

Charles M. Walker
U.S. Bankruptcy Judge

Dated: 3/13/2019



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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

EXPEDITED CONSENT ORDER (I) APPROVING THE FIRST AMENDMENT TO THE PANOLA APA, (II) AUTHORIZING THE DEBTORS TO PAY THE PURCHASE PRICE FROM THE SALE OF PANOLA MEDICAL CENTER TO SERVISFIRST BANK, (III) AUTHORIZING CERTAIN RELEASES, AND (IV) GRANTING RELATED RELIEF

Upon the emergency hearing held on March 12, 2019 (the “**Hearing**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and upon the request of the debtors and debtors in possession (the “**Debtors**”), Progressive Medical Management of Batesville, LLC (“**PMM**”), and ServisFirst Bank (“**ServisFirst**”) for entry of an order (this “**Order**”), pursuant to sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, authorizing the Debtors to enter into that certain First Amendment to the Panola APA; and upon the record of the Hearing; and it appearing by the signature of counsel below that the Official Committee of Unsecured Creditors (the “**Committee**”) consents to the entry of the relief set forth herein; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the

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).

Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Hearing having been given pursuant to Local Rule 9075-1; and it appearing that no other or further notice of the Hearing is required; and this Court having found that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. Debtors are authorized to enter into the First Amendment to Asset Purchase Agreement (the "**Amendment**"),² a true and correct copy of which is annexed hereto as Exhibit A.

2. Within three (3) business days of the Closing Date, Debtors shall pay to ServisFirst the cash component of Purchase Price (as defined in the Agreement) and endorse the Promissory Notes for payment to the order of ServisFirst and assign the mortgages and guaranties to ServisFirst. ServisFirst shall apply the cash component of the Purchase Price and the full amount of the Promissory Notes as and when collected to reduce the principal amount of the secured portion of ServisFirst's asserted pre-petition claim.

3. Notwithstanding anything in this Order or otherwise, any and all payments and transfers to ServisFirst authorized hereunder shall be subject to and conditioned upon the determination by final order of the adversary proceeding commenced on January 16, 2019 by the Official Committee of Unsecured Creditors (the "**Committee**") on behalf of the Debtors' estates against ServisFirst, pending before this Court under adversary proceeding number 3:19-ap-90010 (the "**Adversary Proceeding**"). Nothing herein shall constitute (i) an allowance of the amount, nature, validity or priority of any pre-petition or post-petition claims or interests of

² Capitalized terms used but not defined herein shall have the meaning(s) ascribed to them in the Amendment.

ServisFirst; (ii) a determination of the extent, validity or priority of any of ServisFirst's asserted liens or security interests; or (iii) a determination that any portion of the proceeds of the Sale, any other property of the Debtors' estates or any proceeds thereof constitute ServisFirst's collateral. All of the rights, claims and defenses of the Committee and ServisFirst in the Adversary Proceeding, are expressly reserved and preserved and nothing herein shall operate as an admission, have any estoppel effect or otherwise prejudice any such rights, claims or defenses. Nothing herein shall be deemed to vacate, alter or otherwise modify any provisions of the Final Order Authorizing the Debtors to (I) Authorizing the Debtor's to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay [Docket No. 455].

4. Notwithstanding anything to the contrary set forth in the *Agreed Order Regarding Emergency Hearing on the Status of Sale of Panola Medical Center and Panola Medical Center West* entered on March 7, 2019 [Docket No. 845], at consummation of the Sale the Deposit shall be applied to the Purchase Price.

5. Debtors, on behalf of their respective bankruptcy estates, and Purchaser and its officers, directors, employees, and agents (collectively, the "**Purchaser Released Parties**"), shall be deemed to have exchanged mutual general releases of any and all claims, rights, and causes of action of any kind relating to the Sale, other than Purchaser's obligations under the Agreement as amended by the Amendment, solely upon satisfaction of each of the following conditions: (1) entry of this Order; (2) consummation of the Sale; (3) payment in full of the Cash Purchase Price; and (4) payment in full of all amounts due under the Promissory Notes (collectively, the "**Purchaser Release Conditions**").

6. Provided that Purchaser Release Conditions one (1) through three (3) in the immediately preceding paragraph are met, Debtors, on behalf of their respective bankruptcy estates, and the Committee each agree to forbear from asserting any claims, rights, and causes of action of any kind against the Purchaser Released Parties provided that Purchaser timely makes all payments when due under the Promissory Notes. Should Purchaser fail to make any payment under the Promissory Notes when due and after written notice to Purchaser from the holder of the Promissory Notes, Purchaser shall be provided a one time, 90-day grace period within which to pay the Promissory Notes in their entirety in one lump sum payment.

7. Upon entry of this Order and consummation of the Sale, Debtors, on behalf of their respective bankruptcy estates and the Committee on the one hand, and Guaranty Bank and its officers, directors, employees, and agents on the other hand, shall be deemed to have exchanged mutual general releases of any and all claims, rights, and causes of action of any kind relating to the Sale.

8. In the event of any conflict or inconsistency between this Order and the Amendment or any other document relating to the Sale, this Order shall govern and control for all purposes.

9. Debtors and Purchaser are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. The fourteen (14) day stays imposed by Rules 6004(h) and 6006(d) of the Bankruptcy Rules are waived with respect to this order, and this order shall take effect immediately upon its entry.

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

AGREED TO AND APPROVED FOR ENTRY BY:

POLSINELLI PC

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*Co-Counsel for the Official Committee of
Unsecured Creditors of Curae Health, Inc., et al.*

-and-

NEAL & HARWELL, PLC

/s/ James R. Kelley

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Counsel for ServisFirst Bank

Exhibit A

The Amendment

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This **FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT**, dated as of March ____, 2019 (this "Amendment"), is an amendment to that certain Asset Purchase Agreement, dated as of January 10, 2019 (the "Agreement"), and is by and between **BATESVILLE REGIONAL MEDICAL CENTER, INC.**, a Tennessee non-profit corporation (with BRP, "Seller"), **BATESVILLE REGIONAL PHYSICIANS, LLC**, a Tennessee limited liability company ("BRP"), Curae Health, Inc., a Tennessee non-profit corporation ("Curae"), **PROGRESSIVE MEDICAL MANAGEMENT OF BATESVILLE LLC**, a Mississippi limited liability company ("PMM"), and **PANOLA PHYSICIANS GROUP, LLC**, a Mississippi limited liability company ("PPG" collectively with PMM, "Purchaser").

WITNESSETH:

WHEREAS, the parties hereto have entered into the Agreement, pursuant to which, among other things, Purchaser has agreed to purchase from Seller, and Seller has agreed to sell to Purchaser, the Assets (as such term is defined in the Agreement); and

WHEREAS, Purchaser failed to pay the Purchase Price (as such term is defined in the Agreement) pursuant to Section 2.11 of the Agreement on March 1, 2019; and

WHEREAS, the parties now desire to proceed with the Closing of the purchase and sale of the Assets related to Panola Medical Center located in Batesville, Mississippi, and payment of the Purchase Price, and the parties have agreed to amend certain provisions of the Agreement in connection therewith.

Capitalized terms not defined in this Amendment shall have the meanings assigned in the Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereby agree as follows:

Section 1. Amendments.

(a) The parties hereto agree that the Closing of the transaction set forth in the Agreement shall take place on March 13, 2019, by electronic mail, facsimile transmission, United States mail or overnight courier, or such other manner as may be agreed to by the parties. The Closing shall be effective as of 12:00:01 a.m., local time, on March 1, 2019.

(b) The following subsection (c) shall be added to Section 2.11 of the Agreement as follows:

“(c) Notwithstanding anything contained herein to the contrary, the Cash Purchase Price as set forth in Section 2.11(a)(ii) above shall be paid at Closing as follows: (i) \$2,292,000.00 shall be paid by wire transfer of immediately available funds to an account designated by Seller, and (ii) the balance of the Cash Purchase Price in the approximate amount of \$208,000.00 shall be paid pursuant to a Promissory Note from Purchaser to Seller with a term of one hundred eighty (180) days and an interest rate of 7.0% (the “First Promissory Note”).

(c) The following subsection (d) shall be added to Section 2.11 of the Agreement as follows:

“(d) Notwithstanding anything contained herein to the contrary, the Inventory and Prepaid Expenses required to be paid under Section 2.19 as set forth in Section 2.11(a)(vi) above shall be paid at Closing as follows: (i) \$500,000.00 shall be paid by wire transfer of immediately available funds to an account designated by Seller, and (ii) the balance of the Inventory and

Prepaid Expenses owed in the approximate amount of \$350,000.00 shall be paid pursuant to a Promissory Note from Purchaser to Seller with a term of one (1) year and no interest due thereon (the "Second Promissory Note" and collectively with the First Promissory Note, the "Promissory Notes"). The Promissory Notes shall be personally guaranteed by those individuals or entities that Seller, in its sole discretion, shall require from the class of individuals or entities who are the equity owners of Purchaser or its member entities."

(d) Section 2.19 of the Agreement is hereby amended and restated as follows:

"2.19 **Inventory and Prepaid Expenses.** Seller has prepared and delivered to Purchaser a balance sheet for the Hospital as of February 28, 2019, which includes an amount for inventory and prepaid expenses (the "Inventory and Prepaid Expenses"). Purchaser shall pay for the Inventory and Prepaid Expenses in the manner set forth in this Agreement."

(e) The following Section 2.21 shall be added immediately following Section 2.20 of the Agreement as follows:

"2.21 **Payroll.** Should the effective date of the Closing take place in the middle of a payroll pay period, Purchaser agrees to process and pay all accrued payroll obligations to all Hospital employees at the end of said pay period. At Closing, Purchaser shall receive a credit from Seller for any payroll obligations accrued prior to the Effective Time. By way of example, if the Closing of this transaction is effective as of 12:00:01 a.m. on March 1, 2019 and the payroll pay period for Hospital employees runs from February 23, 2019 to March 8, 2019, then Purchaser shall pay the Hospital employees on March 8, 2019 for the entire pay period and Purchaser will receive a credit on the closing statement for the accrued payroll from February 23, 2019 until February 28, 2019."

Section 2. Amendment; No Further Modification. The parties agree that this Amendment is an effective and binding amendment of the Agreement pursuant to the Agreement. Except as otherwise expressly stated in this Amendment, all of the terms and provisions of the Agreement shall remain in full force and effect, without amendment or modification.

Section 3. Divisions and Headings. The division of this Amendment into sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Amendment.

Section 4. Counterparts. This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their authorized officers as of the date and year first above written.

SELLER:

Batesville Regional Medical Center, Inc.

By: _____

Print Name: Stephen N. Clapp

Title: President

Batesville Regional Physicians, LLC

By: _____

Print Name: Stephen N. Clapp

Title: President

CURAE:

Curae Health, Inc.

By: _____

Print Name: Stephen N. Clapp

Title: President

[Signature Page Continued on Next Page]

[Cont'd – Signature Page to First Amendment to Asset Purchase Agreement]

PURCHASER:

Progressive Medical Management of Batesville
LLC

By: _____
Print Name: _____
Title: _____

Panola Physicians Group, LLC

By: _____
Print Name: _____
Title: _____