

**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> <sup>1</sup>	)	Case No. 18-05665
	)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921	)	
Debtors.	)	Jointly Administered

**AMENDED EXPEDITED MOTION OF DEBTORS REGARDING PHYSICIAN  
CONTRACTS**

The above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned jointly administered chapter 11 cases (these “**Chapter 11 Cases**”), hereby submit this amended motion (the “**Amended Motion**”) for entry of an amended order (the “**Amended Order**”), in substantially the form filed contemporaneously herewith, authorizing the Debtors to pay pre-petition wages to certain contract physicians, as described below. In support of this Amended Motion, the Debtors respectfully state as follows:

**JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein is sections 105(a), 363(b), and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”).

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<sup>1</sup> 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).

## BACKGROUND

4. On August 24, 2018, (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 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 *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 49] and fully incorporated herein by reference. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. On August 29, 2018, the Court entered an order authorizing joint administration of these Chapter 11 Cases. Also on August 29, 2018, the Court entered an interim order authorizing the Debtors to, *inter alia*, pay certain pre-petition wages of their employees (the “**Interim Employee Wages Order**”) [Docket No. 67].

6. On September 5, 2018, Debtors filed the *Expedited Motion for Entry of an Order Authorizing Assumption of Physician Contracts and Payment of Proposed Cure Amounts* (the “**Motion**”) <sup>2</sup> [Docket No. 106] and an expedited hearing on the Motion was set for September 11, 2018. The circumstances creating the need for an expedited hearing, background for the emergency nature of the relief requested, and background on the Physician Agreements are set forth in detail in the Motion and fully incorporated herein by reference.

7. The United States Trustee formed an official committee of unsecured creditors (the “**Committee**”) on September 6, 2018 [Docket No. 112]. The Committee will seek retention of Sills Cummis & Gross P.C. and Manier & Herod as co-counsel to the Committee.

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<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Motion.

8. Debtors, the Committee, and the U.S. Trustee agreed to a one-week continuance of Debtors' Motion due to: (a) the recent appointment of the Committee and the Committee's request for sufficient time to review Debtors' Motion and related documents; and (b) observance of the Jewish holiday Rosh Hashanah, which fell on September 11, 2018.

9. To resolve the emergency situation faced by the Debtors and provide all parties in interest adequate time to review the Physician Agreements and the ramifications of assuming such agreements, Debtors file this Amended Motion seeking to amend their requested relief.

### **AMENDED RELIEF REQUESTED**

10. Debtors seek to amend the relief requested in the Motion and hereby request authority to (a) pay pre-petition amounts owed (the "**Pre-petition Payments**") to the Contract Physicians listed in Amended Exhibit A, attached hereto, and (b) continue the issue of assumption of the Physician Agreements to such later date to be determined by the Debtors. The Debtors do not by this Amended Motion seek authority to assume any Physician Agreements at this time.

### **BASIS FOR RELIEF**

#### **A. Payment of the Prepetition Amounts Owed to Contract Physicians is Warranted Pursuant to Section 507 of the Bankruptcy Code**

11. Section 507(a)(4)(A) of the Bankruptcy Code grants priority status to up to \$12,850 owed to individuals for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date. *See* 11 U.S.C. § 507(a)(4)(A). Indeed, "[w]age priority has been a feature of the bankruptcy law since 1898." *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at \*2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 507.05[1] (15th ed. 2005)). Its purpose is to "alleviate hardship on workers . . . who may have no other

source of income and “to encourage employees to stand by an employer in financial difficulty.” *Id.* (citing COLLIER ON BANKRUPTCY ¶ 507.05[1]).

12. Independent contractors are entitled to receive wage priority status under section 507(a)(4) of the Bankruptcy Code. *See, e.g., In re Corcoran*, No. 10-00741, 2010 WL 5207589 (Bankr. D. Haw. Dec. 16, 2010); *In re Qualia Clinical Serv., Inc.*, No. BK09-80629-TJM, 2009 WL 2513820 (Bankr. D. Neb. Aug. 10, 2009) (accepting the “expansive interpretation of the scope of individuals covered by the wage priority statute” to include non-employees and independent contractors).

13. Here, for many of the Contract Physicians, not receiving these Pre-petition Payments is the equivalent of not receiving a salary or wages. Debtors seek to pay less than the statutory priority amount of \$12,850 to seventeen of the Contract Physicians listed in Amended Exhibit A (the seven Pre-petition Payments that exceed the statutory priority amount are discussed below). Amounts that are paid on account of priority claims owed to the Contract Physicians would not otherwise be available for distribution to unsecured creditors. Therefore, the Debtors’ unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during the Chapter 11 Cases rather than at the conclusion of the Chapter 11 Cases.

**B. Payment of the Prepetition Amounts Owed to Contract Physicians is Also Warranted Pursuant to Sections 363 and 105 of the Bankruptcy Code**

14. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may “after notice and a hearing, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

15. A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of*

*Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

16. Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (accepting debtor’s argument that payment of employee wage claims was “critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale,” and finding that the debtor had “clearly demonstrated sound business reasons to justify such payments”).

17. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy 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). Under Bankruptcy Code section 105(a), courts may permit pre-plan

payments of prepetition obligations when such payments are essential to the continued operation of the debtor's business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor's business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

18. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession's potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at \*2 (Bankr. D.S.C. Apr. 14, 2000) (courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor”) (citation omitted); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”).

19. Here, as provided in more detail in the Motion, the Contract Physicians provide essential specialty services for the Facilities and cannot be replaced. The loss of any Contract Physician or reduction of any Contract Physician's hours and services would reduce revenues and diminish recovery for Debtors creditors. Accordingly, pursuant to sections 105 and 363 of the Bankruptcy Code, Debtors seek authority to pay the Pre-petition Payments, including those that exceed that statutory priority amount or otherwise do not qualify as priority amounts under section 507(a)(4) of the Bankruptcy Code, because doing so is in the best interests of the Debtors' estates.

20. There are seven Contract Physicians who are owed more than the statutory priority amount. Four of these Contract Physicians are individual physicians who are essential to the operations of the Debtors' businesses and the communities they serve. Debtors submit that paying the Pre-Petition Payments for each of these Contract Physicians is in the best interests of the Debtors' estates because each physician provides essential services as follows.

- a. Donald Carlisle Livingston, M.D. is originally from Amory, Mississippi and was recruited back to the community in the summer of 2018. Retaining Dr. Livingston, a physician who grew in the local community, provides a higher probability of retaining patients in the community.
- b. Erin Livingston, M.D. is also originally from Amory, Mississippi and was recruited back to the community in the summer of 2018. Retaining Dr. Livingston, a physician who grew up in the local community, similarly provides a higher probability of retaining patients in the community.
- c. Richard Earl Brownstein, M.D. is the only gastroenterologist in practice at Clarksdale Regional Medical Center, Inc. ("**Clarksdale**"). Dr. Brownstein performs endoscopy and colonoscopy procedures and surgeries at Clarksdale. Dr. Brownstein also provides call coverage for the emergency room for patients that present there.
- d. Sarah Katherine Pannel, D.O. is the only full-time geropsychiatrist at Batesville Regional Medical Center, Inc. ("**Batesville**"). Dr. Pannel oversees the inpatient geropsych unit for geriatric patients requiring inpatient admission.

21. The remaining three Contract Physicians owed more than the statutory priority amount are two entities (one of which provides services to two Facilities under separate Physician Agreements).

22. Batesville Family Medical Clinic, PLLC (“**BFMC**”) is the private LLC of Michael Havens, M.D., who specializes in family medicine. Dr. Havens serves as the director of the hospitalist program at Batesville and also provides hospitalist services to Batesville’s hospitalist patients (inpatients without an assigned primary care physician or patients who are otherwise referred to Batesville without a relationship with an admitting physician). The Pre-Petition Payment owed to BFMC covers the hospitalist services and hospitalist program director services provided by Dr. Havens, which are essential to Batesville and the community it serves.

23. Willow Anesthesia Services, LLC (“**Willow**”) provides services to two of Debtors’ Facilities, Amory Regional Medical Center, Inc. (“**Amory**”) and Batesville. Willow employs approximately six physicians/certified registered nurses who provide anesthesiology services for Amory. Willow also employs approximately five physicians/certified registered nurses who provide anesthesiology services for Batesville. The Pre-Petition Payments owed to Willow cover the services of multiple physicians and certified registered nurses, and the anesthesiology services they provide are essential to Amory and Batesville and the communities they serve.

24. The potential harm and economic disadvantage that would stem from the failure to pay the Pre-Petition Payments as set forth herein greatly outweighs the amount of any prepetition claims that the Debtors are seeking authorization to pay. Paying the Pre-petition Payments will provide the Contract Physicians with adequate assurance of their job stability and permit the Facilities to continue operating and serving their communities. Paying the Pre-petition



Payments to the Contract Physicians at this time enhances value for the benefit of the Debtors and all interested parties by retaining the Contract Physicians that provide essential specialty services for the Facilities. The loss of any Contract Physician or reduction of any Contract Physician's hours and services would reduce revenues and diminish recovery for Debtors' creditors. Thus, paying the Pre-petition Payments will benefit the Debtors' estates and is within the sound business judgment of the Debtors.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Amended Order, substantially in the form filed contemporaneously herewith, granting the relief requested in the Amended Motion and such other and further relief as may be just and proper.

Dated: September 14, 2018  
Nashville, Tennessee

Respectfully submitted,

**POLSINELLI PC**

/s/ Michael Malone

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*Proposed Counsel to the Debtors and  
Debtors in Possession*



<u>Debtor</u>	<u>Counterparty</u>	<u>Date of Contract</u>	<u>Contract Description</u>	<u>Proposed Pre-Petition Wages to be Paid</u>
Amory Regional Medical Center, Inc. d/b/a Gilmore Memorial Hospital 1105 Earl Frye Blvd. Amory, MS 38821	Erin Livingston, M.D.	November 3, 2016	<u>Recruitment Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Pediatrics</li> </ul>	\$38,044.94
Clarksdale Regional Medical Center, Inc. d/b/a Northwest Mississippi Medical Center 1970 Hospital Drive Clarksdale, MS 38614	G. Davis Berryhill, M.D.	April 21, 2014	<u>Electrocardiogram Interpretation Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Electrocardiogram Interpretation Service</li> <li>Start Date: 5/01/2014</li> <li>Term: 12 Months</li> </ul>	\$339.94
Clarksdale Regional Medical Center, Inc. d/b/a Northwest Mississippi Medical Center 780 Ohio Ave. Clarksdale, MS 38614	Richard Earl Brownstein, M.D.	October 25, 2016	<u>Professional Services Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Gastroenterology</li> <li>Start Date: 10/01/2016</li> <li>Term: 36 Months</li> </ul>	\$36,942.00
Clarksdale Regional Medical Center, Inc. d/b/a Northwest Mississippi Medical Center 1970 Hospital Drive Clarksdale, MS 38614	Faseeh Hadidi, M.D.	June 11, 2015	<u>Call Coverage Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Neurology</li> <li>Start Date: 6/20/2015</li> <li>Term: 36 Months</li> </ul>	\$6,677.42
Clarksdale Regional Physicians, LLC 1970 Hospital Dr. Clarksdale, MS 38614	Vernon T. Hughes, D.O.	June 1, 2018	<u>Professional Services Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Nurse Practitioner Preceptor Services and Family Medicine</li> </ul>	\$1,298.39
Clarksdale Regional Medical Center, Inc. 1970 Hospital Dr. Clarksdale, MS 38614	Andrew A. Martin, M.D.	June 1, 2018	<u>Professional Services Agreement (Medical Directorship)</u> <ul style="list-style-type: none"> <li>Service/Specialty: Pathology and provide medical director services for Pathology Laboratory</li> </ul>	\$1,558.06
Clarksdale Regional Medical Center, Inc. d/b/a Northwest Mississippi Medical Center	Hunter B. Nelson, M.D.	February 28, 2017	<u>Medical Director and Midlevel-Supervisor Agreement</u>	\$3,088.39

<u>Debtor</u>	<u>Counterparty</u>	<u>Date of Contract</u>	<u>Contract Description</u>	<u>Proposed Pre-Petition Wages to be Paid</u>
1970 Hospital Drive Clarksdale, MS 38614		June 1, 2018	<ul style="list-style-type: none"> <li>Service/Specialty: Medical Director for Wound Care and Supervising Physician for Mid-Level Provider</li> <li>Start Date: 3/03/2017</li> <li>Term: 36 Months</li> </ul> <u>Professional Services Agreement</u> (Interpretive Services)	
Clarksdale Regional Medical Center, Inc. 1970 Hospital Drive Clarksdale, MS 38614	Andrea Smith, M.D.	December 1, 2017	<u>Professional Services Agreement</u> (Interpretive Services) <ul style="list-style-type: none"> <li>Service/Specialty: Internal Medicine</li> </ul>	\$4,828.98
Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center 303 Medical Center Dr. Batesville, MS 38606	Jayce D. Miskel, M.D.	May 15, 2018	<u>Professional Services Agreement</u> (Psychiatry Rounding and Call Coverage) <ul style="list-style-type: none"> <li>Service/Specialty: Psychiatry</li> </ul>	\$4,341.29
Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center 303 Medical Center Dr. Batesville, MS 38606	JPB Pathology, Inc.	October 28, 2015	<u>Pathology Department Professional Services Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Anatomic Pathology Technical Services</li> <li>Start Date: 11/01/2015</li> <li>Term: 36 Months</li> </ul>	\$870.98
Amory Regional Medical Center, Inc. 1107 Earl Frye Blvd. Amory, MS 38821	Kevin Cole, M.D.	June 1, 2018	<u>Medical Director Agreement</u> <ul style="list-style-type: none"> <li>Service/Specialty: Medical Director Services for the Radiology Department</li> </ul>	\$3,630.19
Batesville Regional Physicians, LLC 303 Medical Center Dr. Batesville, MS 38606	Jonathan H. Massey, M.D.	February 1, 2018	<u>Professional Services Agreement</u> (Hospitalist Services) <ul style="list-style-type: none"> <li>Service/Specialty: Internal Medicine</li> </ul>	\$11,000.00
Batesville Regional Physicians, LLC 303 Medical Center Dr. Batesville, MS 38606	Batesville Family Medical Clinic, PLLC	February 1, 2017	<u>Professional Services Agreement</u> (Hospitalist and Program Director Services) <ul style="list-style-type: none"> <li>Service/Specialty: Family Medicine</li> </ul>	\$76,974.29

<u>Debtor</u>	<u>Counterparty</u>	<u>Date of Contract</u>	<u>Contract Description</u>	<u>Proposed Pre-Petition Wages to be Paid</u>
Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center 303 Medical Center Dr. Batesville, MS 38606	Malcolm Roland, M.D.	May 15, 2015	<u>Sleep Laboratory Medical Director Agreement</u> <ul style="list-style-type: none"> <li>• Service/Specialty: Medical Director for Sleep Lab (Polysomnography) Service</li> <li>• Start Date: 6/01/2015</li> <li>• Term: 24 Months</li> </ul>	\$4,015.28
Batesville Regional Medical Center, Inc. 303 Medical Center Dr. Batesville, MS 38606	Sarah Katherine Pannel, D.O.	November 27, 2017	<u>Professional Services Agreement</u> <ul style="list-style-type: none"> <li>• Service/Specialty: Psychiatry and call coverage for the facility and Emergency Department</li> </ul>	\$37,362.64
Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center 303 Medical Center Dr. Batesville, MS 38606	George Michael Anderson, M.D.	February 13, 2018	<u>Professional Services Agreement</u> (Psychiatry Rounding and Call Coverage)	\$4,358.48
Amory Regional Medical Center, Inc. d/b/a Gilmore Memorial Hospital 1105 Earl Frye Blvd. Amory, MS 38821	Willow Anesthesia Services, LLC	February 1, 2018	<u>Anesthesia Department Professional Services Agreement</u> <ul style="list-style-type: none"> <li>• Start Date 1/1/2018</li> <li>• Term: 36 Months</li> </ul>	\$66,774.19
Batesville Regional Medical Center, Inc. d/b/a Panola Medical Center 303 Medical Center Dr. Batesville, MS 38606	Willow Anesthesia Services, LLC	May 25, 2016	<u>Anesthesia Department Professional Services Agreement</u> <ul style="list-style-type: none"> <li>• Start Date 5/1/2016</li> <li>• Term: 36 Months</li> </ul>	\$18,808.25