

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT
OF THE TRIAL COURT
Civil Action No.

ADAM OWENS, ALVIN WALKER,
Petitioners,

v.

EDGAR P. BENJAMIN HEALTHCARE CENTER,
Respondent.

PETITION FOR APPOINTMENT OF A RECEIVER (G.L. c. 111, § § 72M & 72N)

Petitioners Adam Owens and Alvin Walker respectfully petition this Court, pursuant to the Patient Protector Receivership Act, G.L. c. 111, § § 72M & 72N, for the appointment of a temporary receiver for the Edgar P. Benjamin Healthcare Center (“Respondent” or “the Benjamin” or “the Facility”), a nursing home located in the Mission Hill neighborhood of Boston, in order to protect more than 70 of its residents and patients from imminent danger of serious physical injury or death.

A receiver is necessary: (a) to protect the immediate health and safety of the Facility’s residents and patients by ensuring that they receive the care and support they need; (b) to protect

the health and safety of the residents and patients during the coming weeks by taking measures to ensure that the Facility retains adequate vendors and staff; and (c) to ensure the implementation of orderly and safe closure of the Facility and resident transfers over the coming months, if closure is necessary.

The Facility is at risk of dangerous understaffing because Respondent has missed payroll on numerous occasions over the past several months and is currently in the process of reducing staffing further. The Facility is also without critical and essential supplies because it is not paying its vendors. Medical supplies are lacking, and medical equipment has not been ordered or serviced, leading to life-threatening conditions for residents and patients. Utility arrearages amount to hundreds of thousands of dollars. The appointment of a receiver would address these issues and ensure the health and safety of more than 70 residents and patients of the Facility.

In further support of the Petition, Petitioners rely on the Affidavits of Petitioner Adam Owens (“Owens Aff.”); Petitioner Alvin Walker (“A. Walker Aff.”); Guardian Velma Brinson (“Brinson Aff.”); Director of Nursing Marise Colsoul (“Colsoul Aff.”); Director of Admissions Leslie Joseph-Henderson (“Joseph-Henderson Aff.”); Medicaid Specialist Katherine Blicher (“Blicher Aff.”); Activities Director Helen Walker (“H. Walker Aff.”); State Representative Liz Miranda (“Miranda Aff.”); Attorney Oren Sellstrom (“Sellstrom Aff.”), and the Memorandum of Law.

Petitioners respectfully ask that the Court enter the enclosed Proposed Order for the Appointment of Receiver, pursuant to G.L. c.111, § 72M et seq., immediately appointing a receiver for Respondent.

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. Petitioner Adam Owens is the husband and guardian of a resident at the Facility. *See* Owens Aff. ¶ 1. Mr. Owens' wife came to reside at the Benjamin after suffering a massive stroke. *Id.* ¶ 2.

4. Petitioner Alvin Walker is the son of a resident at the Facility. *See* A. Walker Aff. ¶ 1. Mr. Walker's mother has resided at the Benjamin since 2023. *See id.* ¶ 2.

5. On or about February 27, 2024, Petitioner Owens, Petitioner Walker, and 32 other family members, residents, guardians, and staff of the Benjamin petitioned the Massachusetts Department of Public Health (DPH) and the Massachusetts Attorney General seeking a receivership under G.L. c.111, § 72M et seq. *See* Owens Aff. ¶ 3; Walker Aff. ¶ 3; Joseph-Henderson Aff. ¶ 2 (Ex. A). More than five (5) days have elapsed, and neither DPH nor the Attorney General has commenced action. Petitioners are therefore authorized, pursuant to G.L. c. 111, § 72N, 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.

6. Edgar P. Benjamin Healthcare Center is a non-profit corporation and the holder of a license issued by DPH to operate a skilled nursing facility located at 120 Fisher Avenue, Boston, Massachusetts 02120. *See* Sellstrom Aff. ¶ 2, Ex. A.

FACTUAL BACKGROUND

7. The Benjamin was first created in 1927 and was originally known as Resthaven Nursing Home. Sellstrom Aff. ¶ 2, Ex. A.¹ It was founded by Edgar P. Benjamin, a noted attorney and philanthropist who donated the facility to the community as a charitable corporation.² It is the only longstanding nursing home of its kind in New England created to serve Black elderly and frail residents. Today, the vast majority of its residents continue to be people of color, and it is highly valued by the diverse families of Mission Hill and Roxbury.³ Approximately 70 residents and patients are currently at the Benjamin. *See* Joseph-Henderson Aff. ¶ 1.

8. The Facility was placed into receivership in the late 1980s, stabilized, and moved out of receivership in the 1990s. Its Administrator at the time, Myrna Wynn, helped establish the Benjamin as a premier nursing home and rehabilitation center. This demonstrates the high effectiveness of receivership, specifically at the Benjamin.

9. Since approximately 2014, the Administrator and Executive Director of the Benjamin has been Tony Francis (“Administrator”). Under Mr. Francis’ management, and particularly over the past twelve (12) to eighteen (18) months, the Facility has experienced significant deficiencies that place the residents at grave risk. The Facility submitted a Voluntary Notice of Closure on February 12, 2024, with a proposed closing date of July 1, 2024. *See* Sellstrom Aff. ¶ 3, Ex. B.

10. Most alarmingly, on numerous recent occasions, the Facility has been unable to make payroll. In November 2023, for example, staff went without pay for weeks on end. Health

¹ *See also* Edgar P. Benjamin Healthcare Center, “About Us,” *available at* <https://epbhc.org/about/> (last visited Mar. 27, 2024).

² *Id.*

³ *Id.* (noting “service to culturally diverse populations”); *see also* Miranda Aff. ¶ 2.

insurance premiums went unpaid as well, so that employees were unable to access their health insurance. *See* Joseph-Henderson Aff. ¶¶ 8-14; Colsoul Aff. ¶ 12; Blicher Aff. ¶ 19.

11. As a result of this failure to make payroll, the Facility experienced significant problems with understaffing, as per diem staff began “calling out” – more specifically, not showing up for work for the day. *See* Joseph-Henderson Aff. ¶¶ 8-14; Colsoul Aff. ¶ 15; H. Blicher Aff. ¶ 21. At one point, there were only two nurses and one certified nursing assistants (CNAs) for the entire facility, approximately one-third of the normal staffing level. Joseph-Henderson Aff. ¶ 9.

12. After weeks without payment, employees were finally paid in late November. However, weeks later, the Facility again missed payroll and additional periods of under-staffing occurred. *See* Colsoul Aff. ¶ 14; Blicher Aff. ¶ 16.

13. The danger to residents from mismanagement and under-staffing is grave. When insufficient staff are available, patients receive necessary medications such as insulin and blood pressure medicine late, if at all. *See* Joseph-Henderson Aff. ¶ 10; Colsoul Aff. ¶ 19; Blicher Aff. ¶ 24. Staff are unavailable to attend to patients who may be experiencing medical emergencies. *See* Joseph-Henderson Aff. ¶ 12. Residents try to get out of their beds themselves, risking falls – a significant health problem for seniors, which can lead to further injury, disability, deterioration, and even death. This creates a dangerous loop at the Facility as understaffing exacerbates medical conditions, which compounds the need for more resources and support.

14. Other services are also severely curtailed when inadequate staff are available because they are not being paid properly by the Benjamin. Meal service and scheduled psychosocial activities are delayed or missed. This is harmful for an elderly population who need adequate nutrition and activities to prevent deteriorating physical, mental, and emotional conditions. *See*

Joseph-Henderson Aff. ¶ 14; Col soul Aff. ¶ 18; Blicher Aff. ¶ 24. If the Facility cannot guarantee that they will be regularly fed, it cannot ensure the wellbeing and safety of its residents. Dependent on the Facility for their needs, residents at the Facility are essentially held hostage as they experience interruption and disruption in their day-to-day care.

15. In addition to serious problems with meeting payroll, the Benjamin has not paid vendors, leading to compromised care for residents. Basic care items are not available. Equipment is in disrepair. For example, at least two residents need colostomy bags because their colons do not function normally. *See* Joseph-Henderson Aff. ¶ 16; Col soul Aff. ¶ 31. The Benjamin recently ran out of colostomy bags because they had not been ordered. Joseph-Henderson Aff. ¶ 16.

With no ability to otherwise collect fecal matter, staff had to wrap an elderly resident in a towel to prevent feces from going everywhere. Joseph-Henderson Aff. ¶ 16. This is intolerable not only medically but from a human dignity perspective.

16. “Call light” technology – typically, a bedside mechanism or button – serves as a communication tool for residents to request assistance from care providers.⁴ By providing residents with the ability to request immediate assistance, the “call light” system is an indispensable resource and intervention for patient-focused care. Currently, at the Facility, approximately 10 “call lights” are non-functioning. Col soul Aff. ¶ 30. The risk to residents from non-functioning “call lights” cannot be overstated. Residents who are experiencing medical emergencies, particularly in the nighttime, have no way to call staff for help when they need it. At the Facility, given the “call light” deficiencies, the threat of injury and even death is real and ongoing. *Id.*

⁴ *See, e.g.*, “Falls Prevention Efforts – Use of Call Light,” University of Michigan School of Nursing, available at <https://www.youtube.com/watch?v=uz2o36iA9hc> (last visited Mar. 27, 2024) (instructional video for patient use of “call lights”).

17. Other equipment is broken or in disrepair, including wheelchairs and “hoyer lifts”⁵ – machines used to help seniors with mobility challenges to get out of bed or to navigate the bathroom. Joseph-Henderson Aff. ¶ 18. This creates dangerous conditions. *Id.* When “hoyer lifts” are broken, or have not been adequately serviced due to arrears, the risk is that residents will fall out of the medical lifts mid-air, creating an imminent risk of severe injury. *Id.*

18. Nutrition is deteriorating at the Benjamin, where the Director of Nursing reports that a dietician has not been on-site at the Facility on a regular basis. Colsoul Aff. ¶ 27. Weekly risk assessment meetings have not been held since January 2024. *Id.* ¶ 28. At least 20 patients have experienced significant weight loss from December 2023 to March 2024. *Id.* ¶ 29. Without regular on-site intervention from a professional with expertise in nutrition, the Facility cannot meaningfully address the dietary health needs of elderly and sick people.

19. Security at the Facility has also experienced alarming gaps. Whereas the Facility once had a full-time security guard, there are now times when the front desk is unattended due to under-staffing. Blicker Aff. ¶ 25. This means that anyone off the street can enter the building placing both residents and staff at risk. The danger is real: staff report specific instances where unauthorized visitors have made their way to residents’ rooms, intimidating and threatening those in the building. *Id.* ¶ 26. This serious security breach compromises the integrity of the Facility and jeopardizes human lives.

20. Despite serious challenges, the Facility continues to receive significant income and revenue, including for patient care from various sources such as public and private insurance (approximately \$720,000/month). *Id.* ¶ 10. The Facility also receives rental income from a

⁵ “Five Factors to Consider When Selecting a Medical Lift for Your Healthcare Facility,” available at <https://www.youtube.com/watch?v=DxCTLyaboj8> (last visited Mar. 27, 2024) (containing images of “hoyer lifts” and explaining typical uses).

charter school that leases a floor of the building (at least \$75,000/month). *Id.* In 2021, the Facility received \$1,622,636 in Paycheck Protection Program (PPP) support from the federal government.⁶ As recently as 2022, as a result of an influx of revenues brought on by pandemic relief funding, the Facility was flush with cash. *Id.* ¶ 28.

21. There are numerous red flags concerning the current management of the Facility – starting with the fact that the Benjamin has gone from being flush with revenue to not paying staff for weeks at a time – payroll being the most basic function that an Administrator must meet.

22. Other significant concerns about the current Administration include:

- So-called “loans” made by the Administrator to the Facility with Board-approved re-payment terms of 12% interest (Joseph-Henderson Aff., Ex. A (Petition to the Massachusetts Attorney General), Exs. A, D);
- Investments of the Facility’s funds in questionable cryptocurrency exchanges that have lost significant amounts of money (approximately \$100,000) (*Id.*, Ex. L);
- A Board of Directors, which is charged with providing oversight and governance, that has declined from approximately 12 people in 2014 to approximately 4 people after Mr. Francis’ arrival. Today, the Board

⁶ On January 23, 2021, through Rockland Trust Company, the Benjamin received a PPP loan of \$1,622,636. The loan was fully forgiven providing the Facility with an infusion of cash. *See* U.S. Government, Pandemic Oversight, available at <https://www.pandemicoversight.gov/ppp-simple-search-landing?pfilters=%5B%7B%22column%22%3A%22Borrower%22%2C%22operand%22%3A%22IN%22%2C%22values%22%3A%5B%22EDGAR+P.+BENJAMIN+HEALTHCARE+CENTER+THE%22%5D%7D%2C+%7B%22column%22%3A%22Borrower+city%22%2C%22operand%22%3A%22IN%22%2C%22values%22%3A%5B%22Boston%22%5D%7D%5D> (last visited Mar. 27, 2024).

of Directors is down to just 3 people (one of whom is Mr. Francis), *see* Sellstrom Aff. ¶ 5, Ex. D (Secretary of the Commonwealth Business Entity Summary) with the removal of Board members who have raised concerns about financial improprieties. Joseph-Henderson Aff., Ex. A (Petition to Attorney General), Ex. C.

- At the same time, a sharp rise in the Administrator’s salary as reported in the Benjamin’s publicly available IRS tax forms: from 2015 to 2021, the Administrator’s reported salary quadrupled from at least \$156,181 in 2015 to at least \$628,592 by 2021. Sellstrom Aff., ¶¶ 6-7, Exs. E, F (IRS Form 990s).
- Enormous past due amounts on utilities totaling hundreds of thousands of dollars. Joseph-Henderson Aff., Ex. A (Petition To Attorney General), Ex. L.

23. Respondent’s cumulative, ongoing operational issues have created a disruptive environment that adversely impacts resident care and safety.

The Ongoing Emergency at The Facility

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

25. As of March 27, 2024, there are approximately 70 residents and patients living at the Facility.

Appointment of a Receiver

26. Petitioners believe it is necessary to immediately appoint a receiver to prevent harm to the residents of the Facility. Without a receiver, there is an imminent danger to residents at the Facility of serious physical harm and death.

27. Respondent is unable to provide adequate supervision and care to its residents to ensure their health, safety and welfare. The immediate appointment of a receiver is necessary to prevent harm to the Facility's residents.

28. Petitioners respectfully propose that the Court appoint Attorney Joseph D. Feaster, Jr., as receiver for the Facility. Attorney Feaster has longstanding ties to the community, a wealth of relevant experience, and has deep expertise having previously served for five years as a receiver for the Roxbury Comprehensive Community Health Center. A copy of Attorney Feaster's professional profile is attached as Exhibit G to the Sellstrom Affidavit. Petitioners have spoken with Attorney Feaster, who is ready, willing, and able to accept the appointment if made by the Court. Sellstrom Aff. ¶ 8.

CAUSE OF ACTION

(For Appointment of a Receiver G.L. c. 111, § 72M)

29. Petitioners reallege the foregoing paragraphs as if each were fully set forth herein.

30. An emergency exists as to the Respondent facility because there is a situation or condition which presents serious physical harm to patients and imminent danger of death.

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

32. The emergency exists because Respondent is unable to ensure the health, welfare and safety of its residents, primarily due to a lack of funds resulting in life-threatening shortages for staffing, food, supplies, equipment, and critical services.

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

34. Appointing a receiver will allow the receiver to access payments previously made to the Respondent and, if necessary, to work with insurers such as MassHealth and other payors to receive funds to help ensure that the residents of the Facility receive the care they need and deserve.

35. With the Court's order, the receiver will have authority to access funds in the Facility's bank accounts that contain MassHealth and other Facility funds to pay for care for the residents and patients.

WHEREFORE, the Court should enter the enclosed Proposed Order For The Appointment Of A Receiver, which among other things, appoints Attorney Joseph D. Feaster, Jr., receiver for the Respondent, pursuant to G.L. c. 111, § 72M, and make such other orders as are just and proper.

Dated: March 28, 2024

Respectfully submitted,

/s/ Oren M. Sellstrom

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