

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)
)
Parkview Adventist Medical Center,) Chapter 11
) Case No.
Debtor.)

**EMERGENCY MOTION FOR APPROVAL OF TRANSITION OF CERTAIN
HEALTH CARE AND RELATED SERVICES
AND FOR OTHER RELIEF**

Parkview Adventist Medical Center, the above-captioned debtor and debtor-in-possession in these Chapter 11 proceedings (the “Debtor”), by and through its undersigned counsel, hereby moves, *on an emergency basis*, for authority to modify the ordinary course of its business operations, and (i) to transition certain health care and related services currently provided to it by Central Maine Medical Center (“CMMC”) and Central Maine Healthcare Corporation (“CMHC”) to a new provider, Bluewater Emergency Partners of Brunswick, LLC (“Bluewater”), (ii) to reject certain executory contracts between it and CMMC and CMHC (a copy of each of the executory contracts to be rejected are annexed to the Verified Statement of Randee Reynolds (the “Reynolds VS”), as Exhibits A and B) and (iii) to enter into a new contract with Bluewater (a copy of which is annexed to the Reynolds VS as Exhibit C), all as more fully set forth herein.

I. SUMMARY

1. The Debtor is a faith-based, non-profit 501(c)(3) Maine corporation that operates an acute care hospital located in Brunswick, Maine. Prior to the commencement of this case, the Debtor provided emergency services, inpatient services, and a variety of outpatient, ambulatory clinics and other medical services to the greater Brunswick,

Maine, community. The Debtor provided certain of these services through, among other things, contracts with CMMC and CMHC.

2. As more fully set forth below, the Debtor has experienced significant and long-term financial challenges that require the Debtor to change its operations in order to continue to fulfill its mission of providing quality health care services in a faith based, mission driven environment. In particular, for both economic and clinical reasons, the Debtor is unable to continue operating under certain of the current contracts with CMMC and CMHC, and it has therefore, determined that these contracts must be rejected and terminated. In their place, and working in collaboration with Mid Coast Hospital, a non-profit hospital also located in Brunswick, Maine ("Mid Coast"), the Debtor has developed a multi-phase plan which redefines its health care delivery services from both a financial and a clinical perspective. As detailed below, the first phase of this plan involves an immediate transition of emergency department services from personnel provided by CMMC to Bluewater, the transfer of current inpatients to other hospitals, and the continuation of high quality out-patient and other ancillary services for which the Debtor is well-known. The second phase contemplates a sale of the Debtor's Hospital facility in Brunswick to Mid Coast with that facility being continuously operated as a division of Mid Coast, devoted to providing out-patient services including physician practices, a walk-in clinics, diagnostic services including, but not limited to, radiology and lab services, rehabilitative services including, but not limited to, physical and occupational therapy, ambulatory surgery, an oncology and hematology infusion center and a wellness center. The Debtor believes that termination of the current relationship with CMMC and CMHC, and the collaboration with Bluewater and Mid Coast as set forth herein, is a

sound exercise of the Debtor's business judgment for a number of reasons explained more fully below, and will improve the quality of health care services delivered to the Greater Brunswick community.

II. JURISDICTIONAL STATEMENT

3. On June 16, 2015 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). The Debtor continues to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code. No trustee or examiner has been appointed in the Debtor's Chapter 11 case (the "Case"), and no official committee has been appointed or designated.

4. The Debtor is a Maine non-profit corporation. It operates a faith-based acute care community hospital located in Brunswick, Maine, affiliated with the Seventh Day Adventist Church. The Debtor's mission is to provide services supporting the physical, emotional and spiritual wellness of its patients.

5. The Debtor currently provides a number of different types of in-patient and out-patient medical services, including (i) cardiopulmonary services, (ii) perioperative services, (iii) emergency services, (iv) laboratory services, (v) intensive care services, and (vi) medical/surgical services. The Debtor, either directly or indirectly, also offers primary care and specialty practice medical care in a number of areas, including, cardiology, pediatrics, family health, and oncology and hematology services. The Debtor's primary business operations have consisted of owning and operating a 55-bed hospital in Brunswick, Maine (the "Hospital").

6. The Debtor is the sole owner of a number of subsidiaries, including Parkview Management Services Organization (“PMSO”), Parkview Professional Building (“PPPB”), Parkview Medical Arts Building Unit Owners Association (“PMAB”), Parkview Medical Realty Corp. (“PMRC”) and Parkview AMC Energy, LLC (“PAMCE” and collectively with PMSO, PPPB, PMAB and PMRC the “Affiliates”). PMSO is a for-profit entity that provides physician billing services to the Debtor; PPPB and PMAB are for-profit business entities relating to condominium units (office space) currently or formerly owned by the Debtor; PMRC is a Maine for-profit entity that owns the fee interest in the real estate on which the Parkview Medical Arts Building is located; and PAMCE is a Maine limited liability company that was formed to participate in an energy power pool. None of the Affiliates are debtors in this Court.

7. This Court has jurisdiction over the above-captioned bankruptcy case pursuant to 28 U.S.C. §§ 157(a), 1334(a), 1408(1) and Rule 83.6 of the Local Rules of the United States District Court for the District of Maine (the “District Court”), pursuant to which all bankruptcy cases filed in Maine under the Code are automatically referred by the District Court to this Court. This is a core proceeding. The Court has jurisdiction to enter a final order on this Motion pursuant to 28 U.S.C. §§ 157(b)(2)(A) (M) and (O).

III. GENERAL ALLEGATIONS

8. Prior to the commencement of this Case, the Debtor provided certain of its health care services, including, emergency medical services, through, among other things, medical service contracts with CMMC and CMHC. These contracts can be described as follows: (a) that certain Emergency Medicine Management Agreement by and between the Debtor and CMMC dated December 5, 2003 (the “ED Agreement”), pursuant to

which CMMC provided management and professional physician services necessary to adequately staff and operate the Debtor's emergency department; (b) that certain Administrative Support and Service Agreement by and between the Debtor and CMHC dated April 14, 2009 (the "CMHC ASA"), pursuant to which CMHC was to provide third party support and third party administrative services and expertise; and, (c) that certain Fiscal and Billing Services Management Agreement by and between the Debtor and CMHC dated May 1, 2015 (the "Billing Agreement"), pursuant to which CMHC provides certain fiscal, billing and administrative support services.

9. The ED Agreement was entered into in 2003. The CMHC ASA was entered into in 2009. Since the time the Debtor entered into the foregoing contracts, the Debtor's inpatient and emergency department census has steadily declined. Although the reduced demand for inpatient and emergency department services reflects national trends, the decline in inpatient and emergency department services has had a profound effect on the Debtor's financial stability. In addition to experiencing a reduced demand for inpatient services, the Debtor and other health care providers have experienced an increase in health care costs, including the rising costs associated with delivering state of the art diagnostic and medical services, which have made it challenging, at best, for the Debtor to continue to offer services which are duplicative of those offered by Mid Coast. Simply put, the Debtor is unable to sustain continued operations under the ED Agreement and the CMHC ASA (collectively, the "Rejected CMMC Contracts"). At this time, the Rejected CMMC Contracts, and the business model through which Debtor has historically operated in fulfilling its mission, are neither financially viable nor clinically prudent. The Debtor has concluded, in the sound exercise of its business judgment, that

continued operation under the Rejected CMMC Contracts continues to unnecessarily duplicate healthcare resources in the community and in the absence of re-structuring its delivery system will further jeopardize the Debtor's ability to fulfill its healthcare and faith based mission.

10. In view of the foregoing, the Debtor has developed a multi-phase transition plan to redefine its health care delivery services, in a manner consistent with its mission (the "Transition Plan"). The Transition Plan was developed by the Debtor prior to the commencement of this case working in collaboration with Mid Coast and, boiled down to its essence, proposes to preserve the best components of the Debtor's health care services and, ultimately, to combine those with existing resources. For purposes of the first-day motions process generally, and this Motion specifically, the Transition Plan is divided into two phases.

11. As more fully set forth below, the first phase of the Transition Plan, which will take place immediately following Court approval of the relief requested herein, during the very first days of this Case, calls for the following: (a) an immediate transition of emergency department services from services rendered by CMMC under the Rejected CMMC Contracts to services rendered by Bluewater, (b) an immediate transfer of inpatient services to other hospitals selected by patients, and (c) continuing outpatient and other ancillary services in accordance with the Hospital's usual and ordinary practices.

12. The second phase of the Transition Plan contemplates a transfer of certain of the Debtor's health care delivery assets to Mid Coast, through a plan of reorganization to be filed forthwith by the Debtor (the "Plan"). Following confirmation of the Plan and the transfer of assets to Mid Coast pursuant to the Plan, the current campus of the Debtor

will be operated by Mid Coast as an out-patient clinic, providing ambulatory services including physician practices, a walk-in clinic, diagnostic services including, but not limited to radiology and lab services, rehabilitative services including, but not limited to, physical and occupational therapy, ambulatory surgery, oncology and hematology infusion center and a wellness center.

13. In order to implement the first phase of the Transition Plan, the Debtor, by this Motion, seeks authority to, (a) enter into that certain Agreement for Professional and Administrative Services with Bluewater Emergency Partners of Brunswick, LLC dated June 15, 2015 (the "Bluewater Agreement"), effective as of 6:00 p.m. on Tuesday, June 16, 2015 (the "Transition Date") and (b) to reject the Rejected CMMC Contracts, effective as of the Transition Date.

14. To assure the continuity of health care services, implementation of the initial phase of this Transition Plan must begin immediately. The Debtor believes that the first, critical component of the Transition Plan is the transferring of the Debtor's emergency department from CMMC to Bluewater. Bluewater is an experienced, high quality emergency room service provider and it already provides those services at Mid Coast's hospital as well as several other hospitals in the State of Maine. Bluewater physicians have provided services at the Hospital and are familiar with the hospital and medical staff. Accordingly, the Debtor seeks to have the Bluewater Agreement approved, and the rejection of the Rejected CMMC Contracts take place, as of the Transition Date.

15. Another important component of the first phase of the Transition Plan will be the winding down of all inpatient services by the Debtor. The Debtor is currently

treating six (6) inpatients. The Debtor intends to immediately cease new admissions and will divert all ambulances to other area hospitals. In order to assist its existing inpatients in transitioning to another acute-care facility of their choice, the Debtor will designate certain of its professional nursing staff as patient advocates who will provide 24/7 support and assistance to the Debtor's current inpatients and their families.

16. It is anticipated that all inpatients currently being cared for by the Debtor will be transitioned to other facilities by the close of business on Thursday, June 18, 2015. As of that date, the Debtor also plans to change the nature of services provided by its emergency department from emergency, acute and trauma care, to ambulatory, day clinic services. After June 18th, the Debtor intends to continue to operate, in lieu of an emergency department, an ambulatory clinic to be staffed by Bluewater pursuant to the Bluewater Agreement.

17. With the change in the way in which the Debtor will deliver health care services, the Debtor has determined that rejection of the CMHC ASA is also appropriate. The fiscal components of the CMHC ASA have been superseded by the Billing Agreement and many of the other provisions of the CMHC ASA involve fiduciary duties owed to the Debtor. Given the current circumstances, including, without limitation, the Debtor's intent to challenge CMHC's liens, it is not appropriate for CMHC to, for example, employ the Debtor's officers. The Debtor is prepared, and is able, to perform all of the functions covered by the CMHC ASA which are not covered by the Billing Agreement. Thus, during the first phase of the Transition Plan, and through confirmation of the Plan, the Debtor intends to reject the CMHC ASA but continue obtaining certain back office support from CMHC pursuant to the terms of the Billing

Agreement. The Debtor does not anticipate any immediate change to the Billing Agreement, and intends to fully perform under that agreement from and after the Petition Date and until rejection of that Agreement.

18. The Debtor anticipates that CMMC and CMHC will object to the Transition Plan and offer to take over the Debtor's operations. The Debtor has considered this approach and has rejected it because, among other things, integration of the Debtor's services into CMMC depletes the health care resources available to the Debtor's existing patients, and to the greater Brunswick community in general, and therefore does not adequately serve the Debtor's mission. In addition, based on the Debtor's seven (7) year history of trying to coordinate with CMMC and CMHC, the Debtor does not believe such a takeover would (a) be approved by the necessary regulatory authorities, or (b) be successful.

19. In sum, in order to enable the Debtor to begin the process of restructuring the delivery of health care services to enable the Debtor to better serve its mission, the community in general, and patients in particular, in a cost effective, and, most importantly, safe, manner the Debtor believes that it is imperative that the Debtor be given immediate authority, on an emergency basis, to implement the first phase of its Transition Plan, to terminate the Rejected CMMC Contracts, to enter into the Bluewater Agreement, and to transition its resident patients to other acute care facilities.

20. The alternative to the relief requested by this Motion would be the immediate closure of the Debtor's Hospital. The Debtor believes that this course of action, with no notice to the community or provision for an orderly transition, would not

be in the best interests of the Debtor, the estate or the community, and would significantly depress the value of its assets.

21. The Debtor has met with officials of the Maine Department of Health and Human Services (“DHHS”) and of the Office of the Attorney General, and has disclosed its Transition Plan including, importantly for purposes of this Motion, the implementation of the initial phase. DHHS has advised the Debtor that it intends to closely monitor the implementation of the Transition Plan in order to help assure the safety and well being of patients. The Debtor welcomes the involvement of DHHS in this process.

22. The Debtor acknowledges that requesting the relief sought by this Motion on an emergency basis is an extraordinary request. The Debtor respectfully suggests, however, that such a request is warranted under the circumstances of this Case, which is not a typical Chapter 11 case. It is imperative that the Transition Plan be implemented in a manner to assure the continuity, and integrity, of patient care without comprising the health care resources available in greater Brunswick, including the surrounding communities. That objective can only be accomplished through swift implementation of the first phase of the Transition Plan. To delay would necessarily engender uncertainty for both existing and future patients, and in the physician community. This unnecessary risk can be avoided by granting this Motion on an emergency basis. Any potential adverse consequences to CMMC and/or CMHC from allowing the Debtor to terminate the Rejected CMMC Contracts immediately can be adequately addressed through future proceedings in this Court to determine whether, and to what extent CMMC and CMHC will have incurred damages by reason of rejection.

Notice

23. Notice of this Motion has been provided by e-mail, facsimile, or overnight courier to: (a) the Office of the United States Trustee for Region 1, 537 Congress Street, Room 303, Portland, Maine 04101 (attn: Stephen Morrill); (b) the creditors holding the 20 largest unsecured claims against the Debtor (on a consolidated basis); (c) CMMC; (d) CMHC; (d) Mid Coast Hospital; (e) Bluewater; (f) DHHS; (g) TD Bank; (h) Maine Health And Higher Educational Facilities Authority; and (i) those parties who have formally filed requests for notice in this case pursuant to Rule 2002.

Conclusion

For the foregoing reasons, the Debtor respectfully requests that this Court enter an order:

- A. Finding that service of this Motion and the Proposed Order as set forth in above is adequate service of process under the circumstances of this case;
- B. Authorizing the Debtor to reject the ED Agreement and the CMHC ASA as of the Transition Date;
- C. Authorizing the Debtor to enter into the Bluewater Agreement as of the Transition Date; and
- D. Granting the Debtor such other and further relief as the Court deems just and proper.

Dated: June 16, 2015

/s/ George J. Marcus
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