

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee,

_____ /

**ASSIGNEE'S MOTION AUTHORIZING THE
IMPLEMENTATION OF PROCEDURES TO MAINTAIN
AND PROTECT CONFIDENTIAL PATIENT INFORMATION**

¹ At a hearing held on March 22, 2019, the Court administratively consolidated this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

NOTICE TO PATIENT CREDITORS:

By this Motion, the Assignee seeks entry of an Order approving certain procedures related to Patient Creditors and patient-related information. The narrow purpose of this Motion is to: (i) authorize a separate patient creditor matrix and (ii) authorize the notice included with the Proof of Claim form and related procedures. Please read this motion in its entirety. In addition, the following notice was included on the Proof of Claim form that you should have received via U.S. mail - “As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a “wrongful disclosure” under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.”

Assignee, Soneet Kapila of KapilaMukamal, as assignee of LSI Management Company, LLC (“**Assignee**”), by and through his undersigned attorneys, hereby moves the Court for the entry of an order authorizing certain procedures to maintain the confidentiality of the patient information of Patient Creditors (as such term is defined below) as required by applicable privacy rules. In support of this motion, the Assignee states as follows:

General Background

1. On March 14, 2019, Laser Spine Institute, LLC (“**LSI**”) executed and delivered an assignment for the benefit of creditors (the “**Assignment**”) to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “**LSI Assignment Case**”).

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (the “**Affiliated Assignment Cases**” and together with the LSI Assignment Case hereinafter referred to as the “**Assignment Cases**”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo,

LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, together with LSI, the “Assignors”).

3. Prior to filing the Assignment, the Assignors engaged in the business of performing minimally invasive spine and neck surgeries. In the ordinary course of operating their businesses, the Assignors are required to maintain the confidentiality of patient information pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

4. The Assignors ceased all business operations on March 1, 2019. The Assignment Cases provide a statutorily authorized procedure for the orderly liquidation of the Assignors’ assets for the benefit of their creditors.

5. The Assignors’ Schedule A reflects that the largest secured creditor of the Assignment Cases is Texas Capital Bank, N.A., as Administrative Agent (the “Bank”), with outstanding loans totaling approximately \$144 million, secured by substantially all of the assets of the LSI and certain other Assignors. Thus, all of the cash and accounts receivable now held by the Assignee appear to be encumbered by the Bank’s liens. Prior to the commencement of these cases, the Bank froze the funds in the Assignors’ accounts and asserted a lien on those funds as “cash collateral.” The ability of the Assignee to administer these cases is dependent upon his ability to continue to have access to sufficient amounts of cash collateral to enable him to pay the expenses associated with such administration.

Specific Background

6. At the commencement of the Assignment Cases, each Assignor furnished an executed and verified Schedule “A” – Creditor List and Schedule “B” – List of Assets. The Assignors’ Schedule “A”s are hereinafter referred to collectively as “**Creditor Schedules**”. The Creditor Schedules list thousands of creditors and other parties-in-interest.

7. One class of creditors in the Assignment Cases is comprised of the Assignors’ patients (hereinafter referred to collectively as “**Patient Creditors**”).

8. Prior to the Assignment Cases, Patient Creditors provided to the Assignors confidential patient information constituting “Protected Health Information” as such term is defined in HIPAA, the Florida Information Protection Act of 2014, or any regulation promulgated thereunder.

9. In order to avoid the disclosure of Protected Health Information, the Assignors did not list Patient Creditors in the Creditor Schedules filed at the commencement of the Assignment Cases.

10. To assist with healthcare related matters in these Assignment Cases, on April 1, 2019, the Assignee filed his *Motion to Employ FisherBroyles, LLP Group as Healthcare Attorney*. The Assignee has and will continue to consult with healthcare counsel with respect to various matters, including, for example, issues related to the handling of Protected Health Information, which may arise during these Assignment Cases.

11. In an abundance of caution, the Assignee entered into a Business Associate Agreement and a Service Agreement with Assignor that permits Assignee to have access to and to receive Protected Health Information. In connection with these agreements, the Assignors furnished to Assignee and his professionals the names, addresses, and certain other contact

information of the Patient Creditors and amounts alleged to be due and owing, if any, to each Patient Creditor. The Assignors produced this information so that Assignee can discharge his statutory duties under Chapter 727 of the Florida Statutes.

12. Chapter 727 of the Florida Statutes sets forth the process and procedures that govern the Assignment Cases. For instance, Chapter 727 outlines procedures related to examination of the Assignors, filing of proofs of claims by creditors, objections to proofs of claims, sale of assets, noticing requirements, and reports of receipts and disbursements, among other things.

13. The Assignee recognized that the requirements under HIPAA may conflict with the duty to disclose certain information as part of the Assignment Cases. As a result, in order to ensure the smooth administration of these Assignment Cases and in order to comply with the noticing requirements and statutory duties set forth in Chapter 727 of the Florida Statutes, procedures specific to Patient Creditors that allow Assignee to maintain patient confidentiality are required.

14. By this Motion, the Assignee seeks approval of certain procedures outlined hereinbelow in order to comply with Chapter 727 of the Florida Statutes and HIPAA as related to Patient Creditors.

Basis for Relief Requested and Memorandum of Law

15. HIPAA creates a duty for health care providers to maintain the confidentiality of patient information. These regulations impose stringent standards on health care providers and their business associates, and also establishes significant penalties for any health care provider or business associate that uses or discloses patient information.

16. Because the Assignee may be considered a Business Associate of Assignor, as defined by HIPAA, such requirements may prevent Assignee from disclosing “protected health information.” “Protected health information” means “individually identifiable health information

... that is (i) [t]ransmitted by electronic media; (ii) [m]aintained in electronic media; or (iii) [t]ransmitted or maintained in any other form or medium.” 45 C.F.R. §164.103.

17. “Individually identifiable health information” is:

[I]nformation that is a subset of health information, including demographic information collected from an individual, and

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) [t]hat identifies the individual; or (ii) [w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual.

18. Assignors and Assignee, if deemed a Business Associate, could be subject to significant monetary penalties for the unauthorized disclosure of protected health information. 45 C.F.R. §160.402.²

19. Assignee believes that the requirements to maintain patient confidentiality under HIPAA conflict with the requirements to disclose information under Chapter 727, Florida Statutes. The Assignee therefore respectfully requests that such patient information through the proposed Patient Creditor procedures herein.

20. In an effort to comply with both federal law and state statute, Assignee proposes certain procedures for Patient Creditors in four (4) specific areas (collectively, the “**Patient Confidentiality Procedures**”): (i) Creditor Schedules, (ii) notice and service upon Patient Creditors, (iii) claims process, and (iv) sale process and the Assignee believes that the relief

² Under 45 C.F.R. § 160.404, monetary penalties of up to \$50,000 could be imposed for each violation, up to an aggregate of \$1,500,000 for identical violations occurring during a calendar year. Such penalties can be imposed even if a person “did not know and, by exercising reasonable diligence, would not have known” that a violation occurred. 45 C.F.R. § 160.404(b)(2)(i).

requested herein appropriately balances the need to maintain confidential patient information under HIPAA with the need for adequate disclosure under Chapter 727, Florida Statutes.

I. Creditor Schedules

21. As noted above, the Assignors did not specifically list Patient Creditors in the Creditor Schedules so as not to inadvertently disclose Protected Health Information. The Assignors did include in the Creditor Schedules the amount of \$570,407.00, representing the total amount of patient deposits posted with the Assignors prior to the Assignment Cases. Pursuant to the agreements entered into with the Assignee, the Assignors furnished directly to Assignee and his professionals the names, addresses, and certain other contact information of the Patient Creditors and amounts alleged to be due and owing, if any, to each Patient Creditor; the furnished information includes the Patient Creditors associated with the patient deposits.

22. The Assignee requests the Court enter an order approving (i) the omission of specific Patient Creditor information in the originally filed Creditor Schedules, and (ii) the receipt by Assignee and his professionals of the names, addresses, and certain other contact information of the Patient Creditors and amounts alleged to be due and owing, if any, to each Patient Creditor, including, but not limited to, information associated with the patient deposits.

II. Notice and Service upon Patient Creditors

23. In these Assignment Cases, creditors and other parties-in-interest are to receive notice of certain actions and matters taken in the cases pursuant to Fla. Stat. §727.111. The statute permits, however, the Court, for good cause shown and without notice of hearing, to limit the parties to whom notice may be given. Fla. Stat. § 727.111(6). Indeed, the statute permits the Court to rule on many matters without notice or hearing, unless notice is specifically required to be provided for the particular action under Chapter 727. *See* Fla. Stat. § 727.111(9).

24. On April 8, 2019, the Court entered its *Order Granting Assignee's Motion to Limit Notice*. By the Court's Order, the Assignee is authorized to serve all motions and all notices required to be served pursuant to Section 727.111(3) and (4) of the Florida Statutes to only (i) the Assignors; (ii) the Assignors' counsel; (iii) all secured creditors; (iv) any party named in the particular motion or notice being filed; and (v) all other interested parties who file with the clerk and serve on the undersigned attorneys either a notice of appearance or a request to receive all notices in the Assignment Cases. The Assignee shall also post all motions and notices on an official website for the Assignment Cases.

25. Additionally, the Assignee will serve the final notice of case closing and related reports to all creditors at the conclusion of the Assignment Cases.

26. With respect to Patient Creditors, the names and addresses of the Patient Creditors have been compiled into a separate mailing matrix for use during these Assignment Cases (the "**Patient Creditor Mailing Matrix**"). The Patient Creditor Mailing Matrix will be maintained by the Assignee and his counsel and will not be filed in the public record in these Assignment Cases.

27. Where the Patient Creditors are served with a pleading or paper in the Assignment Cases, it will be stated in such pleading or paper that the parties served included persons on the Patient Creditor Mailing Matrix without attaching the matrix to the pleading or paper.

28. The Assignee requests the Court enter an order approving the maintenance of a separate Patient Creditor Mailing Matrix and such Patient Creditor Mailing Matrix not being disclosed in the record of the Assignment Cases.

III. Claims Process

29. In these Assignment Cases, the Assignee mailed a form of Proof of Claim to creditors and other parties-in-interest, including to the Patient Creditor Mailing Matrix.

30. The following notice (“Notice”) was included on the Proof of Claim form:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a “wrongful disclosure” under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

31. As indicated by the above notice, any information or supporting documentation included by a Patient Creditor with a proof of claim shall become part of the public record. As a result, any of the information or documentation provided by a Patient Creditor, including Protected Health Information, included by Assignee or his professionals in any subsequent pleading, notice, document, list, or other public disclosure in connection with the Assignment Cases, shall be permitted and shall not constitute a “wrongful disclosure” under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

32. The Notice shall also be provided in plain view on the official website for the Assignment Cases.

33. The Assignee requests the Court enter an order approving the form of Proof of Claim and Notice.

IV. Sale Process

34. Florida Statute § 727.111(4) provides for 21 days’ notice to all creditors of the sale of assets other than in the ordinary course of business. The statute also allows for the Court to limit the time and parties to receive notice, for good cause shown and without notice of hearing. Fla. Stat. §727.111(6). Pursuant to the *Order Granting Assignee’s Motion to Limit Notice*, notice of the sale of assets has been limited to those certain parties listed in paragraph 17 above.

35. In the event the Patient Creditors are to be served with a notice of sale, they shall be served using the Patient Creditor Mailing Matrix. As noted in Section II above, the Patient Creditor Mailing Matrix will not be filed with the Court or in the public record for the Assignment Cases. The Patient Creditor Mailing Matrix shall only be made available to any party-in-interest after this Court has entered an order, after notice and hearing, authorizing the Assignee to do so.

36. The Assignee requests the Court enter an order approving the Patient Confidentiality Procedures for any sale notice filed in the Assignment Cases.

V. Conclusion

37. By this Motion, the Assignee outlines Patient Confidentiality Procedures to be utilized with respect to Patient Creditors. The Patient Confidentiality Procedures ensure the smooth administration of these Assignment Cases and compliance with the noticing requirements and statutory duties set forth in Chapter 727 of the Florida Statutes.

38. The Patient Confidentiality Procedures are in the best interest of the Assignment estates and the creditors and the Assignee believes that the relief requested herein appropriately balances the need to maintain confidential patient information under HIPAA with the need for adequate disclosure under Chapter 727, Florida Statutes. Further, the Patient Confidentiality Procedures standardize and clearly set forth the manner in which Patient Creditors shall receive notice in these cases while not disclosing the Patient Creditor Mailing Matrix in the public record of the Assignment Cases.

39. The Patient Confidentiality Procedures also clearly outline the manner in which disclosure of Patient Creditor information and documentation by the Assignee and his professionals shall not constitute a “wrongful disclosure” under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

40. These Patient Confidentiality Procedures collectively permit the Assignee to comply with Assignee's statutory duties under Chapter 727 of the Florida Statutes.

WHEREFORE, the Assignee respectfully requests the Court grant this Motion, approve the Patient Confidentiality Procedures set forth herein, and that the Court grant such other relief as is just and proper.

/s/ Edward J. Peterson

Harley E. Riedel (FBN 183628)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *Motion Authorizing the Implementation of Procedures to Maintain and Protect Confidential Patient Information* has been furnished on this 29th day of April, 2019 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached and:

All parties on the Patient Creditor Mailing Matrix.

Upon service to such parties in interest, a certificate of service will be filed with the clerk of the Court.

/s/ Edward J. Peterson

Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

April 29, 2019

Assignors and Assignor's Counsel: (via the Court's electronic servicing system)

CLM Aviation, LLC
LSI HoldCo, LLC
LSI Management Company, LLC
Laser Spine Surgery Center of Arizona, LLC
Laser Spine Surgery Center of Cincinnati, LLC
Laser Spine Surgery Center of Cleveland, LLC
Laser Spine Surgical Center, LLC
Laser Spine Surgery Center of Pennsylvania, LLC
Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
Laser Spine Institute, LLC
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Lake Oswego, OR 97035

Steris Corporation
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Mentor, OH 44060

CIT Bank, N.A.
10201 Centurion Pkwy., #400
Jacksonville, FL 32256

Medport Billing, LLC
6352 S. Jones Blvd., #400
Las Vegas, NV 89118

U.S. Bank Equipment Finance
1310 Madrid St.
Marshall, MN 56258

Maricopa County Treasurer
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Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)

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