHHS does not agree to the District’s request to deposit their Patient Records with the federal
19 agency will the District proceed with the disposal of the Patient Records. The District shall
20 destroy the Patient Records in the manner specified in Section 351(3) of the Bankruptcy Code.

21 Conclusion

22 WHEREFORE, the District respectfully requests that this Court enter an order pursuant to
23 Section 351 of the Bankruptcy Code authorizing the District to dispose of its Patient Records in
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1 the manner prescribed herein and granting to the District such other relief as the Court deems just
2 and proper under the circumstances.

3 Dated: December 1, 2016

DENTONS US LLP

4 By: /s/ Samuel R. Maizel
5 Samuel R. Maizel
6 Attorneys for Debtor
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