

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

CURATIVE HEALTH SERVICES INC

Form 10-Q

May 15, 2003

=====
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

X Quarterly report pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934

For the quarterly period ended March 31, 2003

OR

----- Transition report pursuant to Section 13 or 15 (d) of the Securities
Exchange Act of 1934

Commission File Number: 000-19370

Curative Health Services, Inc.
(Exact name of registrant as specified in its charter)

MINNESOTA
(State or other jurisdiction of
incorporation or organization)

41-1503914
(I.R.S. Employer
Identification Number)

150 Motor Parkway
Hauppauge, New York 11788
(631) 232-7000

(Address and phone number of principal executive offices)

Indicate by check mark whether the registrant (1) has filed all reports
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of
1934 during the preceding 12 months (or for such shorter period that the
registrant was required to file such reports), and (2) has been subject to such
filing requirements for the past 90 days: Yes X No

Indicate by check mark whether the registrant is an accelerated filer (as
defined in Rule 12b-2 of the Exchange Act): Yes X No

As of May 1, 2003, there were 12,342,687 shares of the Registrant's Common
Stock, \$.01 par value, outstanding.

=====

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

INDEX

Part I	Financial Information	Page No.
-----	-----	-----
Item 1	Financial Statements:	
	Condensed Consolidated Income Statements	
	Three Months ended March 31, 2003 and 2002	3
	Condensed Consolidated Balance Sheets	
	March 31, 2003 and December 31, 2002	4
	Condensed Consolidated Statements of Cash Flows	
	Three Months ended March 31, 2003 and 2002	5
	Notes to Condensed Consolidated Financial Statements	6
Item 2	Management's Discussion and Analysis of Financial Condition and Results of Operations	11
Item 3	Quantitative and Qualitative Disclosures About Market Risk	16
Item 4	Controls and Procedures	16
Part II	Other Information	Page No.
-----	-----	-----
Item 1	Legal Proceedings	17
Item 6	Exhibits and Reports on Form 8-K	17
	Signatures	19
Part I	Financial Information	
-----	-----	
Item 1	Financial Statements	

Curative Health Services, Inc. and Subsidiaries
CONDENSED CONSOLIDATED INCOME STATEMENTS
(In thousands, except per share data)
(Unaudited)

Three Months Ended	
March 31,	
2003	2002
-----	-----

Revenues:

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Products	\$ 50,450	\$ 13,869
Services	7,570	8,895
	-----	-----
Total revenues	58,020	22,764
Costs and operating expenses:		
Cost of product sales	37,387	10,339
Cost of services	3,478	3,917
Selling, general and administrative	11,058	4,924
	-----	-----
Total costs and operating expenses	51,923	19,180
	-----	-----
Income from operations	6,097	3,584
Interest income	2	36
Interest expense	(487)	(137)
	-----	-----
Income before taxes	5,612	3,483
Income taxes	2,217	1,433
	-----	-----
Net income	\$ 3,395	\$ 2,050
	=====	=====
Net income per common share, basic	\$.28	\$.21
	=====	=====
Net income per common share, diluted	\$.25	\$.19
	=====	=====
Weighted average common shares, basic	12,206	9,653
	=====	=====
Weighted average common shares, diluted	13,920	10,962
	=====	=====

See accompanying notes

Curative Health Services, Inc. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)

	(Unaudited) March 31, 2003	December 31, 2002
	-----	-----
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,998	\$ 2,643
Accounts receivable, net	40,858	36,438
Inventories	13,741	12,766
Prepays and other current assets	1,570	2,212
Deferred tax assets	2,957	2,957
	-----	-----

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Total current assets	61,124	57,016
Property and equipment, net	4,666	3,284
Intangibles subject to amortization, net	1,617	1,652
Intangibles not subject to amortization (trade name)	735	636
Goodwill	127,121	122,877
Other assets	1,087	979
	-----	-----
Total assets	\$ 196,350	\$ 186,444
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 30,816	\$ 21,786
Accrued expenses	9,852	11,579
Current portion of long-term liabilities	7,046	6,102
	-----	-----
Total current liabilities	47,714	39,467
Long-term liabilities	24,087	26,076
Stockholders' equity:		
Common stock	121	121
Additional paid in capital	106,073	106,124
Retained earnings	20,438	17,043
Notes receivable - stockholders	(2,083)	(2,387)
	-----	-----
Total stockholders' equity	124,549	120,901
	-----	-----
Total liabilities and stockholders' equity	\$ 196,350	\$ 186,444
	=====	=====

See accompanying notes

Curative Health Services, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Three Months Ended	
	March 31,	
	2003	2002
	-----	-----
OPERATING ACTIVITIES:		
Net income	\$ 3,395	\$ 2,050
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Depreciation and amortization	570	527
Provision for doubtful accounts	1,025	163
Equity in operations of investee	-	(8)
Changes in operating assets and liabilities:		
Accounts receivable	(3,928)	(294)
Prepaid and other current assets	(196)	(1,907)
Accounts payable and accrued expenses	5,242	(7,110)
	-----	-----
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES	6,108	(6,579)
INVESTING ACTIVITIES:		

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Specialty Pharmacy acquisitions, net of cash acquired	(4,656)	(20,418)
Purchases of property and equipment	(1,812)	(33)
	-----	-----
NET CASH USED IN INVESTING ACTIVITIES	(6,468)	(20,451)
FINANCING ACTIVITIES:		
Proceeds from private placement, net of fees	-	16,923
Stock repurchases	(1,524)	-
Proceeds from exercise of stock options	1,777	3,361
Repayment on credit facilities	(538)	-
	-----	-----
NET CASH (USED IN) PROVIDED BY FINANCING ACTIVITIES	(285)	20,284
	-----	-----
NET DECREASE IN CASH AND CASH EQUIVALENTS	(645)	(6,746)
CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR	2,643	12,264
	-----	-----
CASH AND CASH EQUIVALENTS AT END OF YEAR	\$ 1,998	\$ 5,518
	=====	=====
SUPPLEMENTAL INFORMATION		
Interest paid	\$ 428	\$ 7
	=====	=====
Income taxes paid	\$ 115	\$ -
	=====	=====

See accompanying notes

Curative Health Services, Inc. and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Basis of Presentation

The condensed consolidated financial statements are unaudited and reflect all adjustments (consisting only of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation of the financial position and operating results for the interim periods. The condensed consolidated financial statements should be read in conjunction with the consolidated financial statements for the year ended December 31, 2002 and notes thereto contained in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission. The results of operations for the three months ended March 31, 2003 are not necessarily indicative of the results to be expected for the entire fiscal year ending December 31, 2003.

Stock Based Compensation Plans

In December 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure." SFAS No. 148 amends SFAS No. 123, "Accounting for Stock-Based Compensation," to provide alternative methods of transition to SFAS No. 123's fair value method of accounting for stock-based employee compensation. SFAS No. 148 also amends the disclosure provisions of SFAS No. 123 and Accounting Principles Board ("APB") No. 28, "Interim Financial Reporting," to require disclosure in the summary of significant accounting policies of the effects of an entity's accounting policy with respect to stock-based employee compensation on reported net income and earnings per share in annual and interim financial statements. While SFAS No. 148 does not amend SFAS No. 123 to require companies to account for

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

employee stock options using the fair value method, the disclosure provisions of SFAS No. 148 are applicable to all companies with stock-based employee compensation, regardless of whether they account for that compensation using the fair value method of SFAS No. 123 or the intrinsic value method of APB No. 25, "Accounting for Stock Issued to Employees." The Company adopted SFAS No. 148 effective December 31, 2002.

The Company grants options for a fixed number of shares to employees, directors, consultants and advisors with an exercise price equal to the fair value of the shares at the date of grant. The Company accounts for stock option grants under the recognition and measurement principles of APB No. 25 and related Interpretations because the Company believes the alternate fair value accounting provided for under SFAS 123 requires the use of option valuation models that were not developed for use in valuing employee stock options. Under APB No. 25, because the exercise price of the Company's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recorded.

Curative Health Services, Inc. and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Basis of Presentation (continued)

The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based compensation for the three months ended March 31, 2003 and 2002 (in thousands, except per share data):

	Three Months Ended March 31,	
	2003	2002
Net income, as reported	\$ 3,395	\$ 2,050
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	1,132	637
Pro forma net income	\$ 2,263	\$ 1,413
 Earnings per share:		
Basic - as reported	\$.28	\$.21
Basic - pro forma	.19	.15
 Diluted - as reported	\$.25	\$.19
Diluted - pro forma	.17	.13

Note 2. Reclassifications

Certain prior year amounts in the condensed consolidated financial statements have been reclassified to conform to the current year classifications.

Note 3. Net Income per Common Share

Net income per common share, basic, is computed by dividing the net income by the weighted average number of common shares outstanding. Net income per common

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

share, diluted, is computed by dividing adjusted net income (see below) by the weighted average number of shares outstanding plus dilutive common share equivalents. The following table sets forth the computation of weighted average shares, basic and diluted, used in determining basic and diluted earnings per share (in thousands):

	Three Months Ended March 31,	
	2003	2002
Weighted average shares, basic	12,206	9,653
Effect of dilutive stock options and convertible notes	1,714	1,309
Weighted average shares, diluted	13,920	10,962

Curative Health Services, Inc. and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 3. Net Income per Common Share (continued)

Earnings per share, diluted, for the three months ended March 31, 2003 was computed as follows (in thousands):

Net income, as reported	\$ 3,395
Add back interest related to convertible notes, net of tax	65

Adjusted net income	\$ 3,460
	=====

Note 4. Purchase of MedCare, Inc.

On February 3, 2003, the Company acquired MedCare, Inc. ("MedCare"), a specialty pharmacy with locations in Alabama, Mississippi, West Virginia and Florida. MedCare's primary product line is Synagis(R) for the prevention of respiratory syncytial virus, while other product lines include growth hormone and hemophilia clotting factor. The purchase price for MedCare was \$6.6 million, of which \$5.5 million was paid in cash, \$.6 million in cash was placed into escrow for purposes of providing for any indemnifications due to the Company and \$.5 million in cash which was withheld pending delivery of agreed-upon working capital. The Company acquired approximately \$1.8 million of MedCare's assets, including \$1.5 million in accounts receivable and \$.3 million in inventory. The Company also assumed \$1.6 million of MedCare's liabilities. The excess of the acquisition cost over the fair value of identifiable net assets acquired was approximately \$6.4 million, consisting of approximately \$.1 in covenants not to compete, which are being amortized over three years from the date of acquisition, and trade name and goodwill of approximately \$.1 million and \$6.2 million, respectively, which are not being amortized for book purposes per SFAS No. 142, "Goodwill and Other Intangible Assets." Fair market valuations have not yet been completed and, as such, the allocation of the purchase price is preliminary, pending receipt of a formal valuation from the Company's valuation consultants.

The acquisition of MedCare was consummated for purposes of expanding the

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Company's Specialty Pharmacy business and was accounted for using the purchase method of accounting. The accounts of MedCare and related goodwill are included in the accompanying condensed consolidated balance sheets. The operating results of MedCare are included in the accompanying condensed consolidated statements of operations from the date of acquisition.

Unaudited pro forma amounts for the three months ended March 31, 2003 and 2002, assuming the acquisition had occurred on January 1, 2002, are as follows (in thousands, except per share data):

	Three Months Ended March 31,	
	2003	2002
Revenues	\$ 61,032	\$ 35,695
Net income	\$ 3,604	\$ 3,056
Net income per share, diluted	\$.26	\$.26

Curative Health Services, Inc. and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 4. Purchase of MedCare, Inc. (continued)

The pro forma operating results shown above are not necessarily indicative of operations in the periods following the acquisition. The unaudited pro forma operating results include the results of Apex Therapeutic Care, Inc. ("Apex") as if the Apex acquisition, which occurred on January 27, 2002, had occurred on January 1, 2002.

Note 5. Segment Information

The Company adheres to the provisions of SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." The Company has two reportable segments: Specialty Pharmacy Services and Specialty Healthcare Services. In its Specialty Pharmacy Services business unit, the Company contracts with insurance companies and other payors to provide direct to patient distribution of, and other support services, including the provision or coordination of injection or infusion services related to, biopharmaceutical and pharmaceutical products. In its Specialty Healthcare Services business unit, the Company contracts with hospitals to manage outpatient Wound Care Center(R) programs. The Company evaluates segment performance based on income from operations. For the three months ended March 31, 2003, management estimates that corporate general and administrative expenses allocated to the reportable segments are 53 percent for Specialty Pharmacy Services and 47 percent for Specialty Healthcare Services. Such allocations are not necessarily indicative of costs that would be absorbed or eliminated in the event of a sale of the Specialty Healthcare Services business which the Company is currently exploring. Intercompany transactions are eliminated to arrive at consolidated totals.

The following tables present the results of operations and total assets of the reportable segments of the Company for the three months ended March 31, 2003 and 2002 (in thousands):

At and for the three months ended March 31, 2003

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

	Specialty Pharmacy	Specialty Healthcare	Eliminating Entries	Total
	-----	-----	-----	-----
Revenues	\$ 50,450	\$ 7,570	-	\$ 58,020
Income from operations	\$ 5,580	\$ 517	-	\$ 6,097
Total assets	\$ 160,967	\$ 13,875	\$ 21,508	\$ 196,350

At and for the three months ended March 31, 2002

	Specialty Pharmacy	Specialty Healthcare	Eliminating Entries	Total
	-----	-----	-----	-----
Revenues	\$ 13,869	\$ 8,895	-	\$ 22,764
Income from operations	\$ 1,380	\$ 2,204	-	\$ 3,584
Total assets	\$ 99,022	\$ 46,511	\$ (1,710)	\$ 143,823

Curative Health Services, Inc. and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 6. Employee and Facility Termination Costs

In July 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," which nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." SFAS No. 146 addresses financial accounting and reporting for costs associated with exit or disposal activities initiated after December 31, 2002. SFAS No. 146 establishes fair value as the objective for initial measurement of liabilities related to exit or disposal activities and requires that such liabilities be recognized when incurred.

In the first quarter of 2003, the Company consolidated its pharmacy operations in California which resulted in the termination of a total of 25 employees and the vacating of a leased facility. The Company recorded a charge of \$1.6 million related to this activity.

The following provides a reconciliation of the related costs associated with the pharmacy consolidation, which are included in Selling, General and Administrative expenses on the accompanying condensed consolidated income statement for the three months ended March 31, 2003 (in thousands):

	Beginning Balance	Costs Charged to Expense	Costs Paid or Otherwise Settled	Ending Balance
	-----	-----	-----	-----
Employee termination costs	\$ -	\$ 871	\$ 596	\$ 275
Facility termination costs	-	759	68	691
	-	-----	----	----
	\$ -	\$ 1,630	\$ 664	\$ 966
		=====	====	====

Note 7. Changes in Capital Structure

During the first three months of 2003, the Company had the following significant

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

changes in capital structure:

Repurchase of Common Stock. On January 29, 2003, the selling shareholder of Hemophilia Access, Inc. ("HAI") exercised a put option right under the Stock Purchase Agreement of HAI, requiring the Company to repurchase shares issued to acquire HAI. The Company repurchased 97,070 of such shares of common stock for approximately \$1.5 million.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

Curative Health Services, Inc. ("Curative" or the "Company") is a leading disease management company that operates in two business segments: Specialty Pharmacy Services and Specialty Healthcare Services. In its Specialty Pharmacy operations, the Company purchases various pharmaceutical products, including both biopharmaceuticals (biological products, e.g., hemophilia factor), as well as pharmaceuticals (i.e., drugs), from suppliers and then contracts with insurance companies and other payors to provide direct to patient distribution of such products and related education about, reimbursement and other support services (including the provision or coordination of injection or infusion services) related to these biopharmaceutical and pharmaceutical products. The Company's Specialty Pharmacy revenues are derived primarily from payments made by insurance companies, governmental and other payors for the purchase and distribution of these biopharmaceuticals and pharmaceuticals and for injection or infusion services provided. Further, as part of its Specialty Pharmacy operations, the Company provides biopharmaceutical and pharmaceutical product distribution and support services under contracts with retail pharmacies for which it receives product supply and related service fees. The biopharmaceutical and pharmaceutical products distributed and the injection or infusion therapies offered by the Company are used by patients with chronic conditions such as hemophilia, respiratory syncytial virus, immune system disorders, rheumatoid arthritis, hepatitis C, multiple sclerosis, post chemotherapy and growth hormone deficiency. The Specialty Pharmacy Services business unit contracts with 316 payors and 20 retail pharmacies.

The Specialty Healthcare Services business unit contracts with hospitals to manage outpatient Wound Care Center programs. These Wound Care Center programs offer a comprehensive range of services that enables the Company to provide patient specific wound care diagnosis and treatments on a cost-effective basis. Specialty Healthcare Services currently operates two types of Wound Care Center programs with hospitals: a management model and an "under arrangement" model.

In the management model, Specialty Healthcare Services provides management and support services for a chronic wound care facility owned or leased by the hospital and staffed by employees of the hospital, and generally receives a fixed monthly management fee or a combination of a fixed monthly management fee and a variable case management fee. In the "under arrangement" model, Specialty Healthcare Services provides management and support services, as well as the clinical and administrative staff, for a chronic wound care facility owned or leased by the hospital, and generally receives fees based on the services provided to each patient. In both models, physicians remain independent. Specialty Healthcare Services offers assistance in recruiting and provides training in wound care to the physicians and staff associated with the Wound Care Center programs. As of March 31, 2003, the Company had 80 management and eight "under arrangement" Wound Care Center programs.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Critical Accounting Policies and Estimates

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses the Company's condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these condensed consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments, including those related to revenue recognition, bad debts, inventories, income taxes and intangibles. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. Management believes the following critical accounting policies, among others, affect its more significant judgments and estimates used in the preparation of its condensed consolidated financial statements:

Revenue recognition. Specialty Pharmacy Services' revenues are recognized, net of any contractual allowances, when the product is shipped to a patient, retail pharmacy or a physician's office. Specialty Healthcare Services' revenues are recognized after the management services are rendered and are billed monthly in arrears.

Trade receivables: Considerable judgment is required in assessing the ultimate realization of receivables, including the current financial condition of the customer, age of the receivable and the relationship with the customer. The Company estimates its allowances for doubtful accounts using these factors. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required. In circumstances where the Company is aware of a specific customer's inability to meet its financial obligations (e.g., bankruptcy filings), a specific reserve for bad debts is recorded against amounts due to reduce the receivable to the amount the Company reasonably believes will be collected. For all other customers, the Company has reserves for bad debt based upon the total accounts receivable balance. As of March 31, 2003, the Company's reserve for accounts receivable was approximately 7.7 percent of total receivables.

Inventories: Inventories are carried at the lower of cost or market on a first in, first out basis. Inventory consists of high cost biopharmaceutical and pharmaceutical products that, in many cases, require refrigeration or other special handling. As a result, inventories are subject to spoilage or shrinkage. On a quarterly basis, the Company performs a physical inventory and determines whether any shrinkage or spoilage adjustments are needed. Although the Company believes its inventory balances at March 31, 2003 are reasonably accurate, there can be no assurances that spoilage or shrinkage adjustments will not be needed in the future. The recording of any such reserve may have a negative impact on the Company's operating results.

Deferred tax assets: The Company has approximately \$3.0 million in deferred tax assets as of March 31, 2003 to record against future income. The Company does not have a valuation allowance against this asset as it believes it is more likely than not that the tax assets will be realized. The Company has considered future income expectations and prudent tax strategies in assessing the need for

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

a valuation allowance. In the event the Company determines in the future that it needs to record a valuation allowance, an adjustment to deferred tax assets would be charged against income in the period of determination.

Goodwill and intangibles: Goodwill represents the excess of purchase price over the fair value of net assets acquired. Intangibles consist of the separately identifiable intangibles, such as pharmacy and customer relationships, covenants not to compete and trademarks. Effective January 1, 2002, the Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets," which requires that goodwill and intangible assets with indefinite lives no longer be amortized but rather be reviewed annually, or more frequently if impairment indicators arise, for impairment. Separable intangible assets that are not deemed to have an indefinite life will continue to be amortized over their useful lives. In assessing the recoverability of the Company's goodwill and intangibles, the Company must make assumptions regarding estimated future cash flows and other factors to determine the fair value of the respective assets. If these estimates or assumptions change in the future, the Company may need to record an impairment charge for these assets. An impairment charge would reduce operating income in the period it was determined that the charge was needed.

Results of Operations

Revenues. The Company's revenues for the first quarter of 2003 increased 154 percent to \$58.0 million compared to \$22.8 million for the first quarter of the prior fiscal year.

Product revenues increased \$36.5 million, or 263 percent, to \$50.4 million in the first quarter of 2003 from \$13.9 million in the first quarter of 2002. The increase is primarily the result of growth of hemophilia patient related revenues and the inclusion of Synagis(R), IVIG and infusable revenues as the result of the Specialty Pharmacy acquisitions completed in the first quarter of 2003 and throughout 2002. For the first quarter of 2003, product revenues included \$28.5 million of hemophilia related products, \$16.8 million in Synagis(R) sales, \$4.0 million in IVIG and infusables sales and \$1.1 million of other injectable products. For the same period in 2002, product revenues included \$11.5 million of hemophilia related products and \$2.4 million of other injectable products. Synagis(R), a product used for the prevention of respiratory syncytial virus in infants, is a seasonal product used primarily in the months of October through April which corresponds with the Company's first and fourth quarters. As a result, Synagis(R) revenues will be insignificant in the Company's second and third quarters.

Service revenues, attributed entirely to the Specialty Healthcare Services business unit, decreased 15 percent to \$7.6 million in the first quarter of 2003 from \$8.9 million in the first quarter of 2002. The service revenues decrease of \$1.3 million for the first quarter 2003 is attributable to the operation of 88 Wound Care Center programs at the end of the first quarter of 2003 as compared to 96 at the end of the first quarter of the prior fiscal year as the result of contract terminations and renegotiation. Program terminations by client hospitals have been effected for such reasons as reduced reimbursement, financial restructuring, layoffs, bankruptcies or even hospital closings. The continued termination, non-renewal or renegotiations of a material number of management contracts or the inability to sign new contracts could result in a continued decline in the Company's Specialty Healthcare Services business unit revenue. The Company is currently exploring the possibility of a sale of the Specialty Healthcare Services business unit.

Cost of Product Sales. Cost of product sales increased \$27.1 million, or 263 percent, to \$37.4 million in the first quarter 2003 from \$10.3 million in the

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

first quarter of 2002. The increase is attributable to the internal growth of hemophilia patient revenues and the inclusion of the Specialty Pharmacy acquisitions completed in the first quarter of 2003 and throughout 2002. As a percentage of product sales, the cost of product sales for the first quarter of 2003 was 74 percent compared to 75 percent for the same period in 2002.

Cost of Services. Cost of services, attributed entirely to the Specialty Healthcare Services business unit, decreased \$.4 million, or 10 percent, to \$3.5 million in the first quarter of 2003 from \$3.9 million in the first quarter of 2002. The decrease is attributable to reduced staffing and operating expenses of approximately \$.4 million related to the operation of 88 programs at the end of the first quarter of 2003 as compared to 96 programs operating at the end of the first quarter 2002, offset by additional costs of \$.2 million related to new programs. Additionally, there were three fewer under-arrangement programs in operation at the end of the first quarter of 2003 as compared to the same period for 2002, at which the services component of costs is higher than at the Company's other centers due to the additional clinical staffing and expenses that these models require. For the first quarter of 2003, this reduction in the number of under-arrangement programs accounted for approximately \$.2 million of the decrease in the cost of services. As a percentage of service revenues, the cost of services for the first quarter of 2003 was 46 percent compared to 44 percent for the same period in 2002. This increase is primarily attributable to the decline in service revenues.

Selling, General and Administrative. Selling, general and administrative expenses increased \$6.2 million, or 127 percent, to \$11.1 million for the first quarter of 2003 from \$4.9 million for the first quarter 2002. For the first three months of 2003, selling, general and administrative expenses consisted of \$4.3 million related to the Specialty Pharmacy Services business, \$1.2 million related to the Specialty Healthcare Services business, \$2.9 related to corporate services and \$2.7 million in special charges, including \$1.6 million in expenses related to the Company's consolidation of its pharmacy operations in California and \$1.1 million in legal and other costs associated with the settlement of executive departures in March 2002. The increase of \$6.1 million is primarily due to an increase of \$3.0 million of Specialty Pharmacy Services expenses attributable to the Specialty Pharmacy acquisitions completed in the first quarter of 2003 and throughout 2002, increased costs of \$.3 million related to additional corporate staff to support these acquisitions and \$2.7 million in special charges. As a percentage of revenues, selling, general and administrative expenses were 19 percent in the first quarter of 2003 compared to 22 percent for 2002. The improvement in the first quarter of 2003 is due to the increased revenue base.

Net Income. Net income was \$3.4 million, or \$.25 per diluted share, in the first quarter of 2003 compared to \$2.1 million, or \$.19 per diluted share, in the first quarter of 2002. The increases in earnings of \$1.3 million, including special charges of \$2.7 million, for the first quarter of 2003 is primarily attributable to the inclusion of the Specialty Pharmacy acquisitions completed in the first quarter of 2003 and throughout 2002.

Liquidity and Capital Resources

Working capital was \$13.4 million at March 31, 2003 compared to \$17.5 million at December 31, 2002. Total cash and cash equivalents as of March 31, 2003 was \$2.0 million. The ratio of current assets to current liabilities was 1.3:1 at March 31, 2003 and 1.4:1 at December 31, 2002. The decrease in the Company's working capital and current ratio is primarily attributable to the acquisition of MedCare completed in the first quarter of 2003.

Cash flows provided by operating activities for the three months ended March 31,

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

2003 totaled \$6.1 million, the majority of which is attributable to \$3.4 million in net income and an increase in accounts payable and accrued expenses of \$5.2 million, offset by an increase in accounts receivable, net of \$1.8 million.

Cash flows used in investing activities totaled \$6.5 million primarily attributable to \$6.1 million used in the acquisition of MedCare and \$1.8 million used in fixed asset purchases, offset by \$1.6 million in proceeds received from accounts receivable, indemnification and other claims related to the purchases of eBioCare.com, Inc. ("eBioCare") and Apex, transactions which were recorded as purchase price adjustments. Cash flows used in financing activities totaled \$3.3 million, attributable to \$1.5 million of cash used for repurchase of stock used in the purchase of HAI and \$.5 million used in net repayment of debt obligations, offset by proceeds of \$1.8 million from the exercise of stock options.

For the first three months of 2003, the Company experienced a net increase in accounts receivable of \$4.4 million attributable to the growth in revenues as the result of the Specialty Pharmacy acquisitions. Days sales outstanding were 65 days as of March 31, 2003, as compared to 62 days at December 31, 2002. At March 31, 2003, days sales outstanding for the Specialty Pharmacy Services business were 65 days and 67 days for the Specialty Healthcare business.

As of March 31, 2003, the Company's current portion of long-term liabilities of \$7.0 million included \$3.9 million representing the current portion of the Company's borrowings from its commercial lender, \$2.0 million representing the current portion of the Department of Justice ("DOJ") obligation and \$1.1 million representing the current portion of a convertible note payable used in connection with the purchase of Apex in February 2002. As of March 31, 2003, the Company's long-term liabilities of \$24.1 million included \$3.5 million related to the DOJ obligation, a \$2.7 million promissory note representing the long-term portion of the convertible note used in the purchase of Apex, \$6.0 million in convertible notes payable related to the purchase of Infinity Infusion Care, Ltd. in June 2002, \$3.0 million in a convertible note payable related to the purchase of Home Care of New York, Inc. in October 2002 and \$8.9 million in borrowed funds from the Company's commercial lender.

The Company's longer term cash requirements include working capital for the expansion of its Specialty Pharmacy Services business and Specialty Healthcare Services business and for acquisitions. Other cash requirements are anticipated for capital expenditures in the normal course of business, including the acquisition of software, computers and equipment related to the Company's management information systems. Additionally, as of March 31, 2003, the Company has a \$5.5 million obligation, payable over approximately three years, to the DOJ related to the settlement of its litigation previously disclosed, as well as bank debt and convertible notes totaling \$25.6 million payable over various periods through 2007. In March 2003, the Company signed a commitment with GE Healthcare Financial Services for \$35 million in financing, expandable on a best-efforts basis for an additional \$45 million to finance future acquisitions. The Company expects that, based on its current business plan, its existing cash and cash equivalents and available credit will be sufficient to satisfy its working capital needs and minimal acquisitions at least through March 31, 2004. Any acquisitions of substantial size may require the Company to either increase its credit facilities, issue equity or offer some combination of both debt and equity. The effect of inflation risk is considered immaterial.

Cautionary Statement

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements include statements regarding

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

intent, belief or current expectations of the Company and its management. These forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties that may cause the Company's actual results to differ materially from the results discussed in these statements. Factors that might cause such differences include, but are not limited to, those described under the heading, "Critical Accounting Policies and Estimates" herein, or those described in Exhibit 99.1 to this Form 10-Q and other factors described in the Company's future filings with the SEC.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company does not have operations subject to risks of material foreign currency fluctuations, nor does it use derivative financial instruments in its operations or investment portfolios. The Company places its investments in instruments that meet high credit quality standards, as specified in the Company's investment policy guidelines. The Company does not expect any material loss with respect to its investment portfolio or exposure to market risks associated with interest rates.

Item 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-14(c) and Rule 15d-14(c) under the Exchange Act) as of a date (the "Evaluation Date") within 90 days prior to the filing date of this report. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of the Evaluation Date, our disclosure controls and procedures were effective in timely alerting them to the material information relating to us (or our consolidated subsidiaries) required to be included in our periodic SEC filings.

(b) Changes in internal controls.

There were no significant changes made in our internal controls during the period covered by this report or, to our knowledge, in other factors that could significantly affect these controls subsequent to the date of their evaluation.

Curative Health Services, Inc. and Subsidiaries

Part II Other Information

Item 1. Legal Proceedings

In the normal course of its business, the Company may be involved in lawsuits, claims, audits and investigations, including any arising out of services or products provided by or to the Company's operations, personal injury claims and employment disputes, the outcome of which, in the opinion of management, will not have a material adverse effect on the Company's financial position or

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

results of operations.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

- Exhibit 10.1 Employment agreement dated as of March 5, 2003 between Michelle LeDell and the Company
- Exhibit 10.2 Employment agreement dated as of March 5, 2003 between Alan Jackson and the Company
- Exhibit 10.3 Amendment No. 1 to Curative Health Services, Inc. 2001 Broad-Based Stock Incentive Plan
- Exhibit 10.4 Amendment No. 2 to Curative Health Services, Inc. 2001 Broad-Based Stock Incentive Plan
- Exhibit 99.1 Cautionary Statements
- Exhibit 99.2 Certification of Chief Executive Officer pursuant to 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- Exhibit 99.3 Certification of Chief Financial Officer pursuant to 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

The Company has excluded from the exhibits filed with this report instruments defining the rights of holders of long-term convertible debt of the Company where the total amount of the securities authorized under such instruments does not exceed 10 percent of its total assets. The Company hereby agrees to furnish a copy of any of these instruments to the SEC upon request.

(b) Form 8-K

Form 8-K filed February 5, 2003, reporting under Item 5 on the press release announcing the Company's acquisition of MedCare, Inc.

Form 8-K filed February 14, 2003, reporting under Item 5 to provide the director and executive compensation information for the purpose of being incorporated by reference into the Company's Registration Statement on Form S-3, filed on February 4, 2003, in accordance with the requirements of Response 8B of Item J. of the SEC's Telephone Interpretations Manual.

Form 8-K filed February 18, 2003, reporting under Item 5 on the press release announcing the Company's earnings for the fourth quarter and full year ended December 31, 2002.

Form 8-K filed February 28, 2003, reporting under Item 5 on the amendment of the Registration Rights and Lock-Up Agreement between the Company and the shareholders of Apex Therapeutic Care, Inc., in connection with the Company's acquisition of Apex on February 28, 2002, and the date and number of shares of the Company's common stock that will become freely tradeable in accordance with the amendment.

SIGNATURES

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: May 15, 2003

Curative Health Services, Inc.
(Registrant)

/s/ Joseph Feshbach

Joseph Feshbach
Chief Executive Officer and Chairman
(Principal Executive Officer)

/s/ Thomas Axmacher

Thomas Axmacher
Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATIONS

I, Joseph Feshbach, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Curative Health Services, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - (a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

- (c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
- (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
- (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 15, 2003

/s/ Joseph Feshbach

Joseph Feshbach
Chief Executive Officer

CERTIFICATIONS

I, Thomas Axmacher, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Curative Health Services, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - (a) designed such disclosure controls and procedures to ensure that

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

- (b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - (c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
- (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 15, 2003

/s/ Thomas Axmacher

Thomas Axmacher
Chief Financial Officer

Exhibit 10.1

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made effective as of March 5, 2003 (the "Effective Date"), between CURATIVE HEALTH SERVICES, INC., a Minnesota corporation (the "Company"), and Michelle LeDell ("Executive").

WHEREAS, the Company wishes to retain Executive as a key employee; and

WHEREAS, the Company and Executive want the terms and conditions of Executive's employment to be governed by this Agreement;

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, intending to be legally bound, the Company and Executive hereby agree as follows:

1. Employment

1.1 Employment and Duties. The Company hereby agrees to employ Executive for the Term (as hereinafter defined) as Senior Vice President - Human Resources, subject to the direction of the Chief Executive Officer, and in connection therewith, to perform such duties as she shall reasonably be directed by the Chief Executive Officer to perform. Executive hereby accepts such employment and agrees to render such services. Executive shall perform her duties and carry out her responsibilities hereunder in a diligent manner, shall devote her exclusive and full working time, attention and effort to the affairs of the Company, shall use her best efforts to promote the interests of the Company and shall be just and faithful in the performance of her duties and in carrying out her responsibilities.

1.2 Location. The principal location for performance of Executive's services hereunder shall be at the Company's office in St. Louis Park, Minnesota, subject to reasonable travel requirements during the course of such performance.

2. Employment Term

The term of Executive's employment hereunder (the "Term") shall be deemed to commence on the Effective Date and shall end on the first anniversary of the Effective Date, unless sooner terminated as hereinafter provided; provided, however, that the Term shall be automatically renewed and extended for an additional period of one (1) year on the first anniversary unless either party gives a Notice of Termination (as defined below) to the other party prior to the first anniversary.

3. Compensation and Benefits

3.1 Cash Compensation.

- (a) Base Salary. The Company shall pay Executive an annual salary of \$130,069 payable in bi-weekly installments, in arrears (the "Base Salary"). The Base Salary shall be reviewed annually by the Company's Board of Directors and may be increased, but not decreased (unless mutually agreed upon by Executive and the Company).
- (b) Bonus Plan. Executive shall be entitled to participate in the Company's Annual Corporate Bonus Plan, in accordance with and subject to the terms and provisions thereof.

3.2 Participation in Benefit Plans. Executive shall be entitled to participate in all employee benefit plans or programs of the Company to the extent that her position, title, tenure, salary, active employment status and other qualifications make her eligible to participate. The Company does not guarantee the continuance of any particular employee benefit plan or program during the Term, and Executive's participation in any such plan or program shall be subject to all terms, provisions, rules and regulations applicable thereto. Executive will be entitled to twenty (20) days of vacation per year, to be used in accordance with the Company's vacation policy for senior executives as it may change from time to time. For the Benefit Period, if any, (as hereinafter defined), the Company will arrange to provide Executive with welfare benefits (including life and health insurance benefits) of substantially similar design

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

and cost to Executive as the welfare benefits and other employee benefits available to Executive prior to Executive's or the Company's, as the case may be, receipt of a Notice of Termination (as hereinafter defined). In the event that Executive shall obtain full-time employment providing welfare benefits during the Benefit Period, such benefits as otherwise receivable hereunder by Executive shall be discontinued.

3.3 Expenses. The Company will pay or reimburse Executive for all reasonable and necessary out-of-pocket expenses incurred by her in the performance of her duties under this Agreement. Executive shall keep detailed and accurate records of expenses incurred in connection with the performance of her duties hereunder and reimbursement therefore shall be in accordance with policies and procedures to be established from time to time by the Board.

3.4 Automobile Expenses. During the Term and in accordance with the Company's automobile policy, Executive shall be reimbursed by the Company for the monthly lease expense for an automobile leased in the name of the Executive, in an aggregate amount not to exceed \$500.00 per month.

4. Termination of Employment

4.1 Definitions

(a) "Benefit Period" shall mean (i) the six (6) month period commencing on the Date of Termination which occurs in connection with a termination of employment described in the first sentence of Section 4.5(a), or (ii) the twelve (12) month period commencing on the Date of Termination which occurs in connection with a termination of employment described in the first sentence of Section 4.5(b).

(b) "Cause" shall mean any of the following:

(i) any act or failure to act (or series or combination thereof) by Executive done with the intent to harm in any material respect the interests of the Company;

(ii) the commission by Executive of a felony;

(iii) the perpetration by Executive of a dishonest act or common law fraud against the Company or any subsidiary thereof;

(iv) a grossly negligent act or failure to act (or series or combination thereof) by Executive detrimental in any material respect to the interests of the Company;

(v) the material breach by Executive of her agreements or obligations under this Agreement; or

(vi) the continued refusal to follow the directives of the Chief Executive Officer or Board of Directors that are consistent with Executive's duties and responsibilities identified in Section 1.1 hereof.

(c) A "Change of Control" shall mean any of the following:

(i) a sale of all or substantially all of the assets of the Company;

(ii) the acquisition of more than fifty percent (50%) of the Common Stock of the Company (with all classes or series thereof treated as a single class) by any person or group of persons, except a Permitted Shareholder (as hereinafter defined), acting in concert. A "Permitted

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Shareholder" means a holder, as of the date the Plan was adopted by the Company, of Common Stock;

(iii) a reorganization of the Company wherein the holders of Common Stock of the Company receive stock in another company (other than a subsidiary of the Company), a merger of the Company with another company wherein there is a fifty percent (50%) or greater change in the ownership of the Common Stock of the Company as a result of such merger, or any other transaction in which the Company (other than as the parent corporation) is consolidated for federal income tax purposes or is eligible to be consolidated for federal income tax purposes with another corporation;

(iv) in the event that the Common Stock is traded on an established securities market, a public announcement that any person has acquired or has the right to acquire beneficial ownership of more than fifty percent (50%) of the then-outstanding Common Stock and for this purpose the terms "person" and "beneficial ownership" shall have the meanings provided in Section 13(d) of the Securities and Exchange Act of 1934 or related rules promulgated by the Securities and Exchange Commission, or the commencement of or public announcement of an intention to make a tender offer or exchange offer for more than fifty percent (50%) of the then outstanding Common Stock;

(v) a majority of the Board of Directors is not comprised of Continuing Directors. A "Continuing Director" means a director recommended by the Board of Directors of the Company for election as a director of the Company by the stockholders; or

(vi) the Board of Directors of the Company, in its sole and absolute discretion, determines that there has been a sufficient change in the share ownership of the Company to constitute a change of effective ownership or control of the Company.

(d) "Good Reason" shall mean, within the twelve (12) month period immediately following a Change of Control, the occurrence of any one or more of the following events:

(i) the assignment to Executive of any duties inconsistent in any respect with Executive's position (including status, offices, title, and reporting requirements), authority, duties or other responsibilities as in effect immediately prior to the Change of Control or any other action of the Company that results in a diminishment in such position, authority, duties or responsibilities, other than an insubstantial and inadvertent action that is remedied by the Company promptly after receipt of notice thereof given by Executive;

(ii) a reduction by the Company in Executive's Base Salary as in effect on the date hereof and as the same shall be increased from time to time hereafter;

(iii) the Company's requiring Executive to be based at a location in excess of fifty (50) miles from the location of Executive's principal office immediately prior to the Change of Control;

(iv) the failure by the Company to (a) continue in effect any material compensation or benefit plan, program, policy or practice in which Executive was participating at the time of the Change of Control or (b) provide Executive with compensation and benefits at least equal (in terms of benefit levels and/or reward opportunities) to those provided for under each employee benefit plan, program, policy and practice as in effect immediately prior to the Change of Control (or as in effect following the Change of Control, if greater);

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

(v) the failure of the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform this Agreement; and

(vi) any purported termination by the Company of Executive's employment that is not effected pursuant to a Notice of Termination (as defined below).

(e) "Date of Termination" shall mean the date specified in the Notice of Termination (as hereinafter defined) (except in the case of Executive's death, in which case Date of Termination shall be the date of death); provided, however, that if Executive's employment is terminated by the Company other than for Cause, the date specified in the Notice of Termination shall be at least thirty (30) days from the date the Notice of Termination is given to Executive and if Executive's employment is terminated by Executive for Good Reason, the date specified in the Notice of Termination shall not be more than sixty (60) days from the date the Notice of Termination is given to the Company.

(f) "Notice of Termination" shall mean a written notice either from the Company to Executive, or Executive to the Company, that indicates Section 2 or the specific provision of Section 4 of this Agreement relied upon as the reason for such termination or nonrenewal, the Date of Termination, and, in reasonable detail, the facts and circumstances claimed to provide a basis for termination or nonrenewal pursuant to Section 2 or this Section 4 of this Agreement.

4.2 Termination Upon Death or Disability. This Agreement, and Executive's employment hereunder, shall terminate automatically and without the necessity of any action on the part of the Company upon the death of Executive. In addition, if at any time during the Term Executive shall become physically or mentally disabled, whether totally or partially, so that she is unable substantially to perform her duties and services hereunder for (i) a period of six (6) consecutive months, or (ii) for shorter periods aggregating six (6) months during any twelve (12) month period, the Company may at any time after the last day of the sixth consecutive month of disability or the day on which the shorter periods of disability shall have equalled an aggregate of six (6) months, by written notice to Executive (but before Executive has recovered from such disability), terminate this Agreement and Executive's employment hereunder.

4.3 Company's and Executive's Right to Terminate—Prior to Change of Control. Prior to a Change of Control, this Agreement and Executive's employment hereunder may be terminated at any time by the Company, with or without Cause, upon thirty (30) days prior written notice to Executive, and by Executive, at any time, upon thirty (30) days prior written notice to the Company. Any termination of Executive's employment by the Company without Cause prior to a Change of Control that occurs at the request or insistence of any person (other than the Company) relating to such Change of Control shall be deemed to have occurred after the Change of Control for the purposes of this Agreement.

4.4 Company's and Executive's Right to Terminate—Following a Change of Control. Following a Change of Control, this Agreement and Executive's employment hereunder may be terminated at any time (i) by the Company, with or without Cause, upon thirty (30) days prior written notice to Executive, and (ii) by Executive for Good Reason upon thirty (30) days prior written notice to the Company. Executive's right to terminate her employment pursuant to this Section 4.4 shall not be affected by incapacity due to physical or mental illness. Executive's continued employment following a Change of Control shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason hereunder.

4.5 Compensation Upon Termination.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

(a) Termination Prior to Change of Control. In the event the Company terminates (or elects not to renew) this Agreement without Cause, and such termination (or nonrenewal) without Cause occurs prior to any Change of Control, Executive shall be entitled to receive her Base Salary through the Date of Termination, the welfare benefits described in Section 3.2 for the Benefit Period, and not later than thirty (30) days after the Date of Termination, a lump sum severance payment equal to the sum of six (6) months of EMPLOYEE's then current Base Salary plus a pro-rated bonus based on Executive's performance in the fiscal year in which the Date of Termination occurs. In addition, to the extent not otherwise required under the Company's Stock Option Plan or any award agreement with Executive, any unvested stock option awards theretofore awarded to Executive which would otherwise vest and become exercisable during the twelve (12) month period commencing on the Date of Termination shall vest and become exercisable on the Date of Termination. In the event this Agreement is terminated (or not renewed) for any reason other than by the Company without Cause, and such termination (or nonrenewal) occurs prior to a Change of Control, Executive shall not be entitled to the continuation of any compensation, bonuses or benefits provided hereunder, or any other payments following the Date of Termination, other than Base Salary earned through such Date of Termination.

(b) Termination Following Change of Control. If this Agreement is terminated (or not renewed) (i) by the Company without Cause, or (ii) by Executive for Good Reason during the twelve (12) month period immediately following a Change of Control, and such termination (or nonrenewal) occurs following a Change of Control, Executive shall be entitled to receive her full Base Salary through the Date of Termination, the welfare benefits described in Section 3.2 for the Benefit Period and, not later than thirty (30) days after the Date of Termination, a lump sum severance payment equal to the sum of Executive's then current Base Salary plus a pro-rated bonus based on Executive's performance in the fiscal year in which the Date of Termination occurs. In addition, to the extent not otherwise required under the Company's Stock Option Plan or any award agreement with Executive, any unvested stock option awards theretofore awarded to Executive shall vest and become immediately exercisable in full. In the event this Agreement is terminated (or not renewed) for any reason other than (i) by the Company without Cause, or (ii) by Executive for Good Reason, and such termination (or nonrenewal) occurs following a Change of Control, Executive shall not be entitled to the continuation of any compensation, bonuses or benefits provided hereunder, or any other payments following the Date of Termination, other than Base Salary earned through the Date of Termination.

(c) At Executive's option to be exercised by written notice to the Company, the severance benefits payable under this Section 4.5 shall be paid in accordance with the Company's normal payroll procedures over the six (6) or twelve (12) month period, as the case may be, corresponding to the amount of the payments instead of in a lump sum.

(d) Anything to the contrary contained herein notwithstanding, as a condition to Executive receiving severance benefits to be paid pursuant to this Section 4.5, Executive shall execute and deliver to the Company a general release in form and substance reasonably satisfactory to the Company releasing the Company and its subsidiaries, affiliates and their respective officers, directors, employees and agents from all liabilities, claims and obligations of any nature whatsoever, excepting only the Company's obligations under this Agreement, under any Stock Option Agreements, and under any other employee benefit plans or programs in which Executive participates under Section 3.2 hereof, subject to all terms and conditions of such plans or programs and this Agreement.

(e) Anything to the contrary contained herein notwithstanding, in the event that any payment or benefit received or to be received by Executive

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

in connection with a Change in Control of the Company or termination of Executive's employment (whether payable pursuant to the terms of this Agreement or any other plan, contract, agreement or arrangement with the Company, with any person whose actions result in a Change in Control of the Company or with any person constituting a member of an "affiliated group" as defined in Section 280G(d) (5) of the Internal Revenue Code of 1986, as amended (the "Code"), with the Company or with any person whose actions result in a Change in Control of the Company (collectively, the "Total Payments") would not be deductible (in whole or in part) by the Company or such other person making such payment or providing such benefit solely as a result of Section 280G of the Code, the amount payable to Executive pursuant to this Section 4.5 shall be reduced until no portion of the Total Payments is not deductible solely as a result of Section 280G of the Code or such amount payable to Executive pursuant to Section 4.5 is reduced to zero. For purposes of this limitation, (a) no portion of the Total Payments the receipt or enjoyment of which Executive shall have effectively waived in writing prior to the date of payment of the amount pursuant to Section 4.5 shall be taken into account; (b) no portion of the Total Payments shall be taken into account which in the opinion of tax counsel selected by the Company and reasonably acceptable to Executive does not constitute a "parachute payment" within the meaning of Section 280G(b) (2) of the Code; (c) the payment pursuant to Section 4.5 shall be reduced only to the extent necessary so that the Total Payments (other than those referred to in the immediately preceding clause (b)) in their entirety constitute reasonable compensation within the meaning of Section 280G(b) (4) (B) of the Code, in the opinion of the tax counsel referred to in the immediately preceding clause (b); and (d) the value of any other non-cash benefit or of any deferred cash payment included in the Total Payments shall be determined by the Company's independent auditors in accordance with the principles of Sections 280G(d) (3) and (4) of the Code.

5. Employment Covenants

5.1 Trade Secrets and Confidential Information. Executive agrees that she shall, during the course of her employment and thereafter, hold inviolate and keep secret all documents, materials, knowledge or other confidential business or technical information of any nature whatsoever disclosed to or developed by her or to which she had access as a result of her employment (hereinafter referred to as "Confidential Information"). Such Confidential Information shall include technical and business information, including, but not limited to, inventions, research and development, engineering, products, designs, manufacture, methods, systems, improvements, trade secrets, formulas, processes, marketing, merchandising, selling, licensing, servicing, customer lists, records or financial information, manuals or Company strategy concerning its business, strategy or policies. Executive agrees that all Confidential Information shall remain the sole and absolute property of the Company. During the course of her employment, Executive shall not use, disclose, disseminate, publish, reproduce or otherwise make available such Confidential Information to any person, firm, corporation or other entity, except for the purpose of conducting business on behalf of the Company. Following the Term, Executive shall not use, disclose, disseminate, publish, reproduce or otherwise make available such Confidential Information to any person, firm, corporation or other entity. Upon termination of her employment with the Company, Executive will leave with or deliver to the Company all records and any compositions, articles, devices, equipment and other items which disclose or embody Confidential Information including all copies or specimens thereof, whether prepared by her or by others. The foregoing restrictions on disclosure of Confidential Information shall apply so long as the information has not properly come into the public domain through no action of Executive.

5.2 Transfer of Inventions. Executive, for herself and her heirs and representatives, will promptly communicate and disclose to the Company, and upon request will, without additional compensation, execute all papers reasonably necessary to assign to the Company or the Company's nominees, free of

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

encumbrance or restrictions, all inventions, discoveries, improvements, whether patentable or not, conceived or originated by Executive solely or jointly with others, at the Company's expense or at the Company's facilities, or at the Company's request, or in the course of her employment, or based on knowledge or information obtained during the Term. All such assignments shall include the patent rights in this and all foreign countries. Notwithstanding the foregoing, this Section 5.2 shall not apply to any invention for which no equipment, supplies, facilities or trade secret information of the Company was used and which was developed entirely on Executive's own time and (a) that does not relate (1) directly to the business of the Company or (2) to the Company's actual or demonstrably anticipated research or development, or (b) that does not result from any work performed by Executive for the Company.

5.3 Exclusivity of Employment. During the Term, Executive shall not directly or indirectly engage in any activity competitive with or adverse to the Company's business or welfare or render a material level of services of a business, professional or commercial nature to any other person or firm, whether for compensation or otherwise.

5.4 Covenant Not to Compete. Executive agrees to be bound and abide by the following covenant not to compete:

(a) Term and Scope. During her employment with the Company and for a period of two (2) years after the Term, Executive will not render to any Conflicting Organization (as hereinafter defined), services, directly or indirectly, anywhere in the world in connection with any Conflicting Product, except that Executive may accept employment with a large Conflicting Organization whose business is diversified (and which has separate and distinct divisions) if Executive first certifies to the Board of Directors in writing that she has provided a copy of Section 5 of this Agreement to such prospective employer, that such prospective employer is a separate and distinct division of the Conflicting Organization and that Executive will not render services directly or indirectly in respect of any Conflicting Product (as hereinafter defined). Such two-year time period shall be tolled during any period that Executive is engaged in activity in violation of this covenant.

(b) Judicial Action. Executive and the Company agree that, if the period of time or the scope of the restrictive covenant not to compete contained in this Section 5.4 shall be adjudged unreasonable in any court proceeding, then the period of time and/or scope shall be reduced accordingly, so that this covenant may be enforced in such scope and during such period of time as is judged by the court to be reasonable. In the event of a breach or violation of this Section 5.4 by Executive, the parties agree that in addition to all other remedies, the Company shall be entitled to equitable relief for specific performance, and Executive hereby agrees and acknowledges that the Company has no adequate remedy at law for the breach of the covenants contained herein.

(c) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Conflicting Product" means any product, method or process, system or service of any person or organization other than the Company which is related to the areas of disease management, wound care or specialty pharmaceutical services, or the provision or sale of data in respect thereof, that is the same as or similar to or competes with a product, method or process, system or service of or provided by the Company or any of its subsidiaries or affiliates in existence or under development at the time Executive's employment with the Company terminates or about which Executive acquires Confidential Information.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

"Conflicting Organization" means any person or organization which is engaged in disease management, wound care or specialty pharmaceutical services, or the provision or sale of data in respect thereof, and which is, or about to become engaged in, research on or development, production, marketing, licensing, selling or servicing of a Conflicting Product.

5.5 Disclosure to Prospective Employers. Executive will disclose to any prospective employer, prior to accepting employment, the existence of Section 5 of this Agreement. The obligation imposed by this Section 5.5 shall terminate two (2) years after termination of Executive's employment with the Company; provided, however, the running of such two-year period shall be tolled to the extent the covenant not to compete contained in Section 5.4(a) hereof is tolled.

5.6 Non-Solicitation. For one (1) year after termination of employment with the Company for any reason, the Executive shall not directly or indirectly solicit or hire, or assist any other person in soliciting or hiring, any employee of the Company (as of the date of termination) or any person who, as of the date of termination, was in the process of being recruited by the Company or induce any such employee to terminate his or her employment with the Company.

6. Miscellaneous

6.1 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered on the earlier of (i) the date received, or (ii) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service depository, postage prepaid, sent registered or certified mail, return receipt requested, addressed to the party to receive the same at the address of such party set forth below, or at such other address as may be designated in a notice delivered or mailed as herein provided.

To Company: Curative Health Services, Inc.
150 Motor Parkway, 4th Floor
Hauppauge, NY 11788
Attention: Nancy F. Lanis, Executive Vice
President, General Counsel and Secretary

Executive: Michelle LeDell
5118 Paul Drive
Brooklyn Center, MN 55429

6.2 Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed a part of or affect the construction or interpretation of any provision hereof.

6.3 Modifications; Waiver. No modification of any provision of this Agreement or waiver of any right or remedy herein provided shall be effective for any purpose unless specifically set forth in a writing signed by the party to be bound thereby. No waiver of any right or remedy in respect of any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

6.4 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, oral or written, heretofore made with respect thereto, including without limitation, the offer letter dated January 21, 2002.

6.5 Severability. Any provision of this Agreement prohibited by or

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provision hereof. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this Employment Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

6.6 Controlling Law. This Agreement has been entered into by the parties in the State of New York and shall be continued and enforced in accordance with the laws of that State.

6.7 Assignments. The Company shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder to any entity that controls the Company, that the Company controls or that may be the result of the merger, consolidation, acquisition or reorganization of the Company and another entity. Executive agrees that this Agreement is personal to her and her rights and interest hereunder may not be assigned, nor may her obligations and duties hereunder be delegated (except as to delegation in the normal course of operation of the Company), and any attempted assignment or delegation in violation of this provision shall be void.

6.8 Attorney Fees. In the event of litigation between the parties, to enforce their respective rights under this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party reimbursement of the prevailing party's reasonable attorney's fees and costs at all levels of trial and appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CURATIVE HEALTH SERVICES, INC.

By: /s/ Joseph L. Feshbach

Name: Joseph L. Feshbach
Title: Chairman and Chief Executive Officer

Executive: /s/ Michelle LeDell

Name: Michelle LeDell

Exhibit 10.2

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made effective as of March 5, 2003 (the "Effective Date"), between CURATIVE HEALTH SERVICES, INC., a Minnesota corporation (the "Company"), and Alan Jackson ("Executive").

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

WHEREAS, the Company wishes to retain Executive as a key employee; and

WHEREAS, the Company and Executive want the terms and conditions of Executive's employment to be governed by this Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, intending to be legally bound, the Company and Executive hereby agree as follows:

1. Employment

1.1 Employment and Duties. The Company hereby agrees to employ Executive for the Term (as hereinafter defined) as Senior Vice President - Information Systems and Chief Information Officer, subject to the direction of the Chief Executive Officer, and in connection therewith, to perform such duties as he shall reasonably be directed by the Chief Executive Officer to perform. Executive hereby accepts such employment and agrees to render such services. Executive shall perform his duties and carry out his responsibilities hereunder in a diligent manner, shall devote his exclusive and full working time, attention and effort to the affairs of the Company, shall use his best efforts to promote the interests of the Company and shall be just and faithful in the performance of his duties and in carrying out his responsibilities.

1.2 Location. The principal location for performance of Executive's services hereunder shall be at the Company's executive offices, which are currently located in Hauppauge, New York, subject to reasonable travel requirements during the course of such performance.

2. Employment Term

The term of Executive's employment hereunder (the "Term") shall be deemed to commence on the Effective Date and shall end on the first anniversary of the Effective Date, unless sooner terminated as hereinafter provided; provided, however, that the Term shall be automatically renewed and extended for an additional period of one (1) year on the first anniversary unless either party gives a Notice of Termination (as defined below) to the other party prior to the first anniversary.

3. Compensation and Benefits

3.1 Cash Compensation.

- (a) Base Salary. The Company shall pay Executive an annual salary of \$170,477.50 payable in bi-weekly installments, in arrears (the "Base Salary"). The Base Salary shall be reviewed annually by the Company's Board of Directors and may be increased, but not decreased (unless mutually agreed upon by Executive and the Company).
- (b) Bonus Plan. Executive shall be entitled to participate in the Company's Annual Corporate Bonus Plan, in accordance with and subject to the terms and provisions thereof.

3.2 Participation in Benefit Plans. Executive shall be entitled to participate in all employee benefit plans or programs of the Company to the extent that his position, title, tenure, salary, active employment status and other qualifications make him eligible to participate. The Company does not guarantee the continuance of any particular employee benefit plan or program during the Term, and Executive's participation in any such plan or program shall be subject to all terms, provisions, rules and regulations applicable thereto.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Executive will be entitled to twenty (20) days of vacation per year, to be used in accordance with the Company's vacation policy for senior executives as it may change from time to time. For the Benefit Period, if any, (as hereinafter defined), the Company will arrange to provide Executive with welfare benefits (including life and health insurance benefits) of substantially similar design and cost to Executive as the welfare benefits and other employee benefits available to Executive prior to Executive's or the Company's, as the case may be, receipt of a Notice of Termination (as hereinafter defined). In the event that Executive shall obtain full-time employment providing welfare benefits during the Benefit Period, such benefits as otherwise receivable hereunder by Executive shall be discontinued.

3.3 Expenses. The Company will pay or reimburse Executive for all reasonable and necessary out-of-pocket expenses incurred by him in the performance of his duties under this Agreement. Executive shall keep detailed and accurate records of expenses incurred in connection with the performance of his duties hereunder and reimbursement therefore shall be in accordance with policies and procedures to be established from time to time by the Board.

3.4 Automobile Expenses. During the Term and in accordance with the Company's automobile policy, Executive shall be reimbursed by the Company for the monthly lease expense for an automobile leased in the name of the Executive, in an aggregate amount not to exceed \$500.00 per month.

4. Termination of Employment

4.1 Definitions

(a) "Benefit Period" shall mean (i) the six (6) month period commencing on the Date of Termination which occurs in connection with a termination of employment described in the first sentence of Section 4.5(a), or (ii) the twelve (12) month period commencing on the Date of Termination which occurs in connection with a termination of employment described in the first sentence of Section 4.5(b).

(b) "Cause" shall mean any of the following:

(i) any act or failure to act (or series or combination thereof) by Executive done with the intent to harm in any material respect the interests of the Company;

(ii) the commission by Executive of a felony;

(iii) the perpetration by Executive of a dishonest act or common law fraud against the Company or any subsidiary thereof;

(iv) a grossly negligent act or failure to act (or series or combination thereof) by Executive detrimental in any material respect to the interests of the Company;

(v) the material breach by Executive of his agreements or obligations under this Agreement; or

(vi) the continued refusal to follow the directives of the Chief Executive Officer or Board of Directors that are consistent with Executive's duties and responsibilities identified in Section 1.1 hereof.

(c) A "Change of Control" shall mean any of the following:

(i) a sale of all or substantially all of the assets of the Company;

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

(ii) the acquisition of more than fifty percent (50%) of the Common Stock of the Company (with all classes or series thereof treated as a single class) by any person or group of persons, except a Permitted Shareholder (as hereinafter defined), acting in concert. A "Permitted Shareholder" means a holder, as of the date the Plan was adopted by the Company, of Common Stock;

(iii) a reorganization of the Company wherein the holders of Common Stock of the Company receive stock in another company (other than a subsidiary of the Company), a merger of the Company with another company wherein there is a fifty percent (50%) or greater change in the ownership of the Common Stock of the Company as a result of such merger, or any other transaction in which the Company (other than as the parent corporation) is consolidated for federal income tax purposes or is eligible to be consolidated for federal income tax purposes with another corporation;

(iv) in the event that the Common Stock is traded on an established securities market, a public announcement that any person has acquired or has the right to acquire beneficial ownership of more than fifty percent (50%) of the then-outstanding Common Stock and for this purpose the terms "person" and "beneficial ownership" shall have the meanings provided in Section 13(d) of the Securities and Exchange Act of 1934 or related rules promulgated by the Securities and Exchange Commission, or the commencement of or public announcement of an intention to make a tender offer or exchange offer for more than fifty percent (50%) of the then outstanding Common Stock;

(v) a majority of the Board of Directors is not comprised of Continuing Directors. A "Continuing Director" means a director recommended by the Board of Directors of the Company for election as a director of the Company by the stockholders; or

(vi) the Board of Directors of the Company, in its sole and absolute discretion, determines that there has been a sufficient change in the share ownership of the Company to constitute a change of effective ownership or control of the Company.

(d) "Good Reason" shall mean, within the twelve (12) month period immediately following a Change of Control, the occurrence of any one or more of the following events:

(i) the assignment to Executive of any duties inconsistent in any respect with Executive's position (including status, offices, title, and reporting requirements), authority, duties or other responsibilities as in effect immediately prior to the Change of Control or any other action of the Company that results in a diminishment in such position, authority, duties or responsibilities, other than an insubstantial and inadvertent action that is remedied by the Company promptly after receipt of notice thereof given by Executive;

(ii) a reduction by the Company in Executive's Base Salary as in effect on the date hereof and as the same shall be increased from time to time hereafter;

(iii) the Company's requiring Executive to be based at a location in excess of fifty (50) miles from the location of Executive's principal office immediately prior to the Change of Control;

(iv) the failure by the Company to (a) continue in effect any material compensation or benefit plan, program, policy or practice in which Executive was participating at the time of the Change of Control or (b) provide Executive with compensation and benefits at least equal (in terms of benefit levels and/or reward opportunities) to those provided for under each employee benefit plan, program, policy and practice as in effect immediately prior to the

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

Change of Control (or as in effect following the Change of Control, if greater);

(v) the failure of the Company to obtain a satisfactory agreement from any successor to the Company to assume and agree to perform this Agreement; and

(vi) any purported termination by the Company of Executive's employment that is not effected pursuant to a Notice of Termination (as defined below).

(e) "Date of Termination" shall mean the date specified in the Notice of Termination (as hereinafter defined) (except in the case of Executive's death, in which case Date of Termination shall be the date of death); provided, however, that if Executive's employment is terminated by the Company other than for Cause, the date specified in the Notice of Termination shall be at least thirty (30) days from the date the Notice of Termination is given to Executive and if Executive's employment is terminated by Executive for Good Reason, the date specified in the Notice of Termination shall not be more than sixty (60) days from the date the Notice of Termination is given to the Company.

(f) "Notice of Termination" shall mean a written notice either from the Company to Executive, or Executive to the Company, that indicates Section 2 or the specific provision of Section 4 of this Agreement relied upon as the reason for such termination or nonrenewal, the Date of Termination, and, in reasonable detail, the facts and circumstances claimed to provide a basis for termination or nonrenewal pursuant to Section 2 or this Section 4 of this Agreement.

4.2 Termination Upon Death or Disability. This Agreement, and Executive's employment hereunder, shall terminate automatically and without the necessity of any action on the part of the Company upon the death of Executive. In addition, if at any time during the Term Executive shall become physically or mentally disabled, whether totally or partially, so that he is unable substantially to perform his duties and services hereunder for (i) a period of six (6) consecutive months, or (ii) for shorter periods aggregating six (6) months during any twelve (12) month period, the Company may at any time after the last day of the sixth consecutive month of disability or the day on which the shorter periods of disability shall have equalled an aggregate of six (6) months, by written notice to Executive (but before Executive has recovered from such disability), terminate this Agreement and Executive's employment hereunder.

4.3 Company's and Executive's Right to Terminate-Prior to Change of Control. Prior to a Change of Control, this Agreement and Executive's employment hereunder may be terminated at any time by the Company, with or without Cause, upon thirty (30) days prior written notice to Executive, and by Executive, at any time, upon thirty (30) days prior written notice to the Company. Any termination of Executive's employment by the Company without Cause prior to a Change of Control that occurs at the request or insistence of any person (other than the Company) relating to such Change of Control shall be deemed to have occurred after the Change of Control for the purposes of this Agreement.

4.4 Company's and Executive's Right to Terminate-Following a Change of Control. Following a Change of Control, this Agreement and Executive's employment hereunder may be terminated at any time (i) by the Company, with or without Cause, upon thirty (30) days prior written notice to Executive, and (ii) by Executive for Good Reason upon thirty (30) days prior written notice to the Company. Executive's right to terminate his employment pursuant to this Section 4.4 shall not be affected by incapacity due to physical or mental illness. Executive's continued employment following a Change of Control shall not constitute consent to, or a waiver of rights with respect to, any circumstance constituting Good Reason hereunder.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

4.5 Compensation Upon Termination.

(a) Termination Prior to Change of Control. In the event the Company terminates (or elects not to renew) this Agreement without Cause, and such termination (or nonrenewal) without Cause occurs prior to any Change of Control, Executive shall be entitled to receive his Base Salary through the Date of Termination, the welfare benefits described in Section 3.2 for the Benefit Period, and not later than thirty (30) days after the Date of Termination, a lump sum severance payment equal to the sum of six (6) month's of EMPLOYEE's annual Base Salary plus a pro-rated bonus based on Executive's performance in the fiscal year in which the Date of Termination occurs. In addition, to the extent not otherwise required under the Company's Stock Option Plan or any award agreement with Executive, any unvested stock option awards theretofore awarded to Executive which would otherwise vest and become exercisable during the twelve (12) month period commencing on the Date of Termination shall vest and become exercisable on the Date of Termination. In the event this Agreement is terminated (or not renewed) for any reason other than by the Company without Cause, and such termination (or nonrenewal) occurs prior to a Change of Control, Executive shall not be entitled to the continuation of any compensation, bonuses or benefits provided hereunder, or any other payments following the Date of Termination, other than Base Salary earned through such Date of Termination.

(b) Termination Following Change of Control. If this Agreement is terminated (or not renewed) (i) by the Company without Cause, or (ii) by Executive for Good Reason during the twelve (12) month period immediately following a Change of Control, and such termination (or nonrenewal) occurs following a Change of Control, Executive shall be entitled to receive his full Base Salary through the Date of Termination, the welfare benefits described in Section 3.2 for the Benefit Period and, not later than thirty (30) days after the Date of Termination, a lump sum severance payment equal to the sum of Executive's then current Base Salary plus a pro-rated bonus based on Executive's performance in the fiscal year in which the Date of Termination occurs. In addition, to the extent not otherwise required under the Company's Stock Option Plan or any award agreement with Executive, any unvested stock option awards theretofore awarded to Executive shall vest and become immediately exercisable in full. In the event this Agreement is terminated (or not renewed) for any reason other than (i) by the Company without Cause, or (ii) by Executive for Good Reason, and such termination (or nonrenewal) occurs following a Change of Control, Executive shall not be entitled to the continuation of any compensation, bonuses or benefits provided hereunder, or any other payments following the Date of Termination, other than Base Salary earned through the Date of Termination.

(c) At Executive's option to be exercised by written notice to the Company, the severance benefits payable under this Section 4.5 shall be paid in accordance with the Company's normal payroll procedures over the six (6) or twelve (12) month period, as the case may be, corresponding to the amount of the payments instead of in a lump sum.

(d) Anything to the contrary contained herein notwithstanding, as a condition to Executive receiving severance benefits to be paid pursuant to this Section 4.5, Executive shall execute and deliver to the Company a general release in form and substance reasonably satisfactory to the Company releasing the Company and its subsidiaries, affiliates and their respective officers, directors, employees and agents from all liabilities, claims and obligations of any nature whatsoever, excepting only the Company's obligations under this Agreement, under any Stock Option Agreements, and under any other employee benefit plans or programs in which Executive participates under Section 3.2 hereof, subject to all terms and conditions of such plans or programs and this Agreement.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

(e) Anything to the contrary contained herein notwithstanding, in the event that any payment or benefit received or to be received by Executive in connection with a Change in Control of the Company or termination of Executive's employment (whether payable pursuant to the terms of this Agreement or any other plan, contract, agreement or arrangement with the Company, with any person whose actions result in a Change in Control of the Company or with any person constituting a member of an "affiliated group" as defined in Section 280G(d) (5) of the Internal Revenue Code of 1986, as amended (the "Code"), with the Company or with any person whose actions result in a Change in Control of the Company (collectively, the "Total Payments") would not be deductible (in whole or in part) by the Company or such other person making such payment or providing such benefit solely as a result of Section 280G of the Code, the amount payable to Executive pursuant to this Section 4.5 shall be reduced until no portion of the Total Payments is not deductible solely as a result of Section 280G of the Code or such amount payable to Executive pursuant to Section 4.5 is reduced to zero. For purposes of this limitation, (a) no portion of the Total Payments the receipt or enjoyment of which Executive shall have effectively waived in writing prior to the date of payment of the amount pursuant to Section 4.5 shall be taken into account; (b) no portion of the Total Payments shall be taken into account which in the opinion of tax counsel selected by the Company and reasonably acceptable to Executive does not constitute a "parachute payment" within the meaning of Section 280G(b) (2) of the Code; (c) the payment pursuant to Section 4.5 shall be reduced only to the extent necessary so that the Total Payments (other than those referred to in the immediately preceding clause (b)) in their entirety constitute reasonable compensation within the meaning of Section 280G(b) (4) (B) of the Code, in the opinion of the tax counsel referred to in the immediately preceding clause (b); and (d) the value of any other non-cash benefit or of any deferred cash payment included in the Total Payments shall be determined by the Company's independent auditors in accordance with the principles of Sections 280G(d) (3) and (4) of the Code.

5. Employment Covenants

5.1 Trade Secrets and Confidential Information. Executive agrees that he shall, during the course of his employment and thereafter, hold inviolate and keep secret all documents, materials, knowledge or other confidential business or technical information of any nature whatsoever disclosed to or developed by him or to which he had access as a result of his employment (hereinafter referred to as "Confidential Information"). Such Confidential Information shall include technical and business information, including, but not limited to, inventions, research and development, engineering, products, designs, manufacture, methods, systems, improvements, trade secrets, formulas, processes, marketing, merchandising, selling, licensing, servicing, customer lists, records or financial information, manuals or Company strategy concerning its business, strategy or policies. Executive agrees that all Confidential Information shall remain the sole and absolute property of the Company. During the course of his employment, Executive shall not use, disclose, disseminate, publish, reproduce or otherwise make available such Confidential Information to any person, firm, corporation or other entity, except for the purpose of conducting business on behalf of the Company. Following the Term, Executive shall not use, disclose, disseminate, publish, reproduce or otherwise make available such Confidential Information to any person, firm, corporation or other entity. Upon termination of his employment with the Company, Executive will leave with or deliver to the Company all records and any compositions, articles, devices, equipment and other items which disclose or embody Confidential Information including all copies or specimens thereof, whether prepared by him or by others. The foregoing restrictions on disclosure of Confidential Information shall apply so long as the information has not properly come into the public domain through no action of Executive.

5.2 Transfer of Inventions. Executive, for himself and his heirs and representatives, will promptly communicate and disclose to the Company, and upon

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

request will, without additional compensation, execute all papers reasonably necessary to assign to the Company or the Company's nominees, free of encumbrance or restrictions, all inventions, discoveries, improvements, whether patentable or not, conceived or originated by Executive solely or jointly with others, at the Company's expense or at the Company's facilities, or at the Company's request, or in the course of his employment, or based on knowledge or information obtained during the Term. All such assignments shall include the patent rights in this and all foreign countries. Notwithstanding the foregoing, this Section 5.2 shall not apply to any invention for which no equipment, supplies, facilities or trade secret information of the Company was used and which was developed entirely on Executive's own time and (a) that does not relate (1) directly to the business of the Company or (2) to the Company's actual or demonstrably anticipated research or development, or (b) that does not result from any work performed by Executive for the Company.

5.3 Exclusivity of Employment. During the Term, Executive shall not directly or indirectly engage in any activity competitive with or adverse to the Company's business or welfare or render a material level of services of a business, professional or commercial nature to any other person or firm, whether for compensation or otherwise.

5.4 Covenant Not to Compete. Executive agrees to be bound and abide by the following covenant not to compete:

(a) Term and Scope. During his employment with the Company and for a period of two (2) years after the Term, Executive will not render to any Conflicting Organization (as hereinafter defined), services, directly or indirectly, anywhere in the world in connection with any Conflicting Product, except that Executive may accept employment with a large Conflicting Organization whose business is diversified (and which has separate and distinct divisions) if Executive first certifies to the Board of Directors in writing that he has provided a copy of Section 5 of this Agreement to such prospective employer, that such prospective employer is a separate and distinct division of the Conflicting Organization and that Executive will not render services directly or indirectly in respect of any Conflicting Product (as hereinafter defined). Such two-year time period shall be tolled during any period that Executive is engaged in activity in violation of this covenant.

(b) Judicial Action. Executive and the Company agree that, if the period of time or the scope of the restrictive covenant not to compete contained in this Section 5.4 shall be adjudged unreasonable in any court proceeding, then the period of time and/or scope shall be reduced accordingly, so that this covenant may be enforced in such scope and during such period of time as is judged by the court to be reasonable. In the event of a breach or violation of this Section 5.4 by Executive, the parties agree that in addition to all other remedies, the Company shall be entitled to equitable relief for specific performance, and Executive hereby agrees and acknowledges that the Company has no adequate remedy at law for the breach of the covenants contained herein.

(c) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Conflicting Product" means any product, method or process, system or service of any person or organization other than the Company which is related to the areas of disease management, wound care or specialty pharmaceutical services, or the provision or sale of data in respect thereof, that is the same as or similar to or competes with a product, method or process, system or service of or provided by the Company or any of its subsidiaries or affiliates in existence or under development at the time Executive's employment with the Company terminates or about which Executive acquires Confidential Information.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

"Conflicting Organization" means any person or organization which is engaged in disease management, wound care or specialty pharmaceutical services, or the provision or sale of data in respect thereof, and which is, or about to become engaged in, research on or development, production, marketing, licensing, selling or servicing of a Conflicting Product.

5.5 Disclosure to Prospective Employers. Executive will disclose to any prospective employer, prior to accepting employment, the existence of Section 5 of this Agreement. The obligation imposed by this Section 5.5 shall terminate two (2) years after termination of Executive's employment with the Company; provided, however, the running of such two-year period shall be tolled to the extent the covenant not to compete contained in Section 5.4(a) hereof is tolled.

5.6 Non-Solicitation. For one (1) year after termination of employment with the Company for any reason, the Executive shall not directly or indirectly solicit or hire, or assist any other person in soliciting or hiring, any employee of the Company (as of the date of termination) or any person who, as of the date of termination, was in the process of being recruited by the Company or induce any such employee to terminate his or her employment with the Company.

6. Miscellaneous

6.1 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered on the earlier of (i) the date received, or (ii) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service depository, postage prepaid, sent registered or certified mail, return receipt requested, addressed to the party to receive the same at the address of such party set forth below, or at such other address as may be designated in a notice delivered or mailed as herein provided.

To Company: Curative Health Services, Inc.
150 Motor Parkway, 4th Floor
Hauppauge, NY 11788
Attention: Nancy F. Lanis, Executive Vice President,
General Counsel and Secretary

Executive: Alan Jackson
129 W. Henrietta Avenue
Oceanside, New York 11572

6.2 Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed a part of or affect the construction or interpretation of any provision hereof.

6.3 Modifications; Waiver. No modification of any provision of this Agreement or waiver of any right or remedy herein provided shall be effective for any purpose unless specifically set forth in a writing signed by the party to be bound thereby. No waiver of any right or remedy in respect of any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

6.4 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all other agreements, oral or written, heretofore made with respect thereto, including without limitation, the employment agreement dated September 29, 1999.

6.5 Severability. Any provision of this Agreement prohibited by or

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provision hereof. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this Employment Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

6.6 Controlling Law. This Agreement has been entered into by the parties in the State of New York and shall be continued and enforced in accordance with the laws of that State.

6.7 Assignments. The Company shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder to any entity that controls the Company, that the Company controls or that may be the result of the merger, consolidation, acquisition or reorganization of the Company and another entity. Executive agrees that this Agreement is personal to him and his rights and interest hereunder may not be assigned, nor may his obligations and duties hereunder be delegated (except as to delegation in the normal course of operation of the Company), and any attempted assignment or delegation in violation of this provision shall be void.

6.8 Attorney Fees. In the event of litigation between the parties, to enforce their respective rights under this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party reimbursement of the prevailing party's reasonable attorney's fees and costs at all levels of trial and appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CURATIVE HEALTH SERVICES, INC.

By: /s/ Joseph L. Feshbach

Name: Joseph L. Feshbach
Title: Chairman and Chief Executive Officer

Executive: /s/ Alan Jackson

Name: Alan Jackson

Exhibit 10.3

AMENDMENT NO. 1 TO CURATIVE HEALTH SERVICES, INC.

2001 BROAD-BASED STOCK INCENTIVE PLAN

WHEREAS, Curative Health Services, Inc.'s (the "Company") 2001 Broad-Based Stock Incentive Plan, (the "Plan") provides that 1,000,000 shares of Company common stock may be issued pursuant to Awards (as defined in the Plan) granted under the Plan.

Edgar Filing: CURATIVE HEALTH SERVICES INC - Form 10-Q

WHEREAS, the Board of Directors of the Company wishes to increase the number of shares available for issuance pursuant to Awards to 2,000,000 shares of Common Stock.

1. The first sentence of Section 4(a) of the Plan is hereby amended and restated in its entirety to read as follows:

Subject to adjustment as provided in Section 4(c) of the Plan, the aggregate number of Shares that may be issued under all Awards under the Plan shall be 2,000,000.

Effective: June 21, 2002

Exhibit 10.4

AMENDMENT NO. 2 TO CURATIVE HEALTH SERVICES, INC.

2001 BROAD-BASED STOCK INCENTIVE PLAN

WHEREAS, Curative Health Services, Inc.'s (the "Company") 2001 Broad-Based Stock Incentive Plan, as amended (the "Plan") provides that 2,000,000 shares of Company common stock may be issued pursuant to Awards (as defined in the Plan) granted under the Plan.

WHEREAS, the Board of Directors of the Company wishes to make additional amendments to the Plan as set forth herein.

1. Section 5 of the Plan is hereby amended and restated in its entirety to read as follows:

Section 5. Eligibility.

Any Eligible Person shall be eligible to be designated a Participant. In determining which Eligible Persons shall receive an Award and the terms of any Award, the Committee may take into account the nature of the Services rendered by the respective Eligible Persons, their present and potential contributions to the success of the Company or such other factors as the Committee, in its discretion, shall deem relevant. Notwithstanding the foregoing, the Committee shall not have the authority to grant Awards to Participants who are officers and directors of the Company in an aggregate amount that equals or exceeds 50% of the Shares authorized for issuance pursuant to Section 4(a) of the Plan.

2. Section 6(a) (iii) of t