

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

In re:	)	
	)	Chapter 11
Curae Health, Inc.,	)	Case No. 18-05665
Amory Regional Medical Center, Inc.,	)	Case No. 18-05675
Batesville Regional Medical Center, Inc.,	)	Case No. 18-05676
Clarksdale Regional Medical Center, Inc.	)	Case No. 18-05678
Amory Regional Physicians, LLC	)	Case No. 18-05680
Batesville Regional Physicians, LLC	)	Case No. 18-05681
Clarksdale Regional Physicians, LLC	)	Case No. 18-05682
	)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921	)	
Debtors.	)	Joint Administration Pending

**EXPEDITED MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING  
PROCEDURES TO MAINTAIN AND PROTECT CONFIDENTIAL PATIENT  
INFORMATION**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Order**”), pursuant to sections 105(a), 107, and 521(a)(1) of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the implementation of procedures to protect confidential information of current and former patients of the Debtors (collectively, the “**Patients**”), and granting certain related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health Inc., in Support of Chapter 11 Petitions and First Day Pleadings*, filed concurrently herewith (the “**First Day Declaration**”). In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

## JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 107, and 521(a)(1), and Bankruptcy Rules 1007, 9018, and 9037.

## BACKGROUND

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

## RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request entry of the Order, pursuant to Bankruptcy Code sections 105(a), 107, and 521(a)(1) and Bankruptcy Rules 1007, 9018, and 9037, authorizing the implementation of procedures to protect confidential information of the Debtors’ Patients, as required by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”).

5. The Debtors are in the business of operating facilities that provide a range of medical services to individuals. In the ordinary course of their business, the Debtors have access to and receive “protected health information” and data relating to Patients, which the Debtors are required to confidentially maintain pursuant to HIPAA. Notwithstanding, some of these Patients could potentially hold actual or contingent claims against the Debtors’ estates, and as such, under

Bankruptcy Code section 521(a), the Debtors have a duty to list all such creditors on the Debtors' mailing matrices and bankruptcy schedules.

6. In an effort to comply with both federal statutes, the Debtors propose the following procedures to maintain patient confidentiality during the pendency of these Chapter 11 Cases (the "**Privacy Procedures**"):

- a. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain (i) a separate creditor matrix of the Patients (the "**Patient Matrix**"), and (ii) separate schedules of claims that may be asserted by and against the Patients (the "**Patient Schedules**");
- b. The Debtors are not required to file the Patient Matrix and the Patient Schedules in the format as required by the Local Rules for the United States Bankruptcy Court for the Middle District of Tennessee, but are permitted to file a redacted version of the Patient Schedules that redacts the names and addresses of the Patients and assigns a unique identification number to each of the Patients, provided, however, that the Patient Matrix and the Patient Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, and (iii) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Patient Matrix and Patient Schedules to such party;
- c. If the Debtors' proposed noticing and claims agent, BMC Group, Inc. (the "**Claims Agent**"), serves any document upon any person listed on the Patient Matrix, the Claims Agent is authorized to note in the certificate of service that the parties served include individuals listed on the Patient Matrix;
- d. To the extent any Patient discloses his or her own "protected health information" ("**PHI**") (as such term is defined in HIPAA) in any pleading, proof of claim, notice, or other publicly available document, the Debtors and their professionals shall be permitted, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, directed to include such PHI in any subsequent pleading, notice, document, list, or other public disclosure made in connection with these Chapter 11 Cases, and such disclosure shall not be deemed to be a "wrongful disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

## **BASIS FOR RELIEF**

### **A. The Procedures Will Allow the Debtors to Protect Patient Information While Still Complying with the Requirements of the Bankruptcy Code**

7. HIPAA and its corresponding regulations impose stringent standards on health care providers and establish significant penalties for any health care provider that uses or discloses patient information. *See* 42 U.S.C. § 1302d, *et. seq.* and 45 C.F.R. § 164.502.

8. Because the Debtors qualify as health care providers that transmit health information, they are considered to be “covered entities” under 45 C.F.R. § 160.103. This designation prevents the Debtors from disclosing, except in limited circumstances, “individually identifiable health information.” 45 C.F.R. § 164.502. HIPAA defines “individually identifiable health information” as any information relating to the individual’s “past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present or future payment for the provision of health care to the individual” that also “identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual.” 42 U.S.C. § 1302d(6). Individually identifiable health information is referred to as PHI under HIPAA.

9. The Debtors could be subjected to significant monetary penalties for the unauthorized disclosure of PHI. 45 C.F.R. § 160.402. Such penalties can be imposed even if a person “did not know and, by exercising reasonable diligence, would not have known” that a violation occurred. 45 C.F.R. § 160.404(b)(2)(i).

10. The Debtors believe that the requirements to maintain patient confidentiality under HIPAA conflict with the requirements to disclose information under the Bankruptcy Code, specifically the duty to file a list of all creditors under Bankruptcy Code section 521(a)(1)(A) and the duty to file schedules of all assets and liabilities under Bankruptcy Code section

521(a)(1)(B)(i). The Debtors therefore respectfully request that such patient information be protected through the proposed Privacy Procedures herein pursuant to Bankruptcy Code section 107(c), which allows a bankruptcy court, for cause, to protect an individual if disclosure would create an undue risk of unlawful injury. *See also* Bankruptcy Rule 9018 (allowing a bankruptcy court to protect governmental matters that are made confidential by statute or regulation).

11. This Court may also approve the proposed Privacy Procedures pursuant to Bankruptcy Code section 105(a), which authorizes the a court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

12. The Debtors believe that the relief requested herein appropriately balances the need to maintain confidential patient information under HIPAA with the need for adequate disclosure under the Bankruptcy Code. Given the nature of any information that may reveal even the identity of Patients, confidentiality in this context is of paramount importance.

### **NOTICE**

13. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) the Centers for Medicare and Medicaid Services; (c) the State of Tennessee Department of Health Division of Licensure and Regulation Office of Health Care Facilities; (d) the Mississippi State Department of Health; (e) those parties listed on the consolidated list of creditors holding the thirty (30) largest unsecured claims against the Debtors; (f) counsel to any official committee(s) establish in these cases pursuant to Section 1102 of the Bankruptcy Code; (g) ServisFirst Bank and its counsel; (h) Midcap Financial Trust and its counsel; (i) CHS/Community Health Systems, Inc. and its counsel; (j) all Tennessee local counsel having entered a notice of appearance in these cases; (k) the Internal Revenue Service; (l) the Tennessee Attorney General’s Office; (m) the Mississippi Attorney General’s Office; (n)

the Tennessee Secretary of State; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

**NO PRIOR REQUEST**

14. No previous request for the relief sought herein has been made to this Court or any other court.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order, substantially in the form of the proposed order attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 24, 2018  
Nashville, Tennessee

Respectfully submitted,

**POLSINELLI PC**

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*Proposed Counsel to the Debtors and  
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**EXHIBIT A**

**Proposed Order**

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

In re:	)	
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1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921	)	
Debtors.	)	Joint Administration Pending

**EXPEDITED ORDER AUTHORIZING PROCEDURES TO MAINTAIN AND  
PROTECT CONFIDENTIAL PATIENT INFORMATION**

Upon the motion (the “**Motion**”)<sup>1</sup> of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to sections 105(a), 107, and 521(a)(1) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the implementation of procedures to protect confidential information of current and former patients of the Debtors (collectively, the “**Patients**”), and granting certain related relief, all as further described in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that

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<sup>1</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain the Patient Matrix and the Patient Schedules.
3. The Debtors are not required to file the Patient Matrix and the Patient Schedules in the format as required by the Local Rules for the United States Bankruptcy Court for the Middle District of Tennessee, but are permitted to file a redacted version of the Patient Schedules that redacts the names and addresses of the Patients and assigns a unique identification number to each of the Patients, provided, however, that the Patient Matrix and the Patient Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, and (iii) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Patient Matrix and Patient Schedules to such party.
4. If the Debtors' proposed Claims Agent serves any document upon any person listed on the Patient Matrix, the Claims Agent is authorized to note in the certificate of service that the parties served include individuals listed on the Patient Matrix.
5. To the extent any Patient discloses his or her own PHI (as such term is defined in HIPAA) in any pleading, proof of claim, notice or other publicly available document, the Debtors and their professionals shall be permitted, and to the extent required by the Bankruptcy

Code, the Bankruptcy Rules, or any other applicable law, rule or court order, directed to include such PHI in any subsequent pleading, notice, document, list or other public disclosure made in connection with these Chapter 11 Cases, and such disclosure shall not be deemed to be a “wrongful disclosure” within the meaning of HIPAA or any regulation promulgated thereunder.

6. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

**This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page**

APPROVED FOR ENTRY:

**POLSINELLI PC**

*/s/ Michael Malone* \_\_\_\_\_

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Debtors in Possession*