

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

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| IN RE: |) | CASE No. | 18-50661 (JAM) |
| |) | | |
| LITCHFIELD LASER SKIN CARE, LLC, |) | CHAPTER | 11 |
| |) | | |
| DEBTOR. |) | RE: ECF No. | 13 |
| |) | | |

**RULING AND ORDER ON MOTION REGARDING
APPOINTMENT OF PATIENT CARE OMBUDSMAN**

On May 25, 2018, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to 11 U.S.C. §§ 1107 and 1108, the Debtor remains in possession of its assets and continues to operate its business as a debtor in possession.

On June 7, 2018, the Debtor filed a motion seeking determination of whether the Debtor is a health care business pursuant to 11 U.S.C. § 101(27A), and if so, whether the Court should appoint an ombudsman for the protection of the Debtor's patients pursuant to 11 U.S.C. § 333(a)(1) (the "Motion Regarding Appointment of Patient Care Ombudsman," ECF No. 13). In support of the Motion Regarding Appointment of Patient Care Ombudsman, a principal of the Debtor filed an affidavit setting forth facts and circumstances to support a finding that the appointment of an ombudsman is not necessary in this case (the "Affidavit," ECF No. 13).

According to the Affidavit, the Debtor is a cosmetic provider that performs elective procedures of hair and tattoo removal and skin rejuvenation and does not provide inpatient services. These procedures are performed by a board-certified physician with seventeen (17) years of experience in cosmetic skin care. Since 2003, the Debtor has served approximately 1,000 patients and received two complaints¹ alleging improper service, both of which were subsequently dismissed. Furthermore, the Debtor has provided its patients with disclosures and

¹ The exact nature of the complaints is unclear.

statements of their rights as the Debtor's patients. Because the Debtor provides cosmetic procedures that are not invasive, and because the same services offered by the Debtor are readily available from other cosmetic providers, the Debtor's patients may decline to receive any service offered by the Debtor.

On June 26, 2018, a principal of the Debtor, counsel for the Debtor, and the United States Trustee appeared for a hearing on the Motion Regarding Appointment of Patient Care Ombudsman. During the hearing, the United States Trustee took the position that it is not necessary to appoint an ombudsman at this time. At the conclusion of the hearing, the Court took the matter under advisement.

Section 333(a)(1) of the Bankruptcy Code provides that if the Debtor is a health care business pursuant to 11 U.S.C. § 101(27A), the Court must determine whether the appointment of an ombudsman is necessary for the protection of patients under the specific facts of a case. *See* 11 U.S.C. § 333(a)(1). The decision to appoint an ombudsman is within the discretion of this Court. *See In re North Shore Hematology-Oncology Assoc.*, 400 B.R. 7, 11 (Bankr. E.D.N.Y. 2008) (citing *In re Valley Health Sys.*, 381 B.R. 756, 762 (Bankr. C.D. Cal. 2008)). In *In re Alternate Family Care*, 377 B.R. 754 (Bankr. S.D. Fla. 2007), the court identified the following nine non-exclusive factors that may be helpful in the determination of whether to appoint a patient care ombudsman:

1. The cause of the bankruptcy;
2. The presence and role of licensing or supervising entities;
3. Debtor's past history of patient care;
4. The ability of the patients to protect their rights;
5. The level of dependency of the patients on the facility;

6. The likelihood of tension between the interests of the patients and the debtor;
7. The potential injury to the patients if the debtor drastically reduced its level of patient care;
8. The presence and sufficiency of internal safeguards to ensure appropriate level of care; and
9. The impact of the cost of an ombudsman on the likelihood of a successful reorganization.

See Alternate Family Care, 377 B.R. at 758.

Applying the factors identified in *Alternate Family Care*, the Court finds that even if the Debtor is a health care business pursuant to 11 U.S.C. § 101(27A), the appointment of an ombudsman is not necessary at this time. As to the first factor, the Debtor incurred substantial debts when it expanded its business operations which led to the filing of bankruptcy case. The Debtor performs elective cosmetic procedures that are not invasive and does not provide inpatient services. Furthermore, the Debtor's patients may decline to receive any service offered by the Debtor without any adverse effect on their health, and the same service offered by the Debtor is available from other cosmetic providers. Nothing in the record of this case raises any concern with respect to any of the factors enumerated in *Alternate Family Care*.

For those reasons, the Court finds that it is not necessary to appoint a patient care ombudsman at this time. However, pursuant to Fed. R. Bankr. P. 2007.2(b), upon good cause shown by the United States Trustee or any party in interest, the Court may order the appointment of ombudsman at any time during the pendency of the Debtor's case.

Accordingly, it is hereby

ORDERED: The relief sought in the Motion Regarding Appointment of Patient Care Ombudsman is **GRANTED**. Pursuant to 11 U.S.C. § 333(a)(1), the appointment of a patient care ombudsman is not necessary at this time due to the specific facts of this case.

Dated at Bridgeport, Connecticut this 29th day of June, 2018.

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut