

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

Curae Health, Inc., *et al.*¹

1721 Midpark Road, Suite B200
Knoxville, TN 37921

Debtors.

Chapter 11

Case No. 18-05665

Judge Walker

Jointly Administered

**MOTION FOR ORDER AUTHORIZING ABANDONMENT
AND DESTRUCTION OF BUSINESS DOCUMENTS**

Comes now, Steven D Sass LLC, in its capacity as Liquidating Trustee and Debtor Representative (the “Trustee”), and respectfully submits this motion (the “Motion”) for the entry of an order, attached hereto as **Exhibit A**, authorizing the Trustee to abandon and securely destroy certain ordinary course business documents in its possession and/or control that are of no further utility to the Liquidating Trust.² In support of the Motion, the Trustee submits the *Declaration of Steven D. Sass in Support of Motion For Order Authorizing Abandonment and Destruction of Business Documents* attached hereto as **Exhibit B**, and respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Trustee is in the process of administering the Liquidating Trust and winding down the Debtors’ estates, including through the reconciliation of claims and the pursuit of preference litigation for the benefit of unsecured creditors. In order to facilitate efficient

¹ The Debtors in these chapter 11 cases (the “Chapter 11 Cases”), along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

² All capitalized terms not defined in this Motion have the meanings ascribed to them in the Plan (as defined below).

administration and eliminate unnecessary costs to the Liquidating Trust, the Trustee seeks entry of an order, consistent with the terms of the Liquidating Trust Agreement, authorizing the Trustee to (i) abandon and securely destroy certain ordinary course business documents, including accounts receivable documentation and hard-copy medical professional credentialing records, in the Trustee's possession and/or control that are of no further utility to the Liquidating Trust (the "Records") and (ii) take the same action in future without further notice or application to the Court with respect to other ordinary course business documents the Trustee reasonably determines to be of no further utility to the Liquidating Trust (the "Additional Records").

2. On the Plan's Effective Date, title to all of the estates' assets (other than certain causes of action that revested in the applicable Debtors) was transferred to the Liquidating Trust. These assets included the Records, which were not acquired by any purchasers of the Debtors' assets (the "Purchasers"). The Trustee has determined that the Records have no value to the Liquidating Trust and are not necessary for the administration of the Liquidating Trust or winding down of the Debtors' estates. The Trustee has also confirmed that the Purchasers have no need for the Records. In particular, the Purchasers have advised that they do not need any credentialing records, as they have now assembled their own sets of relevant credentialing files. The Liquidating Trust should therefore be relieved of the burdens associated with storing and preserving the Records, and consistent with the Liquidating Trustee's broad discretion to dispose of property of the Liquidating Trust under the terms of the Liquidating Trust Agreement, should be authorized to abandon and securely destroy the Records.

3. The Trustee further seeks authorization to abandon and securely destroy Additional Records that the Trustee, in the exercise of the Trustee's business judgment,

determines to be unnecessary to administer the Liquidating Trust and wind down the Debtors' estates without further notice or application to the Court.

4. For the avoidance of doubt, the Trustee is not seeking authority to destroy or abandon any medical records that may be in its possession. The Trustee will seek a further order of the Court to the extent that it requires relief with respect to any medical records.

JURISDICTION AND VENUE

5. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code.

BACKGROUND

7. On August 24, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Middle District of Tennessee (the "Court").

8. On May 13, 2019, following the sale of substantially all of the Debtors' assets to the Purchasers, the Court entered an order confirming the Debtors' *Joint Chapter 11 Plan of Liquidation* (the "Plan") [Dkt. No. 1074].

9. The Plan provided that, among other things, on the Plan's Effective Date, the estates' assets (other than certain causes of action that revested in the applicable Debtors) would be transferred to the Liquidating Trust to be administered by the Trustee consistent with the terms of the Liquidating Trust Agreement.

10. On June 11, 2019, the Effective Date of the Plan occurred, the Liquidating Trust was established, and the Trustee was appointed [Dkt No. 1120].

11. The assets transferred to the Liquidating Trust on the Effective Date included the Records, which are currently stored at the Debtors' former office space on a temporary basis, and which the Trustee has determined are of no value to the Liquidating Trust.

12. The Liquidating Trust Agreement grants the Trustee broad authority to abandon and otherwise dispose of Liquidating Trust assets, particularly where such assets are non-cash assets and/or otherwise determined to be of no benefit to the Liquidating Trust:

a. Section 3.1(a) of the Liquidating Trust Agreement provides that the Trustee has the authority to "collect, sell, lease, license, abandon, or otherwise dispose of all assets of the Liquidating Trust Estate subject to the terms of the Plan."

b. Section 3.1(x) authorizes the Trustee to "abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any assets if he concludes that they are of no benefit to the Liquidating Trust."

c. Section 7.3 of the Liquidating Trust Agreement also grants the Trustee the authority to abandon non-Cash property, providing that "[a]ny non-Cash property of the Liquidating Trust may be sold, transferred, or abandoned by the Liquidating Trustee."

13. Notwithstanding this clear authority, section 9.1 of the Liquidating Trust Agreement [Dkt. No. 1014], which sets forth procedures for the Liquidating Trust's termination, provides that (i) the Trustee "shall retain the books, records, and files that shall have been delivered to or created by the [Trustee]" upon the final distribution from the Liquidating Trust and (ii) "all such records and documents may be destroyed at any time after two (2) years after the Final Distribution Date" in the Trustee's discretion.

RELIEF REQUESTED

14. In an abundance of caution, in order to facilitate the efficient administration of the Liquidating Trust and avoid any potential perceived conflict with section 9.1 of the Liquidating Trust Agreement, the Trustee requests authorization to (i) abandon and securely destroy the Records consistent with sections 3.1(a), 3.1(x), and 7.3 of the Liquidating Trust Agreement and (ii) take the same action with respect to Additional Records the Trustee subsequently determines to be of no further utility to the Liquidating Trust without further notice or application to the Court.

BASIS FOR RELIEF REQUESTED

15. Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order . . . that is necessary or appropriate to carry out the provisions of this title.” This includes orders for the purpose of implementing a confirmed bankruptcy plan. *See Parrett v. Nat’l Century Fin. Enters.*, 2006 U.S. Dist. LEXIS 16982, *12-13 (S.D. Ohio, Case No. 2:04-cv-489, March 23, 2006). Here, the requested relief is necessary to further the administration of the Liquidating Trust established pursuant to the terms of the Debtors’ Plan and accordingly falls within the scope of section 105(a).

16. Because the Records and Additional Records became property of the Liquidating Trust upon the occurrence of the Plan’s Effective Date, the Trustee’s authority to abandon the Records and Additional Records as requested in this Motion is governed by the Liquidating Trust Agreement. However, courts’ deference to decisions of trustees and debtors in possession to abandon property under section 554(a) of the Bankruptcy Code – which applies to bankruptcy estate property – provides an instructive analogy for the Court’s determination of the Trustee’s request.

17. Section 554(a) of the Bankruptcy Code allows a trustee or debtor in possession to abandon and destroy its interest in property of the estate if the property is (i) “burdensome to the estate” or (ii) “of inconsequential value and benefit to the estate.” As stated in *Church Joint Venture, L.P. v. Bedwell (In re Blasingame)*, 598 B.R. 864, 871 (B.A.P. 6th Cir. 2019), courts afford broad discretion to trustees with respect such decisions:

Courts defer to the trustee’s [judgment] and place the burden on the party opposing the abandonment to prove a benefit to the estate and an abuse of the trustee’s discretion. The party opposing the abandonment must show some likely benefit to the estate, not mere speculation about possible scenarios in which there might be a benefit to the estate.

(quoting *In re Slack*, 290, B.R. 282, 284 (Bankr. D.N.J. 2003)) (internal citations omitted). See also, e.g., *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 507 (1986) (noting that a trustee’s power to abandon property is broad, subject only to state laws or regulations “reasonably designed to protect the public health or safety from identifiable hazards”).

18. In this case, the Trustee has determined that the Records have no value to the Liquidating Trust and are not necessary for the Trustee to administer the Liquidating Trust or wind down the Debtors’ estates. The Trustee has further conferred with the Purchasers and confirmed that they do not require the Records for any purpose. Because the Records present a burden to the Liquidating Trust to the extent that the Trustee is required to arrange and provide for their retention and storage, abandoning and securely destroying the Records constitutes a sound exercise of the Trustee’s discretion to dispose of Liquidating Trust property.

19. In addition to the foregoing, the Trustee anticipates that Additional Records may be identified in the future as having no further utility to the Liquidating Trust. In order to facilitate the efficient administration of the Liquidating Trust, the Trustee requests authorization

to abandon and securely destroy any such Additional Records as they are identified without further notice or application to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order (i) authorizing the Trustee to abandon and securely destroy the Records; (ii) authorizing the Trustee to abandon and securely destroy any Additional Records the Liquidating Trustee determines to be of no further utility to the Liquidating Trust without further notice or application to the Court; and (iii) granting such other and further relief that the Court deems just and appropriate.

Dated: December 23, 2020
Nashville, Tennessee

Respectfully submitted,

MANIER & HEROD, P.C.

/s/ Robert W. Miller

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*Co-Counsel to Steven D Sass LLC, in its
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