

1 James E. Cross, No. 009063
2 Brenda K. Martin, No. 013318
3 **OSBORN MALEDON, P.A.**
4 2929 North Central Avenue, Suite 2100
5 Phoenix, Arizona 85012-2793
6 Telephone: (602) 640-9000
7 Facsimile: (602) 640-9050
8 E-mail: jcross@omlaw.com
9 bmartin@omlaw.com

10 Attorneys for Debtor-in-Possession

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re

14 WESTERN MEDICAL, INC.,

15 Debtor.

16 Chapter 11 Proceedings

17 Case No. 2-06-bk-01784-RTB

18 **MOTION TO SET LAST DAY FOR FILING OF**
19 **APPLICATIONS FOR ALLOWANCE OF**
20 **ADMINISTRATIVE CLAIMS FOR ALL**
21 **CREDITORS OTHER THAN ESTATE**
22 **PROFESSIONALS**

23 Western Medical, Inc., Debtor and Debtor-in Possession ("Debtor"), through counsel, hereby
24 requests entry of an Order establishing October 10, 2006, as the last day for the filing of applications
25 for allowance of administrative expense claims arising under 11 U.S.C. § 503(b) and incurred on or
26 prior to August 31, 2006, for all creditors other than professionals employed pursuant to 11 U.S.C.
§§ 327, 332, or § 1103. This motion is supported by the record in this case and by the following
Memorandum of Points and Authorities.

27 **Memorandum of Points and Authorities**

28 **I. BACKGROUND**

29 1. On June 15, 2006, the Debtor filed its Voluntary Petition for relief under Chapter
30 11 of the United States Bankruptcy Code.

31 2. To date, no trustee or examiner has been appointed herein.

1 3. On June 27, 2006, the Office of the United States Trustee appointed the
2 Committee of Unsecured Creditors ("Committee").

3 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and
4 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under
5 28 U.S.C. §§ 1408 and 1409.

6 **II. STATUS OF CASE**

7
8 1. On June 2, 2006, the Debtor and Providential Holdings, Inc. ("Providential")
9 entered into an "Asset Purchase Agreement" which was attached to the "Debtor's Motion To Sell
10 Substantially All Of The Debtor's Assets Pursuant to Section 363 With Liens To Attach To
11 Proceeds" which was filed with the Court on June 15, 2006 (the "Original Sale Motion").

12 2. On July 26, 2006, a hearing was held wherein the Court approved Providential as
13 the high bidder at auction. On July 27, 2006, the Court entered its Order approving "Debtor's
14 Motion to Sell Substantially All of the Debtor's Assets Pursuant to Section 363, With Liens to Attach
15 to Proceeds, and Setting Auction Sale" (the "Initial Sale Order") wherein the Court approved the sale
16 of substantially all the Debtor's assets to Providential for the amount of \$5,650,000, subject to
17 adjustment only in the event that a reduction was provided for under the APA based on diminished
18 accounts receivable. Pursuant to the Initial Sale Order, the closing of the sale to Providential was to
19 close on August 2, 2006. Providential failed to close on August 2, 2006.

20
21 3. On August 11, 2006, the Debtor filed its Expedited Motion proposing to sell some
22 or all of the Debtor's assets to the highest and best bidder at auction.

23 4. On August 15, 2006, the Court held a hearing on the Expedited Motion. The
24 Court proceeded to hold an auction at which time Apria Healthcare, Inc. ("Apria") was determined
25 to be the highest and best bidder at \$2.5 million (the "Purchase Price") for the assets of the Debtor
26

1 including the right to assignment of certain executory contracts, but not including accounts
2 receivable. The sale to Apria closed on August 25, 2006 (the “Closing”), at which point the Debtor
3 ceased its operations.

4 **III. RELIEF REQUESTED**

5 1. To assist the Debtor with its analysis of the liabilities of the estate, the Debtor
6 requires that the total pool of post-petition administrative claims for which the Debtor is liable be
7 known. After the Closing, with the Debtor having divested itself of its operations, administrative
8 expenses other than those of estate professionals will be minimal.

9 2. Because the professionals retained by the estate and the Creditors’ Committee
10 will continue to serve after the Closing, a later final date for the submission of applications for
11 payment of their fees and expenses is appropriate.

12 3. The Debtor requests that the Administrative Claims Bar Date be established as
13 October 10, 2006, for all post-petition claims incurred through August 31, 2006, other than claims of
14 professionals, all administrative claims for the period being disallowed if not filed timely.

15 4. The Debtor proposes to give notice to all creditors of the Administrative Claims
16 Bar Date not less than 30 days prior thereto.

17 **IV. AUTHORITY**

18 1. In a Chapter 11 case, the Court is authorized to set a claims deadline. Fed. R.
19 Bankr. P. 3003(c)(3). It is common in Chapter 11 business reorganization cases to set more than one
20 bar date for different classes, or even subclasses, of claims.

21 2. The comparatively short duration of this case prior to the Closing suggests that
22 the number and amounts of the claims of administrative-period claimants will not be great;

1 establishing the total number and amount of non-professionals' claims for the period will inform the
2 Debtor's future plans for distributions of the proceeds.

3 **V. CONCLUSION**

4 WHEREFORE, the Debtor requests the Court enter its order establishing **October 10, 2006**
5 as the last date to file applications for allowance of administrative expense claims incurred prior to
6 August 31, 2006, pursuant to Code § 503, for all parties not employed as professionals of the estate,
7 deeming that claims for the administrative period that are not filed timely are disallowed, and
8 granting such other and further relief as is just in the circumstances.
9

10 RESPECTFULLY SUBMITTED this 29th day of August, 2006.

11 **OSBORN MALEDON P.A.**

12 /s/ Brenda K. Martin

13 Brenda K. Martin
14 2929 N. Central Avenue, Suite 2100
15 Phoenix, AZ 85012-2793
16 Attorneys for the Debtor

17 Copy of the foregoing sent this 29th day of
18 August, 2006, to:

19 OFFICE OF THE U.S. TRUSTEE
20 230 N First Ave , Suite 204
21 Phoenix, Arizona 85003-1706

22 All parties on the Master Mailing List

23 All parties who have requested notice.

24 /s/ Kara L. Stewart
25
26