

# EXHIBIT E

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:

Curae Health, Inc., *et al.*<sup>1</sup>

1721 Midpark Road, Suite B200  
Knoxville, TN 37921

Debtors.

Chapter 11

Case No. 18-05665

Judge Walker

Jointly Administered

Hearing Date: October 16, 2018

Objection Deadline: October 12, 2018

Re: Docket No. 10

**CERTIFICATION OF ALLEN WILEN IN SUPPORT OF  
OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO  
EXPEDITED MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL  
ORDERS: (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION  
SECURED FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING  
LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III)  
GRANTING ADEQUATE PROTECTION, (IV) MODIFYING THE AUTOMATIC  
STAY, AND (V) SCHEDULING A FINAL HEARING**

ALLEN WILEN, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a Partner and serve as the National Director of the Financial Advisory Services Group of EisnerAmper LLP (“Eisner Amper”), an accounting and financial consulting firm having expertise in, *inter alia*, turnaround and bankruptcy issues. I am a Certified Public Accountant (CPA), Accredited in Business Valuation (ABV), Certified Insolvency and Restructuring Advisor (CIRA), Chartered Financial Analyst (CFA) and Certified Turnaround

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

Professional (CTP), and I have personal knowledge of the facts stated herein, unless otherwise stated.

2. On September 6, 2018, the United States Trustee formed the Official Committee of Unsecured Creditors (the “Committee”) of Curae Health, Inc., et al. (collectively, the “Debtors”) [Docket No. 112]. On October 10, 2018, the Committee sought to retain Eisner Amper as financial advisor to the Committee [Docket No. 304].

### **QUALIFICATIONS**

3. Eisner Amper provides accounting and financial consulting services to a diverse group of clients, including clients in the healthcare industry. At Eisner Amper, I lead a team of approximately 100 professionals dedicated to assisting the firm’s clients through the litigation and restructuring process. I provide forensic accounting, valuation and litigation support services specializing in the areas of distress, debt restructuring, and business disputes. In addition, I provide analysis of insolvent and troubled companies, provide advice in turnaround and crisis situations, counsel purchasers in the acquisition of assets within the bankruptcy arena, and provide expert advice to parties in civil matters. I have more than 25 years of financial and accounting experience in both national and regional public accounting firms.

4. Prior to joining Eisner Amper, I provided similar services for Arthur Andersen LLP and PriceWaterhouse Coopers LLP and was a founding Principal of Amper Investment Banking LLC, a licensed Investment Banker.

5. I have been involved in numerous complex matters requiring expertise in forensic accounting and operational analysis. I have advised on numerous restructurings in the healthcare industry. My healthcare experience includes restructurings at St. Michael’s Medical Center, Kidspace, Ashford Regional Medical Center, St. Mary’s Regional Medical Center,

Neighborhood Healthcare, Specialty Hospital of Washington and Integral Nuclear, among others.

### ANALYSIS

6. On August 24, 2018, the Debtors' filed the *Expedited Motion of Debtors for Entry of Interim and Final Orders: (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* [Docket No. 10] (the "DIP Motion").

7. Concurrently herewith, the Committee filed its objection to the DIP Motion (the "Objection").<sup>2</sup>

8. Based on my analysis of the Debtors' Budget, the Week 5 Variance Analysis, the Week 4 Cumulative Variance Analysis, and the Cumulative Entity-by-Entity Week 4 Variance Analysis, I have determined that the Debtors are already in default under the DIP Credit Agreement. For example, the Debtors are in default under section 10.1(jj)(i) and (iii). 10.1(jj)(i) states that an Event of Default shall occur "if the Borrowers' actual disbursements under any line item on the Budget for any four-week period (as tested weekly) exceed the budgeted disbursements for such four-week period in such line item by more than ten percent (10%) of the budgeted amount for such four-week period[.]" According to the Week 5 Variance Analysis, the Debtors have already defaulted under this provision, as several line item budgeted amounts were exceed by 10%.

9. The DIP Credit Agreement therefore needs to be amended, such that the variance for disbursements should be tested only on an aggregate basis, not a line item basis, and the

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the DIP Motion or the Objection.

aggregate disbursement variance should be 15%, rather than five percent (5%) currently required in 10(jj)(ii).

10. Section 10.1(jj)(iii) provides that an Event of Default occurs if the Borrowers' "aggregate cash receipts during any four-week period (as tested weekly) are less than ninety percent (90%) of aggregate projected cash receipts set forth in the Budget for such four-week period[.]" The Debtors are also in default under this provision, as cash receipts are less than 90% of the projected cash receipts in the Budget, as set forth in the Week 5 Variance Analysis.

11. Further, an Event of Default linked to revenue amounts is especially problematic for a hospital whose revenue is dependent upon government receivables, which are uncertain as to timing. Thus, timing of receipts is a guessing game and creates an unnecessary risk for the Debtors of triggering a default due to a timing delay from a governmental agency.

12. Based on the Debtors' Budget, the Debtors will be in default of the Minimum Liquidity covenant in section 6.1 of the DIP Credit Agreement prior to February 22, 2019. The Minimum Liquidity covenant states that the "Borrowers will not permit the Minimum Liquidity at any time during the term of this Agreement to be less than \$500,000." "Minimum Liquidity" is defined as "the sum of the Revolving Loan Availability plus cash and cash equivalents that are (a) owned by any Borrower, and (b) not subject to any Lien other than a Lien in favor of Agent." The Budget shows that the Debtors will not meet the Minimum Liquidity covenant based on cash alone for all but two weeks (11/23/18 and 11/30/18) during the Budget period since the Debtors have ending cash of less than \$500,000 for all but those two weeks.

13. Therefore, to comply with the Minimum Liquidity covenant for the remaining weeks, the cash plus the Revolving Loan Availability must be equal to \$500,000. The definition of "Revolving Loan Availability" is "the Revolving Loan Limit minus the Revolving Loan

Outstanding.” The “Revolving Loan Limit” is “the lesser of (a) the Revolving Loan Commitment *and (b) the Borrowing Base.*” The Borrowing Base is likely lower than the Revolving Loan Commitment and thus the Borrowing Base should be used in calculating the Revolving Loan Availability. However, even using the Revolving Loan Commitment (which is likely higher than the Borrowing Base) to calculate the Revolving Loan Availability, as demonstrated in the Budget, the Debtors will be in default of the Minimum Liquidity covenant for at least the weeks of 12/07/18 and 12/21/18. Further, there is very little cushion with respect to several other weeks during the Budget period to comply with the Minimum Liquidity covenant.

14. As demonstrated in the Cumulative Entity-by-Entity Week 4 Variance Analysis, Clarksdale is severely underperforming as compared with the other Debtor entities. The total receipts for Clarksdale are 25% below the budgeted amount,<sup>3</sup> whereas for Amory and Batesville the total receipts are 5% and 6% below the budgeted amounts, respectively. In addition, operating performance results for Clarksdale indicate the facility is currently losing money and has been a drain on operations for an extended period. The DIP Loan requires the testing of receipts on an aggregate basis and requires that aggregate actual cash receipts during any four-week period not be less than 90% of the aggregated projected cash receipts set forth in the Budget for such four-week period. As such, Clarksdale’s underperformance or any delay in payment processing, whether system conversion related or from governmental payors, will likely cause the Debtors as a whole to continue to default under the DIP Facility.

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<sup>3</sup> This was primarily due to a system conversion at the Clarksdale facility. In addition, a potential shutdown of the Clarksdale facility and additional issues with that system usage could create future collection issues that would distort the covenant test.

15. Further, the DIP Facility needs to be properly sized to ensure the Debtors have sufficient liquidity to pay all administrative expenses throughout the pendency of these cases. The DIP Facility as currently constructed does not provide for payment of administrative expenses accrued during the periods covered by the Budget (which is prepared on a cash basis) but not payable until after the conclusion of the relevant Budget period, leaving the estates exposed to administrative insolvency.

16. First, the Debtors' Budget does not account for the accrual of unpaid operating administrative expenses and unpaid fees and expenses of Retained Professionals, which expenses are incurred during the Budget period, yet are not payable until after the Budget period (the "Trailing Expenses"). The Budget shows that as of February 22, 2019, the Debtors will have no remaining availability from the DIP Loan. Yet, because the Budget does not account for the Trailing Expenses, at the end of the Budget period, the Debtors will be responsible for the Trailing Expenses without any ability to pay. As such, a line item should be added to the Budget for accrual of operating administrative expenses and for accrual of fees and expenses of Retained Professionals. Further, the Committee's professionals' fees line item should be increased to \$100,000 per month, rather than \$75,000. The size of the DIP Facility then needs to be increased to cover these additional expenses.

17. Next, the proposed DIP Facility does not make clear that the administrative expenses of the Debtors reflected in the "Disbursements" category of the Budget for a particular week, which expenses are ultimately not payable until a later week, will be subsequently covered by the Budget in the week such expenses are payable (the "Delayed Expenses"). The Debtors' Week 4 Cumulative Variance Analysis, and Week 5 Variance Analysis demonstrate this concern. For example, the Week 4 Cumulative Variance Analysis shows that the Debtors budgeted

\$1,449,843 in “Taxes and Assessments” for the that week, yet shows an actual disbursement of only \$481.00. There is a comment next to this line item that the Debtors “[h]ave yet to receive an invoice from the state of Mississippi.” However, the Week 5 Variance Analysis shows that the Delayed Expense was not covered in the subsequent week when payment became due. Rather, the Week 5 Variance Analysis shows that there were no amounts budgeted for the “Taxes and Assessments” in week 5, yet there were actual disbursements of \$132. There is no mechanism in the Budget to carry over the accrued but unpaid expense.

18. Similarly, the Week 4 Cumulative Variance Analysis shows that the Debtors budgeted \$295,880 in “Insurance” for that week. Yet, the Week 4 Cumulative Variance Analysis shows an actual disbursement of only \$190,895 for insurance payments, with a comment stating “[t]iming difference, no payments are due or processed this week.” The Week 5 Variance Analysis shows no amounts budgeted for “Insurance” for that week, but an actual disbursement of \$127,867. Although there is a comment stating “timing variance – cumulatively under budget,” it is unclear if that means that this line item cannot be used to trigger an event of default with respect to variance testing. Further, without clarifying that the Delayed Expenses will be covered in a subsequent Budget period when payments are due, the Debtors will be left with additional expenses not covered by the DIP Facility which they will have no means to repay, leaving the estates administratively insolvent.



19. As such, the Debtors are currently in default under the currently proposed DIP Facility and the currently proposed DIP Financing does not provide sufficient funding to ensure the Debtors are not administratively insolvent. In fact, it my understanding that the Debtor has received a letter stating they are in default.

I hereby certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Allen Wilen  
ALLEN WILEN

DATED: October 12, 2018