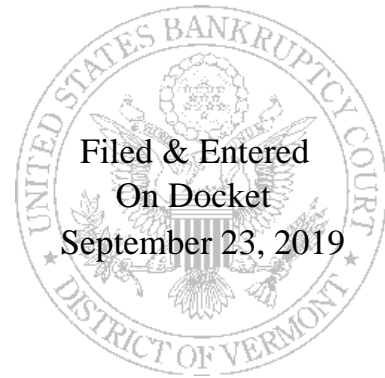


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

Springfield Hospital, Inc.,
Debtor,

Case # 19-10283
Chapter 11

In re:

Springfield Medical Care Systems, Inc.,
Debtor.

Case # 19-10285
Chapter 11

ORDER
GRANTING DEBTORS' MOTIONS FOR A DETERMINATION
THAT APPOINTMENT OF A PATIENT CARE OMBUDSMAN IS NOT NECESSARY, AND
DENYING DALKE AND U.S. TRUSTEE'S REQUESTS FOR APPOINTMENT OF PATIENT CARE OMBUDSMAN

Springfield Hospital, Inc. (the "Hospital") and Springfield Medical Care Systems ("SMCS" and, collectively, the "Debtors"), each filed a chapter 11 bankruptcy case on June 26, 2019. Each of the Debtors is a non-profit business corporation that delivers health care services to communities in southeastern Vermont and southwestern New Hampshire (case # 19-20183, doc. # 5, ¶ 9 and case # 19-10285, doc. # 11, ¶ 8)¹. In response to the Court's entry of an Order setting a hearing on whether a patient care ombudsman (a "PCO") should be appointed in this case (doc. # 54), the U.S. Trustee (the "UST") filed a statement and supplement urging the Court to appoint a PCO (doc. ## 62, 67, the "UST Statement"), creditors Cammie and David Dalke filed a memorandum of law in support of the appointment of a PCO (doc. # 65), and the Debtors each filed a response to the Order and a motion seeking a determination that a PCO is not necessary in either case (doc. ## 64, 66, the "Motions"). Based on those filings, as well as the controlling provisions of the Bankruptcy Code and Bankruptcy Rules, see 11 U.S.C. § 101(27A) and Bankruptcy Rule 2007.2, and as detailed in earlier Orders, this Court has previously found

¹ All docket references hereafter include only the Springfield Hospital, Inc., docket number, but all such documents or their equivalents have also been filed in, and can be found on the docket of, the Springfield Medical Care Systems, Inc. case as well, unless otherwise indicated.

- (1) each Debtor is a health care business for purposes of these bankruptcy cases, see 11 U.S.C. § 101(27A);
- (2) an evidentiary hearing was necessary to determine whether a PCO is necessary in each of these cases, see 11 U.S.C. § 333 and Bankruptcy Rule 2007.2(a), and an Order was entered setting that evidentiary hearing for September 20, 2019 (doc. # 72); and
- (3) on an interim basis, and pending that evidentiary hearing, no PCO was necessary, see Bankruptcy Rule 2007.2(a).

The Court assumes the parties' familiarity with the full procedural history relating to the appointment of a PCO in these cases, and does not repeat it here. A summary of the arguments the Debtors and UST have presented on this issue is included in the Order entered on July 17, 2019 (doc. # 72).

On September 20, 2019, the Court held an evidentiary hearing at which the parties introduced four (4) exhibits regarding the Hospital and two (2) exhibits regarding SMCS (with the parties' stipulation to admit them), as well as the testimony of two witnesses: Joshua Dufresne, acting chief executive officer of SMCS and Michael Halstead, interim chief executive officer of the Hospital. Both witnesses testified credibly, and in great detail, with respect to the policies, procedures, and operations of the respective Debtor for whom they worked, and described how the various regulations and internal systems currently in place worked to effectively monitor patient care and to maintain consistently high levels of patient care. They each concluded by stating they were persuaded a PCO was not necessary in light of (i) the priority each of them assigned to patient care and communicated to their staffs as part of each Debtor's institutional culture; (ii) the effective systems each Debtor already had in place for both patients and staff to easily file complaints; (iii) the Debtors' history of extremely few complaints based on patient care; (iv) the ongoing annual, targeted, and random regulatory audits; (v) their recognition of the need to maintain exemplary patient care in order to sustain the financial viability necessary to succeed in chapter 11 and thereafter. They also testified persuasively that the Debtors were operating on a very thin budget and the cost of a PCO's services – no matter how low – would impose a financial strain on the Debtors and distract the Debtors' management and staff from the critical day-to-day operations of the Debtors. The UST cross-examined the witnesses on each of these points, and argued that, notwithstanding the witnesses' testimony, the Debtors had the burden of showing the appointment of a PCO was unnecessary and the Debtors had failed to carry that burden under applicable case law.

In accordance with its responsibilities under the Bankruptcy Code and Rules, and after careful consideration of the Debtors' Motions, the UST Statement, the memoranda of law, the exhibits admitted and witness testimony presented at the September 20, 2019 hearing, and the applicable and case law,

THE COURT FINDS it has jurisdiction over this contested matter, adequate notice was given and all parties in interest had a sufficient opportunity to present evidence and arguments with respect to whether a PCO should be appointed in these cases, and the Debtors have met their burden of proof in demonstrating a PCO is not necessary in either of these cases.

THE COURT FURTHER FINDS the applicable legal test for determining whether a PCO is necessary is set forth in In re Alternate Family Care, 377 BR 754, 758 (Bankr. S.D. Fla. 2007), accord, In re Vartanian, 2007 Bankr. LEXIS 4274, 2007 WL 4418163 (Bankr. D. Vt. Dec. 13, 2007), which includes the following factors:

- the cause of the bankruptcy filing,
- the presence and role of licensing or supervising entities,
- the Debtor's past history of patient care,
- the ability of the patients to protect their rights,
- the level of dependency of the patients on the facility,
- the likelihood of tension between the interests of the patients and the Debtor,
- the potential injury to the patients if the Debtor drastically reduced its level of patient care,
- the presence and sufficiency of internal safeguards to ensure appropriate level of patient care, and
- the impact of the cost of a PCO on the likelihood of a successful reorganization.


THE COURT FURTHER FINDS the record in this case establishes these factors weigh in favor of the Debtors.

Accordingly, and for the reasons the Court stated on the record at the September 20, 2019 hearing, **IT IS HEREBY ORDERED** (I) the Debtors' Motions for a determination a PCO is not necessary is GRANTED, and (II) the UST and Dalke requests for appointment of a PCO are DENIED, subject to the preservation of rights set forth in the Bankruptcy Rules and this Order.

IT IS FURTHER ORDERED the UST or any party in interest may, and is encouraged to, file an emergency motion, on shortened notice, to appoint a PCO if the facts and circumstances indicate such appointment is necessary to protect patients, at that future date, pursuant to Bankruptcy Rule 2007.2(b).

SO ORDERED.

September 23, 2019
Burlington, Vermont


Colleen A. Brown
United States Bankruptcy Judge