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Debtors In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

☐ Affects All Debtors

☒ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:

Case No. 2:18-bk-20162-ER

Case No. 2:18-bk-20163-ER

Case No. 2:18-bk-20164-ER

Case No. 2:18-bk-20165-ER

Case No. 2:18-bk-20167-ER

Case No. 2:18-bk-20168-ER

Case No. 2:18-bk-20169-ER

Case No. 2:18-bk-20171-ER

Case No. 2:18-bk-20172-ER

Case No. 2:18-bk-20173-ER

Case No. 2:18-bk-20175-ER

Case No. 2:18-bk-20176-ER

Case No. 2:18-bk-20178-ER

Case No. 2:18-bk-20179-ER

Case No. 2:18-bk-20180-ER

Case No. 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DEBTORS' NOTICE OF MOTION AND
MOTION FOR ORDER AUTHORIZING
DISPOSAL OF PATIENT RECORDS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JOHNNETTE CHONG**

HEARING:

Date: September 4, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

255 East Temple Street

Los Angeles, California 90012-3300



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PLEASE TAKE NOTICE that at **10:00 a.m.** (prevailing Pacific Time) **on September 4, 2019**, before the Honorable Ernest M. Robles in Courtroom 1568 of the United States Bankruptcy Court for the Central District of California, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012-3300, Verity Health System of California, Inc., the debtor and debtor in possession in the above-captioned cases (“VHS” or the “Debtor”), will request entry of an order authorizing the Debtor to dispose of certain patient records in the manner set forth in § 351 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* and Rule 6011 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).¹ The medical records at issue are medical records of patients who were minors (“Minors’ Patient Records”) when treated at the general acute care hospital (the “Hospital”) operated by Robert F. Kennedy Medical Center (“RFKMC”), a nonprofit religious corporation (the “Corporation”). The Hospital closed fifteen years ago. VHS is in possession of RFKMC medical records because when the Hospital closed in 2004, the records were retained by the Daughters of Charity Health System (“DCHS”); in 2015, DCHS transferred those medical records to VHS. No one has asked for a copy of any of these records in approximately four years. RFKMC is not a debtor in the above-referenced chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the attached Declaration of Johnnette Chong, the *Declaration Of Richard G. Adcock In Support Of Emergency First Day Motions* filed on August 31, 2018 [Docket No. 8] (the “Adcock Declaration”), the supporting statements, arguments and representations of counsel who will appear at the hearing on the Motion, and other admissible evidence properly brought before the Court at or before the hearing on this Motion, if any. In addition, the Debtor requests that the Court take judicial notice of all documents filed with the Court in this case.

¹ All additional references to “section” or “§” shall be to the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* All references to “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedures. All references to “LBR” shall be the Local Rules of the United States Bankruptcy Court for the Central District of California.

1 **PLEASE TAKE FURTHER NOTICE** in accordance with LBR 9013-1(o)(1) and (4),
2 any party opposing or responding to the Motion must file and serve the response (“Response”) on
3 the moving party and the United States Trustee not later than 14 days before the date designated
4 for the hearing. A Response must be a complete written statement of all reasons in opposition
5 thereto or in support, declarations and copies of all evidence on which the responding party
6 intends to rely, and any responding memorandum of points and authorities.

7 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h), the failure to
8 file and serve a timely objection to the Motion may be deemed by the Court to be consent to the
9 relief requested herein.

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11 Dated: August 14, 2019

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14 By /s/John A. Moe, II
JOHN A. MOE, II

15 Attorneys for the Chapter 11 Debtors and
16 Debtors In Possession
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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System of California, Inc., the debtor and debtor in possession in the above-captioned cases (“VHS” or the “Debtor”), respectfully requests that the Court enter an order authorizing VHS to dispose of certain minors’ patient records (the “Minors’ Patient Records”) in the manner set forth in § 351 of title 11 of the United States Code, §§ 101 et seq. (the “Bankruptcy Code”)² and Bankruptcy Rule 6011. As discussed herein, the Debtor’s predecessor-in-interest closed the Hospital (as defined below) fifteen years ago, in 2004. VHS ought not use its limited funds to continue *now fifteen* years later to store Minors’ Patient Records in the manner required by applicable law, especially in a case where unsecured creditors will not be paid in full. Accordingly, VHS hereby moves for entry of an order in the above-referenced case authorizing it to dispose of Minors’ Patient Records in the manner set forth herein and in accordance with the Bankruptcy Code and Bankruptcy Rules.

I. JURISDICTION AND VENUE

This Court has jurisdiction over this Motion under 28 U.S.C. § 157(b)(2)(A) and (O). Venue of these proceedings and this Motion is proper pursuant to 28 U.S.C. § 1409. The statutory predicate for this Motion is § 351 and Bankruptcy Rule 6011.

II. BACKGROUND

A. The Bankruptcy Cases

1. On August 31, 2018, (“Petition Date”), VHS and sixteen affiliated entities, debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases, each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Cases”). The Cases are being jointly administered before the Bankruptcy Court pursuant to this Court’s Order [Docket No. 17]. Since the commencement of their Cases, the debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

² All references to § herein are to sections of the Bankruptcy Code. All references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Procedure. All references to “LBR” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”).

2. VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O'Connor Hospital and Saint Louise Regional Hospital, and currently operates St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center, including Seton Medical Center Coastsides Campus (collectively, the "Hospitals") and other facilities in the state of California.

3. As of the Petition Date, VHS, the Hospitals, and their affiliated entities operated as a nonprofit health care system, approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. Adcock Declaration, at 4, 12. On the Petition Date, the Debtors had approximately 850 inpatients. *Id.*, at 6, 17. The scope of the services provided by the Verity Health System is exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, 12.

4. A detailed description of the Debtors' businesses, capital structure and the events leading to the commencement of these Cases is contained in the Adcock Declaration [Docket No. 8].

5. On September 17, 2018, the U.S. Trustee appointed a statutory creditors' committee (the "Committee") pursuant to § 1102.

B. RFKMC

6. As set forth in the attached Declaration of Johnnette Chong ("Chong Decl."), RFKMC, a California nonprofit religious corporation, operated a 229-bed general acute care hospital (the "Hospital") in Hawthorne, California. Chong Decl. ¶ 2. For more than 76 years, the Hospital met the needs of the Los Angeles communities in the South Bay. Chong Decl. ¶ 3. The Hospital was a member of the Daughters of Charity Health System ("DCHS"). Chong Decl. ¶ 3. The Hospital provided medical/surgical inpatient medical services, intensive care/telemetry inpatient services, psychiatric services, skilled nursing services, rehabilitation services, obstetrical services, and outpatient services, and it had an emergency department. Chong Decl. ¶ 3.

7. Between July 2003 and June 2004, the average daily general acute inpatient census was approximately 50 patients per day, while the average daily emergency room patients numbered approximately 65 patients per day. Chong Decl. ¶ 4.

8. On September 23, 2004, DCHS notified the Los Angeles County Department of Health Services and Emergency Medical Services of its intention to cease operation of the Hospital and emergency services, no later than December 31, 2004. In fact, operations were closed on or about December 31, 2004. Chong Decl. ¶ 5.

9. As a result of the transfer of DCHS assets to VHS, RFKMC assets were transferred to VHS. Adcock Decl., ¶¶ 48, 53, 88, 89. Accordingly, the RFKMC patient records are under the control of VHS. Chong Decl. ¶ 5. The Corporation's patient records are stored at Guaranteed Records Management/GRM Information Management ("GRM"). Chong Decl. ¶ 6.

10. No one has asked for a copy of any of these records for approximately four years. Chong Decl. § 7.

III. BASIS FOR RELIEF REQUESTED

"Duties that arise when a health care business is ceasing operations, such as proper destruction or retention of patient records ... are covered under § 351 ... of the Bankruptcy Code ... and allow the Trustee to carry out such functions." *In re Banes*, 355 B.R. 532, 536 (Bankr. M.D.N.C. 2006). Section 351 specifically provides that "[i]f a healthcare business commences a case under chapter ... 11, and the trustee does not have a sufficient amount of funds to pay for the storage of the patient records in the manner required under applicable Federal or State law," then, subject to certain specified requirements, the trustee may "destroy those records" by "shredding or burning the records" if they are written or by "otherwise destroying those records so that those records cannot be retrieved" if they are "magnetic, optical, or other electronic records." 11 U.S.C. §§ 351, 351(3); accord *In re LLSS Mgmt. Co., Inc.*, No. 07-02678-5-ATS, 2008 WL 395184, *2 (Bankr. E.D.N.C. Feb. 11, 2008) ("Section 351 of the Bankruptcy Code provides that if a chapter 7 trustee does not have sufficient funds to pay for the storage of patient records in the manner required under applicable Federal or State law, certain requirements must be met."); *Banes*, 355 B.R. at 536; *In re 7-Hills Radiology, LLC*, 350 B.R. 902, 903 n.2 (Bankr. D. Nev.

2006) (noting that “health care business[es] are restricted in the way in which they may dispose of patient records” under 11 U.S.C. § 351); see also *In re Gardens Hospital & Medical Ctr.*, Case No. 2:16-bk-17463-ER, Docket Nos. 666, 694 (Bankr. C.D. Cal. filed June 6, 2016); *In re West Contra Costa Healthcare District*, Case No. 4:16-bk-42917, Docket Nos. 28, 67 (Bankr. N.D. Cal. filed Oct. 20, 2016).

Section 351 provides that, before the trustee or debtor is authorized to destroy a debtor’s patient records, he or she must first publish notice in one or more appropriate newspapers that if the patient’s records are not claimed by the patient or an insurance provider within 365 days after the date of the notification, then the trustee will destroy the patient’s records. See 11 U.S.C. § 351(1)(A).

Section 351 further provides that, during the first 180 days of the 365-day period following the published notices, the trustee must properly attempt to notify each patient and insurance carrier, where applicable, concerning the patient records by mailing to the most recent known address of: (1) the patient, or a family member or contact person for that patient and (2) the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of the patient records. See id. at § 351(1)(B). Bankruptcy Rule 6011 requires that this notice also be given to the Attorney General for the State of California. Fed. R. Bankr. P. 6011(b).

Section 351 further provides that if the patient records are not claimed within 365 days of the date of the published notices, the trustee shall send by certified mail a written request to each appropriate federal agency to request permission to deposit the patient records with that agency. 11 U.S.C. § 351(2). Only after the 365-day period following the published notices has elapsed and the patient records have not been claimed by a patient or insurance provider, and a request to deposit the patient records with the appropriate federal agency has not been granted, may the trustee destroy the patient records. See id. at § 351(3); see also *LLSS Mgmt. Co.*, 2008 WL 395184, at *2.

As discussed above, the Hospital closed at the end of 2004. Under federal and state law, VHS is no longer required to maintain the medical records for the vast majority of the patients

1 who were treated at the Hospital. *Those records which VHS is no longer required to retain, will*
2 *be disposed of, as permitted by law and consistent with VHS' policies and procedures.*

3 This Motion relates to those records which, under either federal or state law, VHS is
4 required to retain – namely, the Minors' Patient Records. The Minors' Patient Records that VHS
5 currently stores at GRM are:

- 6 • Minors' Patient Records FYE 2005, to be retained until 2025;
- 7 • Minors' Patient Records FYE 2004, to be retained until 2024;
- 8 • Minors' Patient Records FYE 2003, to be retained until 2023;
- 9 • Minors' Patient Records FYE 2002, to be retained until 2022;
- 10 • Minors' Patient Records FYE 2001, to be retained until 2021; and
- 11 • Minors' Patient Records FYE 2000, to be retained until 2020.

12 VHS is paying for storage of at least 16,591 Minors' Patient Records. Chong Decl. ¶ 7.
13 The cost to continue to store and maintain the Minors' Patient Records is approximately \$3,000
14 per year. Chong Decl. ¶ 7.

15 The Debtors' financial situation, exemplified by the bankruptcy cases, establishes that
16 VHS should be authorized by the Court to destroy the Minors' Patient Records in the manner set
17 forth under § 351 and Bankruptcy Rule 6011. VHS is subject to record retention requirements
18 under state and federal law, including under the Health Insurance Portability and Accountability
19 Act ("HIPAA"). *See LLSS Mgmt.*, 2008 WL 395184, at *2 (listing HIPAA as example of a
20 federal statute mandating record retention by health care businesses seeking to destroy patient
21 records under § 351). The Debtor wishes to conserve its limited financial resources by
22 discontinuing payment for the storage of the Minors' Patient Records, especially considering the
23 fact that no one has asked for a copy of any of these records in approximately four years.

24 The Debtor will comply with all requirements under § 351 and Bankruptcy Rule 6011, in
25 regard to the disposition of the Minors' Patient Records, including:

- 26 • Publication of a notice on the proposed disposal of Minors' Patient Records in a
27 newspaper of general circulation in Los Angeles (the "Published Notice");

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- Prompt notification of all patients and appropriate insurance carriers within 180 days of the Published Notice regarding the claiming or disposing of the Minors' Patient Records, consistent with § 351(1)(B);
- Notification of the United States Department of Health and Human Services ("DHHS") to request permission to deposit the Minors' Patient Records with DHHS, if the Minors' Patient Records have not been claimed within 365 days of the Published Notice by patients or the appropriate insurance carrier;
- Destruction of the Minor's Patient Records if the Minors' Patient Records have not been retrieved by a patient or the appropriate insurance carrier within 365 days of the Published Notice *and* if DHHS does not agree to the Debtor's request to deposit the Minors' Patient Records with the federal agency; and
- Destruction of the Minors' Patient Records in the manner specified in § 351(3) of the Bankruptcy Code.

IV. CONCLUSION

In light of the foregoing, VHS respectfully requests that this Court enter an order (i) authorizing the Debtor to dispose of the Minors' Patient Records in the manner prescribed herein pursuant to § 351, and (ii) granting such other relief as the Court deems just and proper under the circumstances.

Dated: August 14, 2019

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By /s/ John A. Moe, II
JOHN A. MOE, II

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

DECLARATION OF JOHNNETTE CHONG

I, Johnnette Chong, declare that if called as a witness, I would and could testify as follows
base do my own personal knowledge, as follows.

1. I am the Director, Collaborative Center for Operations, Strategy and Clinical
Outcomes Project Management, for Verity Health System of California, Inc. ("VHS"). I report to
and work closely with Doctor Tirso del Junco, who is the Chief Medical Officer for VHS.

2. Robert F. Kennedy Medical Center ("RFKMC"), a California nonprofit religious
corporation, operated a 229-bed general acute care hospital (the "Hospital") in Hawthorne,
California.

3. For more than 76 years, the Hospital met the needs of the Los Angeles
communities in the South Bay. The Hospital was a member of the Daughters of Charity Health
System ("DCHS"). The Hospital provided medical/surgical inpatient medical services, intensive
care/telemetry inpatient services, psychiatric services, skilled nursing services, rehabilitation
services, obstetrical services, and outpatient services, and it had an emergency department.

4. Between July 2003 and June 2004, the average daily general acute inpatient census
at the Hospital was approximately 50 patients per day, while the average daily emergency room
patients numbered approximately 65 patients per day.

5. On September 23, 2004, DCHS notified the Los Angeles County Department of
Health Services and Emergency Medical Services of its intention to cease operation of the
Hospital and emergency services, no later than December 31, 2004. In fact, operations were
closed on or about December 31, 2004.

6. The RFKMC patient records are under the control of VHS. The Corporation's
patient records are stored at Guaranteed Records Management/GRM Information Management
("GRM").

7. VHS is required to keep the patient records of minors ("Minors' Patient Records"),
as follows:

Minors' Patient Records FYE 2005, retain until 2025;

Minors' Patient Records FYE 2004, retain until 2024;

1 Minors' Patient Records FYE 2003, retain until 2023;

2 Minors' Patient Records FYE 2002, retain until 2022;

3 Minors' Patient Records FYE 2001, retain until 2021; and


4 Minors' Patient Records FYE 2000, retain until 2020.

5 At last count the Minors' Patient Records total 16,591 files. GRM has informed me that the cost
6 to retain those records is approximately \$3,000 per year.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Executed this 25th day of July, 2019.

Johnnette
Chong

 Digitally signed by Johnnette Chong
DN: cn=Johnnette Chong, o=Verity Health
System, ou=Quality,
email=johnnettechong@verity.org, c=US
Date: 2019.07.26 11:23:59 -07'00'

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