

**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

**HEALTHTRUST PURCHASING GROUP, L.P.’S AMENDED OBJECTION TO
DEBTORS’ NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS**

HealthTrust Purchasing Group, L.P., (“HealthTrust”) hereby submits this objection to the Debtors’ Notice of: (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing (“Debtors’ Notice”). In support of this objection, HealthTrust respectfully states as follows:

Factual Background

1. HealthTrust is a “group purchasing organization” that is structured to comply with the requirements of the “safe harbor” regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. §1001.952(j) and that maintains agreements with vendors for purchasing products, dietary products, equipment, and services used by hospitals and other healthcare facilities as part of a group purchasing program.

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); Armory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

2. Due to Curae Health, Inc.'s ("Curea Health") unique qualities that made it compatible with HealthTrust's group purchasing organization model, HealthTrust and Curae Health entered into a Participation Agreement² ("Participation Agreement") on December 31, 2014, which enabled Curae Health to participate in HealthTrust's group purchasing program.

3. In the Debtors' Notice filed on October 29, 2018, the Participation Agreement was listed as a contract that the "Debtors **may** assume and assign in connection" with sale of Gilmore Medical Center.

Objection

4. Pursuant to 11 U.S.C. § 365(c)(1), a debtor may not assume or assign a contract if applicable law excuses the non-debtor party from accepting performance or rendering performance to a party other than the debtor and the non-debtor party does not consent to the assumption or assignment.

5. The Participation Agreement between HealthTrust and Curae Health is akin to a non-assignable personal services contract. This is because not all health care entities have the distinct qualities necessary to be compatible with HealthTrust's group purchasing organization model. *See Forest Creek Townhomes, LLC v Carroll Prop.*, No. 2:15-cv-02577-JPM-tmp, 2016 WL 2344230, *5 (W.D. Tenn. May, 3, 2016) (internal citations omitted) (providing that a personal services contract involves "skills, knowledge, experience and expertise [that] are unique to the area and could not be duplicated by others not similarly qualified"); *In re McVay*, 169 B.R. 49, 51 (W.D. Tenn. 1994) ("Ordinarily, personal services cannot be assumed or assigned by bankruptcy trustees because they are based upon personal services or skills or upon personal trust or confidence.").

² The Participation Agreement is attached as Exhibit 1.

6. Furthermore, Curae Health is not permitted to assign the Participation Agreement nor any of its rights or obligations without HealthTrust's written consent pursuant to Section 14 of the Participation Agreement. *See Craster v Thrifty Rent-A-Car Sys., Inc.*, 187 S.W.3d 33, 39 (Tenn. Ct. App. 2005) (internal citations omitted) (providing that a contract should be enforced against the parties as written even if the terms may be "harsh or unjust").

7. HealthTrust does not consent to any assumption and/or assignment at this time.

8. The Participation Agreement further provides that HealthTrust may terminate the Participation Agreement based on the transfer of ownership or bankruptcy of Curae Health or any of Curae Health's participating hospitals or health care facilities.³

9. As an additional matter, HealthTrust has no record that Gilmore Medical Center is a Curae Health hospital or health care facility subject to the Participation Agreement, having never been added to the Participation Agreement by amendment, nor having executed and delivered a GPO Affiliation Certification to HealthTrust, as required by the Participation Agreement.⁴

10. HealthTrust reserves the right to update, supplement, modify, or otherwise amend this objection as may be necessary or appropriate.

Therefore, HealthTrust respectfully requests that this Court sustain its objection to assignment and assumption of the Participation Agreement as well as grant such other relief as may be just and proper.

³ See Participation Agreement, Sections 8.1.2 and 8.1.3.

⁴ See *Id.*, Sections 2.6 and 2.7

Respectfully submitted,

/s/ Steven E. Anderson

Steven E. Anderson, BPR #13143
Ashley B. Tipton, BPR #35375
Anderson & Reynolds PLC
120 30th Ave. North
Nashville, TN 37203
(615) 942-1700
sanderson@andersonreynolds.com
atipton@andersonreynolds.com

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via the Court's CM/EMF system to all parties registered to receive electronic notice on November 9, 2018, including:

David Gordon
Polsinelli PC
1201 West Peachtree Street
Suite 1100
Atlanta, GA 30309
dgordon@polsinelli.com
Counsel for Debtors

David G. Thompson
Neal & Harwell, PLC
1201 Demonbreun Street
Suite 1000
Nashville, TN 37203
dthompson@nealharwell.com
Counsel for ServisFirst Bank

David W. Houston IV
Burr & Forman
222 Second Avenue South
Suite 2000
Nashville, TN 37201
dhouston@burr.com
Counsel for Stalking Horse Purchaser

Andrew Sherman
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102
asherman@sillscummis.com
Counsel to the Committee

David E. Lemke
Waller Lansden Dortch & Davis, LLP
511 Union Street
Suite 2700
Nashville, TN 37219
david.lemke@wallerlaw.com
Counsel for MidCap Financial

/s/ Steven E. Anderson