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HONORABLE FRANK L. KURTZ

HEARING DATE: MAY 8, 2019  
HEARING TIME: 10:00 A.M.  
RESPONSE DUE: AT TIME OF HEARING  
LOCATION: 402 E. Yakima Ave., Suite 200  
(Second Floor Courtroom), Yakima, WA

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9 *Proposed Attorneys for the Chapter 11  
Debtors and Debtors In Possession*

10  
11 **UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

<p>12 IN RE:</p> <p>13 ASTRIA HEALTH, et al.</p> <p>14 Debtors and Debtors in Possession.<sup>1</sup></p>	<p>Lead Case No. 19-01189-11 (Jointly Administered)</p> <p><b>EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF CONFIDENTIAL PATIENT INFORMATION; MEMORANDUM OF POINTS AND AUTHORITIES</b></p> <p><u>EMERGENCY HEARING:</u> Date: May 8, 2019 Time: 10:00 a.m. Place: Yakima Courthouse</p>
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18 <sup>1</sup> The Debtors, along with their case numbers, are as follows: Astria Health (19-  
01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings,  
19 LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-  
01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-  
20 Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11),  
Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11),  
Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-  
01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA  
21 Home Health, LLC (19-01200-11).

Motion to File Under Seal  
Confidential Patient Information



1 **EMERGENCY MOTION**

2 **I. INTRODUCTION**

3 Pursuant to §§ 105(a), 107(b) and (c) of Title 11 of the United States  
4 Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”),<sup>2</sup>  
5 Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and  
6 Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the  
7 Eastern District of Washington (“LBR”), Astria Health, a Washington nonprofit  
8 public benefit corporation (“Astria”), and the above-referenced affiliated debtors and  
9 debtors in possession (the “Debtors”) under chapter 11 bankruptcy cases  
10 (collectively, the “Chapter 11 Case”), hereby move on an emergency basis for entry  
11 of an order: (i) protecting confidential patient information, (ii) protecting patients’  
12 identities and (iii) protecting patients’ privacy.

13 In support of the Motion, the Debtors are filing the Declaration of John M.  
14 Gallagher in support of Debtors’ First Day Motions (the “Gallagher Declaration”).  
15 The Debtors request that the relief sought herein be granted on an emergency basis  
16 to protect patient confidentiality.

17 The Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code  
18 on May 6, 2019 (the “Petition Date”) in the United States Bankruptcy Court for the  
19 Eastern District of Washington (the “Court”). The Debtors continue to operate their  
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21 <sup>2</sup> All references to “§” herein are to sections of the Bankruptcy Code.

1 businesses, manage their financial affairs and operate their bankruptcy estates (the  
2 “Bankruptcy Estates”) as debtors in possession pursuant to §§ 1107 and 1108.

3 The Debtors operate as a nonprofit health care system in the state of  
4 Washington employing more than 1,500 staff statewide, with 315 licensed beds, three  
5 active emergency rooms and a host of medical specialties.

6 The Debtors respectfully submit that the relief requested herein is necessary  
7 and appropriate to ensure a smooth transition into Chapter 11, protecting patient  
8 confidentiality.

## 9 **II. JURISDICTION**

10 This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C.  
11 §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).  
12 Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## 13 **III. PROPOSED RELIEF**

14 To fulfill its obligations under the Bankruptcy Code without violating  
15 applicable non-bankruptcy laws protecting confidential patient information, the  
16 Debtors request authorization to file patients’ names and addresses under seal.  
17 Accordingly, by this Motion, Astria and the above-referenced affiliated debtors,  
18 debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases  
19 (collectively, the “Debtors”) request that the Court enter an Order pursuant to §§  
20 107(b) and (c), Bankruptcy Rule 9018 and LBR 9018-1 authorizing the Debtors to  
21 file confidential patient information under seal.

Motion to File Under Seal  
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1 **IV. STATEMENT OF FACTS**

2 **A. General Background**

3 1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a  
4 voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11  
5 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). Contemporaneously herewith, the  
6 Debtors have requested that their Chapter 11 Cases be jointly administered before  
7 this Court [Docket No. 5]. The Debtors are operating their businesses as debtors in  
8 possession pursuant to §§ 1107 and 1108.

9 2. Debtor Astria, a Washington nonprofit corporation, is the direct or  
10 indirect corporate member of entities that make it the largest non-profit healthcare  
11 system based in Eastern Washington, with annual revenues of approximately  
12 \$240 million. The Astria Health system is headquartered in the heart of the Yakima  
13 Valley of Yakima County, Washington, with facilities in Yakima, Sunnyside, and  
14 Toppenish, Washington.

15 3. The Astria system includes three hospitals: Astria Regional Medical  
16 Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside  
17 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);  
18 and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington  
19 (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the  
20 “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals have  
21 three active emergency rooms and a host of medical specialties. The Astria system

1 also has outpatient Astria Health Centers (14 medical clinics and 24 specialty clinics),  
2 the Ambulatory Surgical Center, Astria Hearing and Speech, and Astria Home Health  
3 and Hospice with healthcare sites and providers conveniently located in towns and  
4 cities throughout the region.<sup>3</sup>

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8 <sup>3</sup> Collectively, the system provides the following services: allergy testing and  
9 treatment program, ambulatory surgery, audiology, behavioral health/psychiatry,  
10 breast health center, cancer care, cardiac electrophysiology, cardiac rehabilitation,  
11 cardiothoracic surgery, catheterization lab, colorectal surgery, critical care medicine,  
12 diabetes education, diagnostic imaging and radiology, ear, nose and throat,  
13 emergency services, endocrinology, family medicine, gastroenterology,  
14 gynecological surgery, heart care, hand surgery, heart failure, home health, hospice,  
15 hospitalists, inpatient behavioral health, internal medicine, interventional cardiology,  
16 laboratory, life transitions intensive out-patient program, maternity services, medical  
17 withdrawal management, nephrology, neurosurgery, spine care, nutritional services,  
18 obstetrics and gynecology, occupational medicine, orthopedics, orthopedic surgery,  
19 outpatient palliative care, speech therapy, physical therapy, pediatrics, pharmacy,  
20 plastic and reconstructive surgery, podiatry, rehabilitation, inpatient rehabilitation,  
21 rheumatology, senior services, sleep medicine, sports medicine, stroke care, surgical  
services, robotic surgery, general surgery, telehealth, urology, urological surgery,  
walk-in care, women's health, vascular medicine, and wound care center.

1           4.     The Astria system provides medical treatments to approximately  
2 346,400 patients annually, including approximately 7,344 who spend at least one  
3 night in its Hospitals during the year. Astria's necessity to the health and welfare of  
4 the people of the Yakima Valley is evidenced by facts, including having the:

- 5           • *only* open-heart surgery program in Yakima County;
- 6           • *only* neurosurgery program in Yakima County;
- 7           • *only* elective cardiac catheterization program in Yakima County;
- 8           • *only* hospital in Sunnyside, Washington;
- 9           • *only* hospital in Toppenish, Washington; and
- 10          • *only* obstetric services in the Lower Valley (both at Sunnyside and  
11 Toppenish).

12           5.     The system employs approximately 1,547 employees (making it one of  
13 the largest employers in the Yakima Valley), plus an additional 172 contract  
14 personnel, and approximately 600 doctors have privileges at the Hospitals.

15           6.     To date, the Office of the United States Trustee (the "U.S. Trustee") has  
16 not appointed an Official Committee of Unsecured Creditors in these Chapter 11  
17 Cases.

18           **B.     Relevant Facts to the Motion**

19           7.     The Debtors serve over 300,000 patients per year in their Hospitals.  
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1           8.     The Debtors are including as potential creditors all patients who have a  
2 claim for reimbursement and those patients who have informed the Debtor(s) they  
3 may have or do have a claim against one or more Debtors. Instead of including those  
4 names on the Master Mailing Matrix, the Debtors propose to file those names under  
5 seal with the Court in order to protect confidential patient information, protect  
6 patients' identities and protect patients' privacy. All of those patients will receive  
7 notice of the filing of these bankruptcy cases, but the names and addresses of those  
8 patients will be filed under seal.

9     **V.    ADDITIONAL INFORMATION**

10           The Debtors will serve this Motion, the Gallagher Declaration, and the Notice  
11 of Hearing on: (i) the Office of the United States Trustee for the Eastern District of  
12 Washington, (ii) counsel for the Prepetition Secured Creditors, (iii) counsel for the  
13 DIP Lender, (iv) all alleged secured creditors, (v) the thirty largest general unsecured  
14 creditors appearing on the list filed in accordance with Rule 1007(d), and (vi) any  
15 parties requesting special notice. To the extent necessary, the Debtors request that  
16 the Court waive compliance with LBR 2002-1(a)(6) and approve service (in addition  
17 to the means of service set forth in such LBR) by overnight delivery. Among other  
18 things, the Notice of Hearing will provide that any opposition or objection to the  
19 Motion may be presented at any time before or at the hearing regarding the Motion,  
20 but that failure to timely object may be deemed by the Court to constitute consent to  
21 the relief requested herein. The Debtors submit that such notice is sufficient and that

Motion to File Under Seal  
Confidential Patient Information

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1 no other or further notice be given.

2 **VI. ARGUMENT**

3 The Debtors are seeking leave to file confidential patient information under  
4 seal. The information to be filed under seal includes all patients who have a credit  
5 balance.

6 Sections 107(b) and (c) authorize the Court to issue orders that will protect  
7 entities from potential harm caused by disclosure of confidential information.  
8 Specifically, Section 107(c) provides:

9 (c)(1) The bankruptcy court, for cause, may protect an  
10 individual, with respect to the following types of information to  
11 the extent the court finds that disclosure of such information  
would create undue risk of identity theft or other unlawful injury  
to the individual or the individual's property:

12 (A) Any means of identification (as defined in section  
13 1028(d) of title 18) contained in a paper filed, or to be filed,  
in a case under this title.

14 (B) Other information contained in a paper described in  
15 subparagraph (a).

16 The Debtors seek to "protect ... confidential ... information," protect the  
17 patients' identities to prevent "undue risk of identity theft or other unlawful injury,"  
18 and protect the patients' privacy.

19 The Privacy Rule of the Health Insurance Portability And Accountability Act  
20 of 1996 ("HIPAA"), Public Law 104-191, protects all individually identifiable health  
21 information, which includes information such as the names or addresses of current



1 or former patients. Thus, the Privacy Rule's requirements to protect the privacy and  
2 security of protected health information require that the names and addresses of  
3 current and former patients not be publicly disclosed.

4 The Debtors are a covered entity under HIPAA and must comply with  
5 HIPAA's requirements to protect the privacy of health information. *See* 45 CFR Part  
6 160 and Part 164, Subparts A and E. However, the Privacy Rule permits the use and  
7 disclosure of protected health information, without an individual's authorization or  
8 permission, as part of a judicial proceeding, if the information is disclosed pursuant  
9 to a court order. 45 CFR 164.512(e); *Barnes v. Glennon*, Case No. 9:05-cv-0153,  
10 2006 WL 2811821, at \*5 n. 6 (N.D.N.Y. Sep. 28, 2006).

11 As the Debtors necessarily must file confidential patient information, good  
12 cause exists to grant Debtors leave to file the confidential patient information under  
13 seal pursuant to §§ 105(a), 107(b) and (c) and Bankruptcy Rule 9018. By this  
14 Motion, the Debtors respectfully request that the Court enter an Order authorizing  
15 them to file the confidential patient information under seal in accordance with  
16 Bankruptcy Rule 9018, and directing that such filing remain confidential and under  
17 seal, and that no such document shall be made available to anyone, other than as set  
18 forth in the Order approving this Motion. Further, the Debtors request of the Court  
19 that the clerk treat such documents held under seal as a confidential document.

20 Based upon the use of the term "shall" in § 107(b), some courts have held a  
21 court must apply the protections of § 107(b) if the information contained in the

Motion to File Under Seal  
Confidential Patient Information

1 document falls within the scope of any of the specified categories in the statute. *See,*  
2 *e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures*  
3 *Corp.),* 21 F.3d 24, 27 (2d Cir. 1994). Other bankruptcy courts have restricted access  
4 to filed documents where parties have demonstrated good cause. *See, e.g., In re*  
5 *Global Crossing Ltd.,* 295 B.R. 720 (Bankr. S.D.N.Y. 2003); *In re Epic Assoc. V,* 54  
6 B.R. 445, 450 (Bankr. E.D. Va. 1985). Both standards are satisfied here.

7 Bankruptcy Rule 9018 sets forth the procedure by which a party may move for  
8 relief under section 107. In particular, Bankruptcy Rule 9018 states that the court  
9 “may make any order which justice requires (1) to protect the estate or any entity in  
10 respect of ... confidential ... information...”

11 LBR 9018-1 provides the opportunity for debtors to file documents under seal,  
12 setting forth the procedure pursuant to which this Motion is being filed.

13 Whether a document falls within the scope of § 107(b) and/or (c) is ultimately  
14 a decision for the Court. *In re Barney’s, Inc.,* 201 B.R. 703, 707 (Bankr. S.D.N.Y.  
15 1996). However, if the Court determines that filed documents are covered by  
16 § 107(c), the Court should issue a remedy that will protect the confidential  
17 information.

18 The Debtors are required to serve notice of the filing of their cases, a bar date  
19 notice, and other critical case related documents on parties with an interest in the case  
20 or who may have a claim against the Debtors. To show proper notice has been  
21 provided, the Debtors are required to file service lists showing the names and

1 addresses of those who have been served. Current and former patients are usually  
2 among the parties entitled to such notice. Here, the Debtors propose to include those  
3 patients who asserted possible or actual claims.

4 The request being made in this Emergency Motion is routinely granted. *In re*  
5 *Gardens Reg. And Med. Ctr, Inc.*, Nos. 21 & 59; Case No. 2:16-bk-17463-ER  
6 (Bankr. C.D. Cal. June 6, 2016); *In re Verity Health Sys. of Cal., Inc.*, Nos. 21 & 135;  
7 Case No. 2-18-bk-20151-ER (Bankr. C.D. Cal., August 31, 2018).

8 The Gallagher Declaration explains the nature of the records to be filed under  
9 seal, consisting of all patients who have a claim for reimbursement and those patients  
10 who have informed the Debtor(s) they may have or do have a claim against one or  
11 more of the Debtors.

12 If requested, the Debtors shall provide to the Office of the United States  
13 Trustee the names and addresses of the patients whose names are filed under seal, on  
14 the basis that confidentiality shall be maintained.

## 15 **VII. NO PREVIOUS APPLICATION**

16 No previous application for the relief sought herein has been made to this or  
17 to any other court.

## 18 **VIII. CONCLUSION**

19 WHEREFORE, the Debtors respectfully request the entry of an Order pursuant  
20 to §§ 105(a), 107(b) and (c), Bankruptcy Rule 9018 and LBR 9018-1:  
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- (i) Granting leave for the Debtors to file the confidential patient information under seal; and,
- (ii) Granting such further other and further relief as may be just and proper.

Dated: May 6, 2019

/s/ James L. Day  
 JAMES L. DAY (WSBA #20474)  
 BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Pro Hac Vice*  
 pending)  
 SAM J. ALBERTS (WSBA #22255)  
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*Proposed Attorneys for the Chapter 11  
 Debtors and Debtors In Possession*

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

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IN RE:

ASTRIA HEALTH, et al.

Debtors and Debtors in  
Possession.<sup>1</sup>

Lead Case No. 19-01189-11

(Jointly Administered)

**[PROPOSED] ORDER GRANTING EMERGENCY  
MOTION OF DEBTORS FOR ENTRY OF AN  
ORDER AUTHORIZING THE FILING UNDER  
SEAL OF CONFIDENTIAL PATIENT  
INFORMATION**

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<sup>1</sup> The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

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Order Granting Motion to File Under  
Seal Confidential Patient Information

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1 Having reviewed the *Emergency Motion Of Debtors For Entry Of An Order*  
2 *Authorizing The Filing Under Seal Of Confidential Patient Information* (the  
3 “Motion”), the Declaration Of John M. Gallagher filed in connection with and in  
4 support of First Day Motions; the Court having jurisdiction to consider the Motion  
5 and relief requested therein, in accordance with 28 U.S.C. §§ 157 and 1334;  
6 consideration of the Motion and relief requested therein being a core proceeding  
7 pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to  
8 28 U.S.C. §§ 1408 and 1409; due and proper notice of the Motion having been  
9 provided; it appearing that no further notice need be provided; the Court having  
10 determined that the relief sought in the Motion is in the best interests of the Debtors,  
11 creditors and all parties-in-interest; the Court having determined that the legal and  
12 factual basis set forth in the Motion establish just cause for the relief granted herein;  
13 and upon all of the proceedings had before the Court and after due deliberations  
14 sufficient cause appearing therefor,

15 IT IS HEREBY ORDERED that:

- 16 1. The Motion is granted;
- 17 2. The Debtors are authorized to file confidential patient information  
18 under seal; subject to section 107 of Title 11;
- 19 3. The Order shall be immediately effective and enforceable upon its  
20 entry; and;

21 Order Granting Motion to File Under  
Seal Confidential Patient Information

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