

**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

Lead Case No. 18-05665

Judge Walker

Jointly Administered

**ORDER REGARDING EMERGENCY HEARING ON THE STATUS OF SALE OF
PANOLA MEDICAL CENTER AND PANOLA MEDICAL CENTER WEST**

Upon the record of the emergency status conference conducted on March 1, 2019 at 11:00 a.m. (prevailing Central Time) (the “Status Conference”) pursuant to the *Emergency Order Setting Emergency Status Conference Regarding Panola Medical Center* (the “Status Conference Order”) [Docket No. 821]; and it appearing to the satisfaction of the Court that good and sufficient cause exists for the following relief:

IT IS HEREBY FOUND AND DETERMINED THAT:

1. On January 22, 2019, the Court entered an order (the “Sale Order”) [Docket No. 694] authorizing the sale (the “Sale”) of Panola Medical Center and Panola Medical Center West (collectively, “Panola Medical Center”) to Progressive Medical Management of Batesville, LLC (“PMM”) and Panola Physicians Group, LLC (“PPG,” and together with PMM, the “Purchaser”) pursuant to the terms of the Asset Purchase Agreement filed at docket number 662 (the “APA”).
2. The APA did not contain any financing contingency.
3. The closing (the “Closing”) of the Sale was scheduled to occur effective as of

¹ The Debtors in these 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).

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12:01 a.m. (prevailing Eastern Time) on March 1, 2019 (the “Expected Closing Date”).

4. All conditions to Closing under the APA were satisfied as of 12:01 a.m. (prevailing Eastern Time) (the “Effective Time”) on the Expected Closing Date.

5. The Debtors were ready, willing, and able to proceed with Closing as of the Effective Time on the Expected Closing Date.

6. In reliance on the Purchaser’s representations regarding proceeding to Closing on the Expected Closing Date, *inter alia*, (i) the Debtors gave notice to Mississippi Emergency Physician Services, LLC (“MEPS”) of their intent to reject the Emergency Department Agreement dated September 1, 2017, between MEPS and Debtor Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center (as amended, the “ED Contract”), under which MEPS provided the emergency department doctors and other mid-level emergency medicine providers to the Panola Medical Center, and in furtherance thereof, agreed to a form of stipulation with MEPS providing for the rejection of the ED Contract effective March 1, 2019, which the parties intended would be filed in this bankruptcy case; (ii) the Debtors’ postpetition financing was terminated, and the Debtors’ postpetition financing obligations were scheduled to be repaid, as of the Expected Closing Date; and (iii) the Debtors’ authority to continue using cash collateral in connection with the operation of Panola Medical Center expired.

7. At or about 3:37 p.m. (Central Time) on February 28, 2019, the day before the Expected Closing Date, the Purchaser notified the Debtors’ bankruptcy counsel that the Purchaser was unable to obtain financing for the Sale and would not go forward with the Closing.

8. As a result of the foregoing, the Debtors assert that the Purchaser is in breach of the APA.

9. Following the Purchaser's notification that it could not go forward with the Closing, the Debtors, on February 28, 2019, filed an emergency motion requesting the Status Conference.

10. The Status Conference Order was entered on February 28, 2019.

11. Due to the exigent circumstances resulting from both the lack of funding to operate Panola Medical Center past the Expected Closing Date and the closing of Panola Medical Center's emergency department, the Debtors allowed the Purchaser to temporarily assume operation of Panola Medical Center with Purchaser's insurance coverage in effect as of the Effective Time on the Expected Closing Date.

12. Pursuant to the Status Conference Order, the Status Conference was conducted on March 1, 2019 at 11:00 a.m. (prevailing Central Time).

13. At the Status Conference, the Court scheduled an emergency hearing for March 4, 2019 at 1:00 p.m. (prevailing Central Time).

IT IS HEREBY ORDERED, AND NOTICE IS GIVEN, THAT:

1. The Debtors were and are authorized to temporarily transfer operation of Panola Medical Center to Purchaser, with Purchaser's insurance coverage in effect, effective as of the Effective Time on the Expected Closing Date. Such transfer is with a full reservation of rights, claims, causes of action, and defenses by the Debtors and their estates against the Purchaser, its agents, employees, officers, directors, trustees, principals, partners, shareholders, members, managers, parents, affiliates, predecessors, successors, assigns, attorneys and other professionals, other representatives, and lenders with respect to the APA, Sale, and all related matters.

2. The Purchaser shall operate and be responsible for the continued operation of Panola Medical Center from and after the Effective Time on the Expected Closing Date until otherwise ordered by the Court (the “Temporary Operation”).

3. Other than as specifically set forth in Paragraph 11 below, Purchaser shall be solely liable for all claims, obligations, demands, losses, liabilities, damages, penalties, fines, judgments, awards, settlements, costs, fees, disbursements, expenses, and other amounts of any kind or nature relating to or arising from the operation of Panola Medical Center during the Temporary Operation period. During the period of Temporary Operation, Purchaser shall be treated as the lessee of the real and personal property and shall maintain property and casualty insurance and liability and malpractice insurance naming the Debtors as an additional insured.

4. Other than as specifically set forth in Paragraph 11 below, neither the Debtors nor their estates shall be responsible or liable in any way for any claims, obligations, demands, losses, liabilities, damages, penalties, fines, judgments, awards, settlements, costs, fees, disbursements, expenses, and other amounts of any kind or nature relating to or arising from the operation of Panola Medical Center during the Temporary Operation.

5. Other than as specifically set forth in Paragraph 11 below, the Purchaser shall indemnify and hold harmless the Debtors, their estates, their affiliates, and their collective respective agents, employees, officers, directors, trustees, principals, partners, shareholders, members, managers, parents, affiliates, predecessors, successors, assigns, attorneys and other professionals, and other representatives (collectively, the “Indemnified Parties”) from and against any and all claims, obligations, demands, losses, liabilities, damages, penalties, fines, judgments, awards, settlements, costs (including court costs), fees (including attorneys’ fees),

disbursements, expenses, and other amounts of any kind or nature relating to or arising from the operation of Panola Medical Center during the Temporary Operation.

6. All rights, claims, causes of action, and defenses of the Debtors and their estates against the Purchaser, its agents, employees, officers, directors, trustees, principals, partners, shareholders, members, managers, parents, affiliates, predecessors, successors, assigns, attorneys and other professionals, other representatives, and Purchaser's lenders with respect to the APA, Sale, and all related matters are expressly reserved and preserved.

7. All rights, claims, causes of action, and defenses of counterparties to executory contracts of the Debtors, including counterparties to executory contracts that are or were to be assumed pursuant to the terms of the APA and/or the Sale Order and related orders, against the Purchaser, its agents, employees, officers, directors, trustees, principals, partners, shareholders, members, managers, parents, affiliates, predecessors, successors, assigns, attorneys and other professionals, other representatives, and lenders with respect to the APA, Sale, and all related matters are expressly reserved and preserved.

8. An emergency hearing (the "Emergency Hearing") regarding the status of the Sale and Panola Medical Center is scheduled for **March 4, 2019 at 1:00 p.m. (prevailing Central Time)**.

9. Quentin Whitwell and Dr. Kenneth Williams are required to attend the Emergency Hearing in person.

10. With the exception of Quentin Whitwell and Dr. Kenneth Williams, parties desiring to participate in the March 4, 2019 hearing by telephone may do so in accordance with the Court's telephonic appearance policy.

11. The *Agreed Order Regarding: Assumption/Assignment of Executory Contracts Among Tallahatchie Valley Electric Power Association, the Debtors, and Progressive Medical Management of Batesville, LLC; Cure Amount; and Adequate Assurance of Future Performance Related to Sale of Panola Medical Center* (the “TV Agreed Order”) [Docket No. 793] is hereby supplemented and amended as follows:

a) As referenced in the TV Agreed Order and this Paragraph 11, “Progressive” shall mean and refer to Purchaser.

b) Ordering Paragraph 1 of the TV Agreed Order is deleted, and replaced with the following: “Effective on and after 12:01 a.m. prevailing Central Time on April 1, 2019, or such other earlier time as agreed to by the parties hereto, Progressive shall be the assignee of the Contracts.”

c) Ordering Paragraph 2 of the TV Agreed Order is deleted, and replaced with the following: “Effective on and after 12:01 a.m. prevailing Central Time on April 1, 2019, or such other earlier time as agreed to by the parties hereto, Curae shall assume and assign all of its interests to Progressive under the Contracts.”

d) Ordering Paragraph 4 of the TV Agreed Order is deleted, and replaced with the following: “Progressive shall pay to TV by wire transfer payment on or before April 1, 2019 the amount of \$150,000.00 as the Cure Amount for such assumption/assignment of the Contracts.:

e) Ordering Paragraph 6 of the TV Agreed Order is deleted, and replaced with the following: “Pursuant to the terms of the Adequate Assurance Agreement between TV and the Debtors, dated November 12, 2018 (the ‘Agreement’), Curae shall be legally responsible to pay for all electric charges provided by TV to the Panola

Medical Center between the petition date of August 24, 2018 and April 1, 2019, unless Progressive accepts assignment of the Agreement on an earlier date. Until such time as Progressive accepts assignment of the Agreement and pays the Cure Amount and the Security Deposit, Curae shall comply with all elements and requirements of the Agreement. Curae reserves all rights against Progressive with respect to such payments.”

f) Ordering Paragraph 7 of the TV Agreed Order is deleted and replaced with the following: “As adequate assurance of future performance of the Contracts, upon acceptance by Progressive of the assignment of the Contracts, and not later than April 1, 2019, Progressive shall pay to TV by wire transfer payment the amount of \$45,000.00 as a cash security deposit (the “Security Deposit”), and on or before April 1, 2019, or such earlier time as agreed by the parties hereto, Progressive and TV shall execute an adequate assurance agreement (the “New Agreement”), with terms and provisions comparable to the Agreement.”

g) All other provisions of the TV Agreed Order remain, and shall remain, in full force and effect.

12. All steps, activities and actions taken by MEDHOST of Tennessee, Inc., MEDHOST Direct, Inc. and MEDHOST Cloud Services, Inc. (collectively, “MEDHOST”) to transition all hosting, licensing, serving and software services (the “MEDHOST Services”), during the period preceding the cut-over of such services from Curae Health, Inc., or any of the other Debtors, to the Purchaser, are hereby ratified by the Court, as if such MEDHOST Services were ultimately and finally approved by the Court prior to the transitioning of such MEDHOST Services to the Purchaser.

13. All use of the MEDHOST software and MEDHOST Services is subject to terms and conditions of the MEDHOST Agreements executed by MEDHOST and the Purchaser during and prior to the transition of all MEDHOST Services from Curae Health, Inc. to the Purchaser.

14. MEDHOST's processing and use of patient information are within the scope of its obligations as a Business Associate of the Purchaser, and are not in violation of any HIPAA or state or local laws.

15. The ED Contract is hereby rejected pursuant to 11 U.S.C. §365(a), effective as of March 1, 2019, at 12:00 a.m., and MEPS shall have no liability under or relating to the ED Contract on or after such time. MEPS shall have thirty (30) days after the date of this Order to file a proof of claim for damages arising from the rejection of the ED Contract. All rights of MEPS and its affiliates and subsidiaries under the ED Contract and any other contract with the Debtors are reserved.

16. This Court retains jurisdiction over this order, the Sale, the APA, and all matters related to any of the foregoing, however, if Progressive does not accept assignment of the Agreement with TV and does not pay the Cure Amount and the Security Deposit to TV, as set forth in Paragraph 11, above, then this Court shall not retain jurisdiction over the terms and conditions pursuant to which TV may provide its electricity to Progressive, and this Court shall not retain jurisdiction over the New Agreement, as set forth in Paragraph 11, above. For the avoidance of doubt, the Court shall retain jurisdiction over all issues arising from or relating to the relationship between TV and the Debtors, as opposed to Progressive.