

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

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*In re:* : Chapter 11  
: :  
Curae Health, Inc., *et al.*<sup>1</sup> : Case No. 18-05665  
: (Jointly Administered)  
: :  
Debtors. : Judge Walker  
: :  
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**APPLICATION OF PATIENT CARE OMBUDSMAN  
FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF SAK MANAGEMENT SERVICES, LLC, AS  
MEDICAL OPERATIONS ADVISOR, *NUNC PRO TUNC* AS OF SEPTEMBER 18, 2018**

Suzanne Koenig, the patient care ombudsman (the “**Ombudsman**”) appointed in the above-captioned chapter 11 cases (the “**Cases**”), submits this application (the “**Application**”) for entry of an Order, pursuant to sections 105, 330 and 333 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the retention and employment of SAK Management Services, LLC (“**SAK**”), as medical operations advisor for the Ombudsman, *nunc pro tunc* as of September 18, 2018. The facts and circumstances supporting this Application are as set forth herein and in the Declaration of Suzanne Koenig (the “**Koenig Declaration**”), attached hereto as **Exhibit A** and incorporated herein by reference. In further support of this Application, the Ombudsman respectfully represents as follows:

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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).

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105, 330 and 333 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016.

## **BACKGROUND**

3. On August 24, 2018 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Tennessee, Nashville Division (the “**Court**”).

4. On September 6, 2018, the Court entered an order directing the appointment of a patient care ombudsman under section 333 of the Bankruptcy Code [Docket No. 111].

5. On September 18, 2018, the Office of the United States Trustee for the Middle District of Tennessee (the “**United States Trustee**”) appointed Suzanne Koenig of SAK Management Services, LLC to serve as patient care ombudsman in these Cases [Docket No. 191].

6. The Ombudsman is President of SAK, which specializes in the management of distressed health care businesses. Although the Ombudsman has vast experience in distressed health care businesses and has acted as an ombudsman in other cases, the Ombudsman nonetheless requires the assistance of SAK’s employees in reviewing the operations of the Debtors to appropriately and adequately discharge her duties as Ombudsman in these Cases.

## **RELIEF REQUESTED**

7. By this Application, the Ombudsman respectfully requests that this Court enter an Order authorizing the Ombudsman to employ and retain SAK as her medical operations advisor

in these Cases, pursuant to sections 105, 330 and 333 of the Bankruptcy Code, *nunc pro tunc* as of September 18, 2018.

8. The Ombudsman has determined that SAK has the resources and experience necessary to assist her in the fulfillment of her duties as Ombudsman. SAK has substantial experience in the health care industry and is nationally recognized for its healthcare consulting services.

9. Under the leadership of the Ombudsman, as founder and President, SAK has represented debtors, trustees, examiners, financial institutions and creditor committees. SAK has assisted the Ombudsman in numerous other bankruptcy cases, including *See In re Illinois Skin, Inc.*, Chapter 7 Case No. 06-16098 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Dari Ann Ungaretti*, Chapter 7 Case No. 06-16094 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Bayonne Medical Center*, Chapter 11 Case No. 07-15195 (Bankr. D.N.J., April 16, 2007); *In re New York Westchester Square Medical Center*, Chapter 11 Case No. 06-13050 (Bankr. S.D.N.Y. Dec. 19, 2006); *In re Atlantic Health Services, Inc.*, Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md. January 24, 2006); *In re Upland Surgical Institute*, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal. August 9, 2006); *In re Brotman Medical Center Inc.*, Case No. 07-19705 (Bankr. C.D. Cal. June 4, 2008); *In re Meridian Behavioral Health, LLC*, Case No. 11-10860 (Bankr. S.D.N.Y. 2011, February 28, 2011), *In re Christ Hospital*, Case No. 12-12906 (Bankr. D.N.J. Feb. 6, 2012) and *In re ICL Holding Company, Inc., et al.*, Case No. 12-13319 (Bankr. D. Del. Dec. 11, 2012), *In re Horizon Health Center, Inc.*, Case No. 13-26348 (Bankr. D. NJ) and *In re Fairmont General Hospital, Inc., et al.*, Case No. 13-01054 (Bankr. N.D.W.VA). Given the nature of these Cases and the specific duties of the Ombudsman required under section 333 of the Bankruptcy Code, the

Ombudsman believes that retention of SAK is appropriate and necessary and will allow her to discharge her duties in the most effective, efficient and timely manner.

### **SCOPE OF EMPLOYMENT**

10. The professional services that the Ombudsman expects SAK to render include, but shall not be limited to, the following:

- (a) Conducting interviews of patients and facility staff as required;
- (b) Reviewing license and governmental permits;
- (c) Reviewing adequacy of staffing, supplies and equipment;
- (d) Reviewing safety standards;
- (e) Reviewing facility maintenance issues or reports;
- (f) Reviewing patient, family, staff or employee complaints;
- (g) Reviewing risk management reports;
- (h) Reviewing litigation relating to the Debtors;
- (i) Reviewing patient records;
- (j) Reviewing any possible sale or restructuring of the Debtors and how it impacts patients;
- (k) Reviewing other information, as applicable to the Debtors and these Cases, including, without limitation, patient satisfaction survey results, regulatory reports, utilization review reports, discharged and transferred patient reports, staff recruitment plans and nurse/patient/acuity staffing plans;
- (l) Reviewing various financial information, including, without limitation, current financial statements, cash projections, accounts receivable reports and accounts payable reports to the extent such information may impact patient care; and
- (m) Assisting the Ombudsman with such other services as may be required under the circumstances of these Cases, including any diligence or investigation required for the reports to be submitted by the Ombudsman.

11. Subject to the Court's approval of this Application, SAK has indicated that it is willing to serve as the Ombudsman's medical operations advisor in these Cases to perform the services described above.

**SAK DOES NOT HOLD OR REPRESENT ANY ADVERSE INTEREST**

12. As set forth in greater detail in the Koenig Declaration, SAK has completed a conflicts check on the following names: (a) the Debtors; (b) the creditors set forth on the list of the Debtors' consolidated top thirty (30) unsecured creditors; (c) the Debtors' lenders; and (d) certain other creditors and/or parties-in-interest. A list of those names reviewed for possible conflicts is attached as **Exhibit 1** to the Koenig Declaration.

13. To the best of the Ombudsman's knowledge, based upon the Koenig Declaration, SAK (a) does not hold or represent any interest adverse to the Debtors or their respective chapter 11 estates, creditors or any other party in interest and (b) is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code.

14. To the best of the Ombudsman's knowledge, the SAK professionals who will work on this matter are not relatives of the Honorable Charles M. Walker, the Bankruptcy Judge presiding over these Cases, the United States Trustee for this Region, or any person employed in the Office of the United States Trustee for this Region.

**COMPENSATION AND REIMBURSEMENT OF EXPENSES**

15. Subject to Court approval, and in accordance with section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, orders of the Court and the rules and other procedures that may be fixed by the Court, the Ombudsman requests that SAK be compensated on an hourly basis, plus reimbursement of the actual and necessary expenses SAK incurs, in accordance with the ordinary and customary rates which are in effect on the date the

services are rendered, including, but not limited to, mail and express mail charges, special or hand delivery charges, photocopying charges, courier services, overnight delivery services, docket and court filing fees, telecommunications, travel expenses, expenses for working meals, computerized research and any other incidental costs advanced by SAK specifically for these matters, at the rates commonly charged for such costs to other SAK clients. In addition, SAK has advised the Ombudsman that it intends to seek compensation for all time and expenses associated with its retention as a professional, including the preparation of this Application, the Koenig Affidavit, and related documents, as well as any monthly, interim or final fee applications.

16. SAK has advised the Ombudsman that the current hourly rates applicable to the principal professionals proposed to be employed by the Ombudsman are:

<b>Professional</b>	<b>Rate Per Hour</b>
Suzanne Koenig	\$400
Joyce Ciyou	\$375
Flora Reznik	\$375
Helen Colon	\$100

17. Other professionals will render services to the Ombudsman as needed. Generally, SAK's hourly rates range between \$175 and \$450. The Ombudsman understands that SAK's hourly rates are subject to periodic adjustments to reflect economic and other conditions. The hourly rates will likely be adjusted upward as of January 1, 2019 and annually thereafter.

**BASIS FOR RELIEF**

18. Courts have approved the engagement of professionals by the court-appointed Ombudsman pursuant to sections 330 and 333 of the Bankruptcy Code. *See In re Illinois Skin, Inc.*, Chapter 7 Case No. 06-16098 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Dari Ann Ungaretti*, Chapter 7 Case No. 06-16094 (MB) (Bankr. N.D. Ill. February 21, 2007); *In re Bayonne Medical Center*, Chapter 11 Case No. 07-15195 (Bankr. D.N.J., April 16, 2007); *In re New York*

*Westchester Square Medical Center*, Chapter 11 Case No. 06-13050 (Bankr. S.D.N.Y. Dec. 19, 2006); *In re Atlantic Health Services, Inc.*, Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md. January 24, 2006); *In re Upland Surgical Institute*, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal. August 9, 2006); *In re Brotman Medical Center Inc.*, Case No. 07-19705 (Bankr. C.D. Cal. June 4, 2008); *In re Meridian Behavioral Health, LLC*, Case No. 11-10860 (Bankr. S.D.N.Y. 2011, February 28, 2011), *In re Christ Hospital*, Case No. 12-12906 (Bankr. D.N.J. Feb. 6, 2012) and *In re ICL Holding Company, Inc., et al.*, Case No. 12-13319 (Bankr. D. Del. Dec. 11, 2012), *In re Horizon Health Center, Inc.*, Case No. 13-26348 (Bankr. D. NJ) and *In re Fairmont General Hospital, Inc., et al.*, Case No. 13-01054 (Bankr. N.D.W.VA). Furthermore, section 330 specifically provides that the Court may award an ombudsman appointed under section 333 “reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person.” Section 333 specifically grants bankruptcy courts authority to compensate the professionals of the Ombudsman.

19. Other authority exists to grant this Application and approve the appointment of professionals for the Ombudsman. The appointment of the Ombudsman is analogous to the appointment of an examiner, and, in many cases, courts have authorized examiners to employ professionals notwithstanding the absence of express authorization in the Bankruptcy Code for such employment, pursuant to section 105 of the Bankruptcy Code. *See, e.g., In re Enron*, Case No. 01-16034 (Bankr. S.D.N.Y. 2001, A. Gonzalez) (allowing examiner to retain professionals); *In re Southmark Corp.*, 113 B.R. 280, 283 (Bankr. N.D. Tex. 1990) (allowing examiner to retain professionals where appropriate to carry out subjective provisions if the Code); *In re Tighe Mercantile, Inc.*, 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986) (holding that “. . . in appropriate

circumstances, a bankruptcy court may rely on §105(a) to authorize examiners to employ professional persons.”); 7 *Collier on Bankruptcy*, ¶ 1104.03[5], at 49-50 (15th ed. rev. 2006) (recognizing that, although the Bankruptcy Code does not expressly authorize examiners to retain professionals to assist in investigations, “it may be preferable to authorize an examiner to retain professionals when necessary for a complete investigation.”).

20. Thus, the Application should be granted by this Court to allow the Ombudsman to employ SAK to assist her in the fulfillment of her duties in these Cases. *See generally* 3 *Collier on Bankruptcy*, ¶333.05[1], at 1 (15<sup>th</sup> ed. rev. 2006) (“If the healthcare business is large or complicated, the ombudsman could be expected to retain professionals to assist in the discharge of the ombudsman’s duties.”).

**NUNC PRO TUNC RETENTION AS OF SEPTEMBER 18, 2018**

21. The Ombudsman requests that the retention and employment of SAK be approved *nunc pro tunc* as of September 18, 2018, the date of the Ombudsman’s appointment by the United States Trustee in these Cases. Given the sale process, the Ombudsman and SAK are in the process of beginning to visit each of the Debtors’ locations.

**NOTICE**

22. Notice of this Application has been provided to (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) the Debtors; (c) counsel for the Debtors; (d) counsel for ServisFirst Bank; (e) counsel for Midcap Funding IV Trust; (f) counsel for Community Health Systems; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

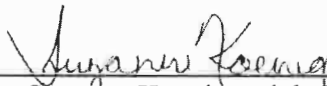
23. No previous motion for the relief sought herein has been made to this or any other court.



**WHEREFORE**, based upon the foregoing, the Ombudsman respectfully requests that the Court enter an order (a) granting this Application, (b) authorizing the Ombudsman to retain and employ SAK Management Services, LLC, in these Cases, *nunc pro tunc* as of September 18, 2018, and (c) granting such other and further relief as this Court may deem just and proper.

Dated: October 5, 2018

**SUZANNE KOENIG, AS COURT APPOINTED  
PATIENT CARE OMBUDSMAN**

By:   
Suzanne Koenig, solely in her capacity as  
Patient Care Ombudsman

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2018, a true and correct copy of the foregoing was sent via this Courts ECF notification system to all parties who are registered to receive ECF notification in these Cases and via United States, postage paid, first class mail to the following:

David Gordon, Esq.  
Polsinelli  
1201 West Peachtree Street, Ste. 1100  
Atlanta, GA 30309  
*Proposed Counsel for the Debtors*

David Lemke, Esq.  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Ste. 2700  
Nashville, TN 37219  
*Counsel for Midcap Financial Trust*

David Thompson, Esq.  
Neal & Harwell, PLC  
1201 Demonbreun Street, Ste. 1000  
Nashville, TN 37203  
*Counsel for ServisFirst Bank*

Megan Seliber, Esq.  
Office of the United States Trustee  
318 Customs House  
701 Broadway  
Nashville, TN 37203  
*Counsel for the United States Trustee*

Paul Jennings, Esq.  
Bass, Berry & Sims PLC  
150 Third Avenue South, Ste. 2800  
Nashville, TN 37201  
*Counsel for Community Health Systems*

/s/ John D. Elrod  
John D. Elrod

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

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*In re:* : Chapter 11  
: :  
Curae Health, Inc., *et al.*<sup>2</sup> : Case No. 18-05665  
: (Jointly Administered)  
: :  
Debtors. : Judge Walker  
: :  
: :

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**LOCAL RULE 9013-1 NOTICE OF APPLICATION OF PATIENT CARE  
OMBUDSMAN FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF SAK MANAGEMENT SERVICES, LLC, AS  
MEDICAL OPERATIONS ADVISOR, NUNC PRO TUNC AS OF SEPTEMBER 18, 2018**

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: OCTOBER 29, 2018**

**IF A RESPONSE IS TIMELY FILED, THE HEARING WILL BE: NOVEMBER 13, 2018  
AT 11:00 AM, CUSTOMS HOUSE, COURTROOM 2, 701 BROADWAY, NASHVILLE,  
TENNESSEE 37203**

SAK Management Services, LLC (“SAK”) has requested the following relief from the Court: to authorize the retention and employment of SAK Management Services, LLC as Medical Operations Advisor, *nunc pro tunc* as of September 18, 2018 (the “**Application**”).

**YOUR RIGHTS MAY BE AFFECTED.** If you do not want the Court to grant the attached Motion, then on or before **October 29, 2018**, you or your attorney must:

1. File with the court your response or objection explaining your position. PLEASE NOTE: THE BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE REQUIRES ELECTRONIC FILING. ANY RESPONSE OR OBJECTION YOU WISH TO FILE MUST BE SUBMITTED ELECTRONICALLY. TO FILE ELECTRONICALLY, YOU OR YOUR ATTORNEY MUST GO TO THE COURT WEBSITE AND FOLLOW THE INSTRUCTIONS AT: <https://ecf.tnmb.uscourts.gov>.

If you need assistance with Electronic Filing, you may call the Bankruptcy Court at (615)736-5584. You may also visit the Bankruptcy Court in person at: 701 Broadway, 1<sup>st</sup> Floor, Nashville, Tennessee 37203 (Monday – Friday – 8:00 a.m. – 4:00 p.m.)

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<sup>2</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).

Your response must state that the deadline for filing responses is October 29, 2018, the date of the scheduled hearing is November 13, 2018, and the document to which you are responding is titled Application of Patient Care Ombudsman for Entry of an Order Authorizing the Retention and Employment of SAK Management Services, LLC, as Medical Operations Advisor, *Nunc Pro Tunc* as of September 18, 2018.

2. If you would like a file stamped copy returned, you must include an extra copy and a self-addressed, stamped envelope.

3. You must serve your response or objection **by electronic service through the Electronic Filing System** described above. You must also mail a copy of your response or objection to:

John D. Elrod  
Greenberg Traurig, LLP  
Terminus 200  
3333 Piedmont Road NE, Ste. 2500  
Atlanta, GA 30305  
Telephone: (678) 553-2100  
Facsimile: (678) 553-2212  
[elrodj@gtlaw.com](mailto:elrodj@gtlaw.com)

Nancy A. Peterman  
Greenberg Traurig, LLP  
77 West Wacker Drive  
Suite 3100  
Chicago, Illinois 60601  
Telephone (312) 456-8400  
Facsimile: (312) 456-8435  
[petermann@gtlaw.com](mailto:petermann@gtlaw.com)

If a response is filed before the deadline stated above, the hearing will be held at the time and place indicated above. ***THERE WILL BE NO FURTHER NOTICE OF THE HEARING DATE.*** You may check whether a timely response has been filed by calling the Clerk's office at (615) 736-5584 or viewing the case on the Court's website at <https://ecf.tnmb.uscourts.gov>.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application and may enter the attached order granting that relief.

Date: October 5, 2018

GREENBERG TRAUIG, LLP

/s/ John D. Elrod

John D. Elrod  
Terminus 200  
3333 Piedmont Road NE, Ste. 2500  
Atlanta, GA 30305  
Telephone: (678) 553-2100  
Facsimile: (678) 553-2212  
[elrodj@gtlaw.com](mailto:elrodj@gtlaw.com)

-and-

Nancy A. Peterman

77 West Wacker Drive, Suite 3100  
Chicago, Illinois 60601  
Telephone (312) 456-8400  
Facsimile: (312) 456-8435  
[petermann@gtlaw.com](mailto:petermann@gtlaw.com)

*Proposed Counsel to the Patient  
Care Ombudsman*