

Fill in this information to identify the case:

Debtor 1 Fayette Memorial Hospital Association, Inc.
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: Southern District of Indiana
Case number 18-07762-JJG-11

RECEIVED
MAY 13 2019
BMC GROUP

Official Form 410
Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Siskin Physicians, LLC
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>Andre Creese</u> Name	_____ Name
<u>155 E Market Street, Suite 700</u> Number Street	_____ Number Street
<u>Indianapolis IN 46204</u> City State ZIP Code	_____ City State ZIP Code
Contact phone <u>800-526-6797</u>	Contact phone _____
Contact email <u>acreese@opys.com</u>	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 2,382,799.12. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Services performed

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____%
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/10/2019
MM / DD / YYYY

/s/ Dustin R. DeNeal
Signature

Print the name of the person who is completing and signing this claim:

Name Dustin R. DeNeal
First name Middle name Last name

Title Partner

Company Faegre Baker Daniels LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 600 E. 96th Street, Suite 600
Number Street
Indianapolis IN 46240
City State ZIP Code

Contact phone 317-569-9600 Email dustin.deneal@faegrebd.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:)	Chapter 11
)	
FAYETTE MEMORIAL HOSPITAL)	Case No. 18-07762-JJG-11
ASSOCIATION, INC. d/b/a FAYETTE)	
REGIONAL HEALTH SYSTEMS,)	
)	
Debtor.)	

STATEMENT OF CLAIM OF SISKIN PHYSICIANS, LLC

Siskin Physicians, LLC (“Siskin”) respectfully submits this Statement of Claim in support of its claim (this “Claim”) and states as follows:

1. Cardinal Physicians, LLC (“Cardinal”) and Fayette Memorial Hospital Association, Inc. d/b/a Fayette Regional Health Systems (“Debtor”) are parties to a certain Agreement for Physician Services Emergency Department, dated March 25, 2015 (the “Agreement”), whereby Cardinal agreed to provide to Debtor certain emergency physician and medical director services. A true and accurate copy of the Agreement is attached as **Exhibit A**.

2. In August 2016, Cardinal assigned the Agreement to Siskin and informed Debtor of the assignment. Debtor acknowledged and agreed to the assignment.

3. As consideration for its services, Siskin received the right to “bill and collect any professional fees and charges for services rendered” by the physicians provided. Agreement § 3.2. To facilitate this billing, Debtor agreed to provide Siskin with reasonable access to and copies of all information reasonably required for Siskin to present bills to patients and third-party payers for the professional services provided by Siskin under the Agreement (the “Billing Information”).

4. Debtor acknowledged, however, that these billings would not fully compensate Siskin for the costs and expenses of staffing Debtor’s emergency room, and Debtor accordingly

agreed to pay Siskin a monthly subsidy of \$59,723.00 (the "Subsidy"). Agreement § 3.1 & Ex. B. Debtor further agreed "to re-evaluate the subsidy quarterly, and adjust based upon demonstrated volume, revenue, and practice expenses." Agreement, Ex. B.

5. Debtor also agreed to pay Siskin \$28,000.00 (the "Placement Fee") for any physician Debtor hires who had been referred or assigned by Siskin to Debtor during the term of the Agreement or within two years of the termination of the Agreement. Agreement § 1.3.

6. Prior to the filing of the above-captioned chapter 11 case, Debtor failed to pay for Siskin's services and timely provide to Siskin the Billing Information in accordance with the Agreement. Debtor's failures constitute a breach of the Agreement and have caused Siskin substantial damages. As a result, Siskin terminated the Agreement as of September 14, 2018.

7. Upon termination of the Agreement, Debtor began contacting the physicians that Siskin had been using to staff Debtor's emergency room, seeking to induce those physicians to leave Siskin and work for Debtor or third parties that Debtor was contacting to replace Siskin.

8. Despite section 1.3 of the Agreement, Debtor has failed to remit to Siskin the Placement Fee for each physician that Debtor hired, or caused to be hired by third parties, to provide services to Debtor. Debtor has retained no less than eight doctors originally referred or placed by Siskin to perform work at Debtor's facilities after termination of the Agreement.

9. Debtor owes Siskin no less than \$2,382,799.12 (the "Indebtedness"). The Indebtedness is calculated as follows:

- (a) \$255,384.20 in unpaid Subsidy owed as of September 15, 2018;
- (b) No less than \$1,800,000 in underfunded Subsidy amounts that should have been paid for the period June 1, 2015 through September 15, 2018;

(c) \$103,414.92 in Siskin's lost profit that would have been earned by Siskin during the remaining term of the Agreement (i.e., September 15, 2018, through February 28, 2019); and

(d) \$224,000 in Placement Fees for the eight doctors that Debtor retained to perform work at Debtor's facilities after termination of the Agreement.

10. The Indebtedness and certain of Siskin's claims against Debtor are set forth in more detail in the prepetition *Complaint* filed by Siskin against Debtor in Fayette Circuit Court, in Fayette County, Indiana on October 9, 2018, as Cause No. 21C01-1810-PL-000757. A true and accurate copy of the *Complaint* is attached as **Exhibit B**.

11. Siskin also may have additional damages due to Debtor's failure to remit to Siskin the Placement Fee for any additional physicians that Debtor hired, or caused to be hired by third parties, to provide services to Debtor during the term of the Agreement or within two years of the termination of the Agreement. Agreement § 1.3. Siskin reserves all rights to amend this claim to assert those damages as they become known.

12. The filing of this Claim shall not constitute (a) a waiver or release of any rights or remedies of Siskin against Debtor or any other person or property; or (b) an election of remedies, choice of law, or submission to jurisdiction. Siskin reserves all rights of setoff, and all rights, in law or equity, to amend, modify, or supplement this Claim, and nothing contained herein shall be construed to limit Siskin's claims against Debtor, including without limitation, claims arising after the Petition Date, administrative claims, and adequate protection claims.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Dustin R. DeNeal

Dustin R. DeNeal (#27535-49)
Elizabeth M. Little (#34096-49)
600 E. 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: 317-569-9600
Facsimile: 317-569-4800
dustin.deneal@faegrebd.com
elizabeth.little@faegrebd.com

Counsel for Siskin Physicians, LLC

Exhibit A

**FAYETTE REGIONAL HEALTH SYSTEM, INC.
AGREEMENT FOR PHYSICIAN SERVICES
EMERGENCY DEPARTMENT**

This is an Agreement ("Agreement") dated November , 2014, by and between CARDINAL PHYSICIANS, LLC., an Indiana limited liability company ("CARDINAL") wholly owned by OPYS Holdings, Inc. and FAYETTE REGIONAL HEALTH SYSTEM, a business located at 1941 Virginia Ave, Connersville, IN 47331 ("FRHS") to provide Emergency Department Physician Staffing on the following terms:

WITNESSETH:

WHEREAS, FRHS sometimes hereafter called ("Hospital") operates a hospital located at 1542 S Bloomington St. Greencastle, Indiana; and

WHEREAS, CARDINAL is located at 155 E. Market Street, Suite 425, Indianapolis, Indiana 46204, and was established by Andre T. Creese, M.D. ("Creese").

WHEREAS, Creese is willing to provide physician services to FRHS through CARDINAL as an independent contractor.

NOW, THEREFORE, in consideration of the mutual covenants as contained herein, the parties agree as follows:

1. DUTIES AND RESPONSIBILITIES

1.1 Services.

1.1-1 CARDINAL agrees to provide physicians ("Physicians"), continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians and to perform those services for FRHS as more particularly described in Exhibit "A", which is attached hereto and made a part hereof ("Services").

1.1-2 CARDINAL agrees to provide a Medical Director ("Director"), continuously, twenty-four hours daily, seven days per week, to perform Services as a Medical Director and to perform those Services for FRHS as more particularly described in Exhibit "C", which is attached hereto and made a part hereof.

1.1-3 Physicians shall perform the Services at FRHS on a regular basis pursuant to a schedule agreed upon by the parties.

1.1-4 CARDINAL agrees to provide Physicians that will work closely with FRHS to help improve the Emergency Department, and resultantly help increase the annual patient

volume.

1.1-5 CARDINAL agrees to provide Physicians that will work closely with FRHS and ensure Physicians engagement and performance in the following Emergency Department metrics:

1.1-5.1 Patient Satisfaction

1.1-5.2 Quality

1.1-5.3 Sustainability

1.1-6 FRHS agrees to provide CARDINAL with monthly Hospital, Emergency Department, and Physician specific patient satisfaction, quality, sustainability, and related metric data and historical trends.

1.2 Reporting. For non-clinical matters, Physicians shall report to the President / CEO of FRHS. For clinical matters, Physicians shall report to FRHS's Medical Director of Emergency Service, or to Vice President of Emergency Medicine in the absence of the Medical Director.

1.3 Permanent Placement. FRHS agrees to pay CARDINAL within thirty (30) days of hiring Twenty-eight Thousand Dollars (\$28,000) for each referred by or assigned by CARDINAL to FRHS who is hired independently of CARDINAL by FRHS or any of its affiliates during the term of this Agreement or within two years of the termination of this Agreement.

1.4 FRHS Policies. The Services are to be performed in accordance with the policies of FRHS, which include the Bylaws and rules of FRHS, the Bylaws and rules of the medical by the Board, FRHS personnel policies and other established policies, practices and procedures of FRHS, as well as all laws, rules and regulations of the State of and Federal governments.

2. QUALIFICATIONS OF PHYSICIANS

2.1 Licensure. Each Physician shall hold and continue to hold an unlimited license to practice medicine in Indiana and shall comply with regulations and standards of professional conduct adopted by the Medical Licensing Board of Indiana. Physicians shall remain board certified. Any Physician failing to meet such requirements shall be promptly replaced by CARDINAL.

2.2 Medical Staff Privileges. Physicians will agree to remain active staff members in good standing of FRHS's Medical Staff and shall participate in regular staff activities and responsibilities.

3. COMPENSATION, BILLING AND ASSIGNMENT

3.1 Compensation. FRHS shall pay CARDINAL, during the term hereof, for all Services to be performed by Physicians such compensation as described in the attached Exhibit "B".

3.2 Billing. CARDINAL will bill and collect any professional fees and charges for services rendered by Physicians, including those Services covered by the Medicare and Medicaid Programs. Cardinal shall be responsible for collection of such fees and Physicians will assign any such fees to FRHS and such fees will be counted as practice revenue for purposes of calculations under Exhibit B. Accounting See Exhibit B.

4. TERM AND TERMINATION

4.1 Term. The Agreement shall be effective as of March 1, 2015 (the "Effective Date") until February 28, 2017 (the "Initial Term").

4.1-1 After the Initial Term, the term shall automatically renew for a period of twelve (12) months unless written notice of non-renewal has been given by one party to the other no later than sixty days prior to any one year anniversary of the Effective Date.

4.1-2 Annual Review. Beginning with the 5th day prior to the end of the Initial Term, or any renewal term thereof, the Agreement shall be subject to review at the request of either party hereto.

4.2 Termination. The Agreement may be terminated as follows:

4.2-1 Termination for Specific Breaches by Physicians. FRHS may terminate this Agreement immediately in the event: (1) CARDINAL does not satisfactorily replace any of the Physicians that fail in any substantial manner to provide the Services and such non-performance continues for a period of fifteen (15) days after CARDINAL has been notified by FRHS of the non-performance, or (2) CARDINAL fails to satisfactorily replace any of the Physicians that die, or becomes disabled whether by reason of injury, illness or otherwise, to the extent that any of the Physicians is unable to perform the Services, with the reasonable accommodations required by law, for a period exceeding thirty (30) calendar days, excluding any leave of absence requested by any Physician and approved in writing by FRHS prior to the beginning of such disability; (3) CARDINAL fails to satisfactorily replace any Physician whose medical staff privileges at FRHS shall be reduced or terminated in compliance with procedural provisions set forth in the Medical Staff Bylaws, or any Physician who ceases to be licensed to practice medicine in the State of Indiana; (4) CARDINAL fails to

satisfactorily replace any Physician that has been convicted of a felony or other crime involving moral turpitude; or (5) CARDINAL fails to satisfactorily replace any Physician whose action is likely to damage the professional reputation and standing of FRHS or any of its affiliated organizations, or any of its employees, contractors or associated or affiliated physicians and any such action has not been removed or corrected to the reasonable satisfaction of FRHS within ten (10) days of notice thereof to CARDINAL by FRHS. Termination of the Agreement under this paragraph 4.2-1 shall automatically terminate the terminated Physician's privileges at FRHS without a hearing under FRHS's fair hearing process unless otherwise required by State or Federal law. The parties agree that FRHS's request that CARDINAL terminate a Physician constitutes an administrative action, and the Physician shall not be entitled to the fair hearing process enumerated under the Medical Staff Bylaws as a result of such request nor shall it be reportable matter to the National Practitioner Data Bank unless otherwise required by Law.

4.2-2 Termination without Cause. Either party may terminate this agreement, after twelve (12) months of Physician service, for any or no reason prior to the expiration of its term by providing at least one hundred twenty (120) days written notice. Such termination shall be without penalty except as expressly delineated elsewhere in this agreement (i.e., educational loan repayment, etc.)

4.3 Effect of Termination. If CARDINAL fails to satisfactorily replace a Physician whose medical staff privileges are revoked or suspended in compliance with procedural provisions set forth in the Medical Staff Bylaws, the Agreement will be subject to termination.

5. EQUIPMENT, FACILITIES AND SUPPORT STAFF

5.1 FRHS shall provide and maintain facilities, equipment, supplies and support staff as FRHS reasonably deems necessary for Physicians' performance of the Services under the terms of the Agreement.

6. INSURANCE

6.1 Professional Liability. Physicians shall become and remain qualified healthcare providers pursuant to Indiana's Medical Malpractice Act.

6.2 Certificate of Insurance. CARDINAL will, at its expense, provide Physicians with professional liability insurance which includes tail coverage.

6.3 Indemnification. CARDINAL and its Physicians shall indemnify and hold harmless FRHS including and without limitation, FRHS's agents, members of the FRHS's Board, officers, employees, invitees and any of FRHS's other contractors, from and

against all claims, losses, costs, damages and expenses relating to injury or death of any person which results from or arises in connection with (1) any breach of the Agreement by Physicians; or (2) any gross negligence or willful act or omission by Physicians.

6.3-1 FRHS shall indemnify and hold harmless CARDINAL and its Physicians from and against all claims, losses, costs, damages and expenses relating to injury or death of any person which results from or arises in connection with (1) any breach of the Agreement by FRHS; or (2) any negligent or willful act or omission by FRHS personnel.

7. ALLOCATION OF TIME AND ACCESS TO BOOKS AND RECORDS

7.1 Allocation of Time. In order that FRHS may be reimbursed under Part A of Medicare for Medicare's share of the compensation paid for Part A Services, it is necessary to have an allocation agreement, and that either Physicians keep an actual daily log of his/her time spent providing Part A Services or that periodic time studies be conducted. The parties agree to use the periodic time methodology and agree to keep and maintain such records as are acceptable to the Part A Fiscal Intermediary under Medicare.

7.2 Access to Books and Records. In order to assure that compensation paid to FRHS for Services rendered by Physicians is included in determining the proper reimbursement to FRHS under Medicare and Medicaid, the parties agree that if this Agreement is determined to be a contract within the purview of Section 1861(V)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated in implementation thereof at 42 CFR part 420, CARDINAL will agree to make available to the Comptroller General of the United States, the Department of Health and Human Services ("HHS") and their duly authorized representative, the books, documents and records of Physicians, and such other information as may be required by the Comptroller General or Secretary of HHS to verify the nature and extent of the costs of Services provided by Physicians. If Physicians carry out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000.00) or more the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records.

7.2-1 If CARDINAL refuses to make the books, documents and records available for said inspection and FRHS is denied reimbursement for said Services as a result of CARDINAL's refusal, CARDINAL will indemnify FRHS for FRHS's loss or reduction in reimbursement. The obligation of CARDINAL to make records available shall extend for four (4) years after the furnishing of the latest Services under this Agreement.

7.3 Quarterly Review of Books CARDINAL will provide FRHS with a quarterly written review of the books.

8. STATUS OF THE PARTIES

8.1 Independent Relationship. In performing the Services, FRHS and CARDINAL will agree that Physicians are acting as employees of CARDINAL and not as agents or employees of FRHS. CARDINAL and Physicians will agree to pay, as they become due, all Federal and State income taxes, as well as other taxes, including self-employment taxes, and to hold FRHS harmless from any and all such taxes, penalties, or interest which might arise by CARDINAL's or Physicians' failure to do so. This provision shall survive the expiration or termination of this Agreement.

8.2 Medical Decisions. FRHS will not direct or control the independent medical acts, decisions, or judgments of Physicians in their rendering of Services.

8.3 Ownership. The ownership and right of control of all reports, records, and supporting documents prepared by Physicians, ("Records") pursuant to the Services provided under this Agreement, shall vest exclusively in FRHS.

8.3-1 Physicians will agree not to remove the Records from FRHS; provided, however, shall have right of access to the Records for legitimate reasons. The Records, and the information in the Records shall be privileged and Physicians will not disclose or release same without the written permission of FRHS except when required by law.

9. GENERAL PROVISIONS

9.1 Confidentiality of Materials. Physicians will agree to not disclose to others, either during the term of this Agreement or subsequent to termination, any data, forms, reports, systems or other materials containing confidential information specific to FRHS without the prior written consent of FRHS.

9.2 Notices. Notices or communications required by the Agreement or permitted by the Agreement shall be given to the respective parties by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses unless either party shall otherwise designate its new address by written notice:

CARDINAL
CARDINAL PHYSICIANS, LLC
155 E Market Street, Suite 425
Indianapolis, IN 46204

With copy to:
James O. Cole, Esq.
10 Nurmi Drive
Fort Lauderdale, FL 33301

FRHS
FAYETTE REGIONAL HEALTH SYSTEM
1941 Virginia Ave,
Connersville, IN 47331

- 9.3 Assignment. FRHS may assign the Agreement without the written approval of CARDINAL to any successor entity operating the facility now operated by FRHS or to a related or an affiliated organization. CARDINAL may not assign its rights or delegate its duties under the Agreement to any other person or entity.
- 9.4 Waiver of Breach. The waiver by either party hereunder of a breach or violation of any provision of the Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.
- 9.5 Compliance with Laws The parties intend and in good faith believe that the Agreement will not violate any State or Federal law, including the Internal Revenue Code and the proscriptions against private inurement and private benefit. In the event that either party reasonably believes subsequently that any provision of the Agreement is contrary to the Internal Revenue Code, the Fraud and Abuse Statute, the Stark Act or any other law, then the parties shall reform the Agreement to eliminate the problematic provision. In the event the parties are unable to reform the Agreement, then either party may terminate the Agreement upon thirty (30) days written notice to the other party.
- 9.6 Governing Law. The Agreement shall be construed and governed by the laws of the State of Indiana.
- 9.7 Severability. In the event that any provision of the Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of the Agreement

shall remain valid and enforceable according to its terms.


9.8 Confidentiality of Agreement Terms. FRHS and CARDINAL agree that the terms and conditions of the Agreement shall remain confidential. No party hereto shall distribute the Agreement or any part thereof or reveal any of the terms of the Agreement to parties other than their employees or agents who have valid reason to know except as required by law.

9.9 Amendments. This Agreement may be amended only by an instrument in writing signed by the parties.

9.10 Execution. This Agreement and any amendments shall be executed in duplicate copies on behalf of FRHS and CARDINAL. Each duplicate copy shall be deemed an original, but both duplicate originals together constitute one and the same instrument

IN WITNESS WHEREOF, the duly authorized officers and representatives of FRHS and CARDINAL have executed this Agreement the 25 day of ~~November~~ March 2015

FAYETTE REGIONAL HEALTH SYSTEM, INC.

BY: 
Randy White
President/ & CEO

CARDINAL PHYSICIANS, LLC


BY: 
Andre T. Creese
Managing Member

Exhibit A

POSITION SUMMARY:

Performs patient care assignments according to established policies and procedures with some degree of independence. She/he must be able to demonstrate effective interpersonal skills and an understanding of the roles of various allied health care professionals. Maintains acceptable standards of care.

POSITION DUTIES:

- Promote positive patient relations in emergency department, providing competent patient care.
- Maintain open communication with staff, problem solves as necessary.
- Promote a cooperative and collaborative working environment among all clinical disciplines involved in patient care.
- Maintain an effective working relationship with the medical staff, administration, and other departments.
- Maintain an acceptable level of clinical skills.
- Carry out and document assignments in a manner that meets or exceeds standards established by Indiana State Department of Health, Center for Medicare and Medicaid Services, the Joint Commission, and other regulatory agencies.
- Correct any identified deficiencies in assigned areas as identified by external review.
- Initiate patient care in a timely manner. Assume full responsibility for patients treated during scheduled work shifts.
- Provide care for occupational medicine patients with appropriate and timely follow-up care and work restrictions.
- Respond to emergencies outside of the department when required.
- Maintain expertise and certifications for assigned tasks and procedures within the Emergency Department.
- Fulfill continuing education requirements to maintain required number of CEUs for all credentials.
- Fulfill Active Medical Staff responsibilities including Medical Staff and assigned Medical Staff committee meetings. Make appropriate referrals for specialty medical services and communicate with those specialty physicians as appropriate.
- Report quality of care issues promptly to appropriate individuals.
- Follow patient care protocols established and complete them within the time constraints within the protocols.

ENVIRONMENTAL AND JOB HAZARDS:

Physician may be exposed to blood borne pathogens, infectious diseases and other hazardous wastes, (i.e. Hepatitis, HIV, Tuberculosis).

PHYSICAL AND MENTAL DEMANDS:

The position requires a considerable amount of walking, stooping, pulling, lifting, feeling, hearing, and repetitive motions. Physician must be able to lift in excess of 50 lbs. on occasion. The position requires visual and hearing acuity sufficient for verbal communication.

MISCELLANEOUS:

Attendance to at least one in-service orientation each year to review hospital policies and procedures is mandatory. Stay abreast of all laws, rules and regulations that apply to the areas supervised. Seek out changes and updates to laws, rules and regulations, and briefs affecting Physician on their responsibilities. Assure all supervised employees comply fully with all applicable laws, rules and regulations. Comply with all employment policies of FAYETTE REGIONAL HEALTH SYSTEM. Comply with Federal and hospital requirements in the areas of protected health information and patient privacy. Comply with federal and hospital requirements in the areas of protected health information and patient privacy.

PERFORMANCE:

Physicians will be managed, led, and incentivized, to work closely with FRHS satisfactorily attain agreed upon performance, quality, metrics and objectives.

This job description is in no way intended to imply or state that these are the only duties to be performed. Some duties may be assigned and other duties assigned as required at FRHS's sole discretion.

EXHIBIT B

CARDINAL COMPENSATION

In consideration of the rendition of Emergency Department Services of the Physicians, FRHS agrees to pay CARDINAL a monthly subsidy totaling Fifty-Nine-Thousand-Seven-Hundred-Twenty-Three Dollars and Zero Cents (\$59,723.00) based on the following assumptions:

ASSUMPTIONS

ER Patient Payor Mix

Medicare	28.0%
Medicaid	25.8%
Medicaid Managed	3.5%
Commercial	11.3%
Champus	0.0%
Workers Compensation	1.1%
Blue Cross	10.7%
Self Insured	19.7%

ER Demographics

Annual Patient Volume	15,000
Admit Rate	10.8%

Projected Revenue Calculations

Practice Revenue	\$ 1,383,941.72
Staff Physician Salaries Expense	\$ -1,401,600.00
Practice Expense	\$ -478,671.31
Cardinal Margin 11% of Total Expenses	\$ -206,829.84
Annual Subsidy	\$ -703,159.43
Monthly Payment of Annual Subsidy	\$ -58,596.62

Both parties agree to re-evaluate the subsidy quarterly, and adjust based upon demonstrated volume, revenue, and practice expenses. Any patient volume based increase in practice revenue will be applied to reduce the subsidy payment obligation of FRHS. Subsidy Payments will be made in full by ACH on the first Monday of every month, for Services rendered during the previous month.

EXHIBIT C

EMERGENCY DEPARTMENT MEDICAL DIRECTOR RESPONSIBILITIES

1. The Medical Director ("Director"):
 - 1.1 Director is to provide leadership, planning, organization, staffing, coordination, and evaluation for emergency department activities.
 - 1.2 Director is responsible for all medical administration, personnel, and activities in the emergency department.
 - 1.3 Director has the responsibility for ensuring the ethical practice of emergency medicine within the department.
 - 1.4 Director directly supervises and has responsibility for emergency physicians in clinical and assigned administrative duties.
 - 1.5 Director acts as liaison with hospital administration and medical staff.
 - 1.6 Director as department head should be a member of the hospital executive committee and represent the interests of emergency medicine.
 - 1.7 Director should be concerned with physician scheduling.
2. The Director should present a written annual report to the emergency committee, hospital administration, and executive committee, detailing departmental progress, problems, and solutions.
3. Department Management
 - 3.1 Director promotes and participates in a collaborative, interdisciplinary ED leadership team.
 - 3.2 Director collaborates with nursing leadership and ED Leadership team to ensure that departmental performance meets or exceeds standards described in medical staff rules and regulations, the hospital bylaws, departmental policies, the JCAHO Manual of Accreditation, and in other appropriate local and national standards.
 - 3.3 Director works with ED leadership team to ensure that the department meets or exceeds its defined objectives for improvement, growth, and expansion of services.
 - 3.4 Director cooperates with hospital administration and nursing leadership to develop a team of personnel managers for the emergency

department (clerical, nursing, and others), teaching them by precept and example to manage.

- 3.5 In conjunction with the ED leadership team, Director helps build enthusiasm, stability, teamwork, and competence among employees through supervision, individualized evaluation and counseling, training, and praise for a job well done.
- 3.6 Director ensures departmental policies are known, understood, and implemented by the emergency physicians.
- 3.7 Director monitors correctness and appropriateness of the emergency department records; implements corrective intervention as required in association with medical records and quality assurance mechanisms.
- 3.8 Director participates in personnel, purchasing, and procedural changes in the emergency department, in cooperation with appropriate personnel and hospital managers.
- 3.9 Director is available for counseling, advice, information, and general support to the physicians and other department members.
- 3.10 Together with nursing leadership, Director ensures adequacy of EMS communications and physician EMS command.
- 3.11 Director maintains a department office and is accessible during usual business hours for routine department business.

4. Liaison

- 4.1 Director shall ensure that the emergency department has effective communications with the following individuals and groups:
 - 4.1-2 Patients and their families
 - 4.1-3 Hospital administration
 - 4.1-4 Nursing leadership and clerical supervisors.
 - 4.1-5 Hospital department heads
 - 4.1-6 Medical staff
 - 4.1-7 Lab and radiology for follow-up and evaluation of tests initiated in the ER
 - 4.1-8 Industry
 - 4.1-9 Paramedic and EMS system
 - 4.1-10 Clergy

5. Recruitment-Orientation
 - 5.1 Director establishes an active process for identifying and recruiting emergency physicians.
 - 5.2 Director reviews and verifies credentials, training, and education of emergency physicians, and mid-level staff in cooperation with the appropriate organizational credentialing office.
 - 5.3 Director designs a formal orientation process for new department members.
6. Department Meetings
 - 6.1 Director schedules regular departmental meetings and decides on the final agenda and special guests.
 - 6.2 Director encourages open forums for departmental communications and problem solving by all ED personnel.
7. Committees - Hospital/Department
 - 7.1 Director serves on hospital medical staff executive committee.
 - 7.2 Director assures emergency department representation on all appropriate committees.
 - 7.3 Director encourages participation of emergency physicians on hospital medical staff committees.

Exhibit B

Fayette Circuit Court

STATE OF INDIANA)
)
COUNTY OF FAYETTE) IN THE FAYETTE CIRCUIT COURT
)
) CAUSE NO. **21C01-1810-PL-000757**

SISKIN PHYSICIANS, LLC, as)
assignee of Cardinal Physicians, LLC and)
OPYS HOLDINGS, INC.)
)
Plaintiffs,)
)
v.)
)
FAYETTE REGIONAL HEALTH)
SYSTEM, INC. and RANDY WHITE)
)
Defendants.)

COMPLAINT

Plaintiffs Siskin Physicians, LLC (“Siskin”), as assignee of Cardinal Physicians, LLC, (“Cardinal”), and OPYS Holdings, Inc. (“OPYS”) for their Complaint against defendant Fayette Regional Health System, Inc. (“Fayette”), state as follows:

Introduction

1. This action devolves from Fayette’s successful scheme to fraudulently induce Cardinal into an agreement, executed on or about March 27, 2015, by which Cardinal would provide to Fayette from June 1, 2015 through February 28, 2017,¹ *inter alia*:

- Physicians, continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians;
- A medical director, continuously, seven days per week, to perform such medical director services.

¹ After this initial term, the term of the contract would automatically renew for twelve month periods absent written notification of non-renewal by either of the parties. The parties did, once, permit the contract to renew one-time.

2. While Cardinal successfully provided such services, without any complaint, as it always does to the greater Indiana community, Fayette, from the beginning of the relationship and prior to the execution of the contract, had concocted a scheme such that it would obtain critical physician and medical services in a manner that would benefit it but would critically harm, Cardinal. Once such economic harm had been done, Fayette would poach numerous doctors introduced by Cardinal, in violation of its agreement not to do so, and defame Cardinal in the local Indiana media.

3. As early as 2014, the parties commenced negotiations concerning the services that Fayette needed from Cardinal and the manner in which Cardinal would be compensated by Fayette, and as early as 2014, Fayette had already started to concoct its scheme to formulate a situation where it would receive medical services for its emergency room at a price at which Cardinal would never have knowingly agreed to provide it.

4. While Cardinal received the right to “bill and collect any professional fees and charges for services rendered” by its Physicians, Fayette acknowledged that these billings would not fully compensate Cardinal for the costs and expenses of staffing Fayette’s emergency room. Thus, Fayette agreed to pay Cardinal an annual subsidy paid on a monthly basis.

5. The subsidy had been a critical component of the contract, and without it, both parties understood that Cardinal could not afford to engage in the agreement contemplated by the parties. The risk of incorrect projections – and indeed, fraud – would be too high.

6. The parties understood and agreed that the subsidy would be predicated upon the difference between Cardinal’s practice expenses (including the cost of physician staff wages, fees paid to locums companies, fees paid for medical scribes², administrative expenses, and the agreed

² For the entire course of the contractual relationship, not a single Scribe has been paid. The Scribe has cost \$20.25 per hour and run twelve to sixteen hours per day, and has been provided for the entire course of the contract.

upon 11 percent management fee) (collectively, “Practice Expenses”) and its projected practice revenues from professional collections attributable to physician services provided under the agreement (“Practice Revenue”).

7. The Practice Revenue was initially calculated based on data provided exclusively by the Fayette, including what it claimed to believe – albeit a fabrication of its current state of mind – the anticipated volume of patients and collections (revenue) attributable to emergency room patients.

8. Fayette guaranteed it would provide 15,000 emergency room patients per year with an agreed upon collection rate of \$92.26 per emergency room patient, providing an estimated practice revenue of \$1,383,941.72 and Practice Expenses in the amount of \$2,087,101.15; the monthly subsidy, approximately, amounted to \$59,000 per month. Fayette, indeed, made representations of 20,000 patient volume projections – albeit inclusive of urgent care and ER – and collection rate per patient projections of \$98 plus as its expectation.

9. At the time Fayette provided that figure, the underlying data that it had in its possession concerning the trends in its annual patient volume and, upon information and belief, collection rate per patient made exceedingly clear that it did not (and could not) believe its own representations to Cardinal. It concealed from Cardinal such underlying data during the period under which the contract had been under negotiations, only disclosing some of it in 2017.

10. To mitigate against incorrect projections, within the contract, the parties had negotiated for a readjustment provision whereby the “parties agree to re-evaluate the subsidy quarterly” and “adjust based upon demonstrated volume, revenue, and practice expenses.” However, Fayette knew full well that the billing information required to disprove its fraudulent representation concerning Practice Revenue (i.e., volume and revenue per patient) would not be

available for many quarters once the contract commenced, and had no intention of permitting Cardinal to exercise such provision. Fayette, of course, would not permit the readjustment provision because it would undercut the value of its fraud.

11. Unsurprisingly, during the contract period volumes never reached 15,000. In 2016 volumes did not break 14,000, and in 2017, did not even reach 13,000. Compounding matters, Practice Expenses increased dramatically during the initial contract period, which had been well known within the medical community, but through this date, despite substantial documentation being provided by Cardinal, Fayette fails to accept this.

12. However, despite consistent request, Fayette refused for June 1, 2015 through December 31, 2017 to exercise the readjustment provision and “revaluate based upon demonstrated volume, revenue and practice expenses.”

13. Fayette never intended to readjust the subsidy at the time it executed it, or any time during the initial term of the contract. It, first, would have undercut its initial fraud, and second, at the time it entered the agreement, it understood that the billing provider would never have been able to provide data in a manner timely enough to allow for quarterly readjustments of the subsidy amount, yet led Cardinal to believe that the same data would be available for it to have such quarterly reconciliations.

14. Had Cardinal known, as Fayette did, at the time it executed the agreement that Fayette had drastically overprojected the volume of patient visits per year as well as the reasonably expected revenue per patient, Cardinal would not have entered into the contract with Fayette.

15. Had Cardinal known, as Fayette did, at the time it executed the agreement that Fayette had no intention to permit Cardinal to exercise the readjustment provision, it would not have entered the contract with Fayette.

16. With continuous substantial shortfalls between the Practice Revenue and the Practice Expenses – an expected result of Fayette’s fraud – and no ability to reconcile and readjust the subsidy, Cardinal had to pursue a series of unfavorable financing transactions with hard-money lenders and merchant cash advance providers so as to continue to fund the Practice Expenses to finance the doctors that worked at Fayette. This remarkably expensive money coupled with the steady losses from the worsening difference in Practice Revenue and Practice Expenses, left Cardinal in dire financial situation, and Cardinal made the same clear to Fayette. Among other reasons, the hard money loans had been taken to finance the doctors salaries because Cardinal did not want any hit to the “goodwill” that it built in the local medical community and did not want to have trouble recruiting good doctors in that community that would not work for an organization that did not fund them.

17. Despite all of the foregoing, Fayette, far from readjusting and making up the years of shortfall, responded to Cardinal’s demand for readjustment and renumeration in 2018 by failing, entirely, to pay any monthly subsidy whatsoever for the months of July, August and September.³ Fayette, compounding its frauds, poached doctors recruited and provided to it by Cardinal without paying for them, and with whom OPYS had a business relationship (and, contract) as required, under its contract with Cardinal. Such poaching had been made easier because of the problems that Fayette’s misconduct caused – a liquidity crisis – Cardinal such that it could not pay the physicians itself.

18. In a final blow to Cardinal, on October 4, 2018, Fayette’s CEO recently defamed Cardinal in the local Indiana Media (including Indiana Economic Digest), providing an interview

³ Fayette, from April 2018 – September 2018, brought in its own nurse practitioners and saw patients in the ER that Cardinal physicians were contractually entitled to, and promised to refund the loss in volume as a component of the subsidy attributable to that during that same time frame that it had been happening. However, it has failed to do so.

that resulted in publication in various local news and trade publications, stating: “The hospital recently changed the company providing physicians in the emergency room. ‘We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,’ White said. “We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.’ **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented before payment and both sides did not come to an agreement after several months of negotiations.”**

19. The foregoing series of frauds, cover-ups, thefts and “blame the victim” styled defamation in the local media has threatened the very existence of one of Indiana’s most critical healthcare businesses, serving the most critical function – providing excellent doctors for hospitals that need them to service their population.

Parties

20. Siskin is an Indiana limited liability corporation with its principal place of business in Indianapolis, Indiana. Siskin is a healthcare provider that provides emergency department physician staffing to Fayette. Siskin is a sister company of Cardinal, an Indiana limited liability company. The parent company to both entities is OPYS, an Indiana corporation.

21. OPYS is the holding company for Cardinal, Siskin and various other subsidiaries serving substantially similar clientele in a substantially similar manner. OPYS, through itself and various subsidiaries such as Cardinal and Siskin, provides hospital-based physician staffing and management to emergency departments, hospitalists, and urgent care centers. It is a physician owned and operated group practice that utilizes only the highest performing, accomplished and trained physicians. OPYS, and its subsidiaries, have spent years developing a trusted brand for

hospitals, and emergency rooms, in Indiana. Combined with the desired and retained physicians, OPYS, and its subsidiaries, will provide fully staffed ER and hospitalist programs.

22. On information and belief, Fayette is an Indiana corporation with its principal place of business in Connersville, Indiana. Fayette owns and operates a hospital in Connersville and, according to its website, provides “health care services to the entire Whitewater Valley and the surrounding area.”

23. Randy White is the CEO of Fayette, and is responsible for the interview that caused the devastating and defamatory local news media discussed herein.

Background

24. Regional hospitals, like Fayette, often turn to outside healthcare providers, like Siskin, to provide twenty-four hour, seven-day a week physician coverage for their emergency room departments. Before establishing its relationship with Siskin in 2015, Fayette had struggled to find consistent, high-quality physician staffing of its emergency room.

Fayette’s Fraud

25. During 2014, Siskin engaged in negotiations with Fayette concerning providing doctors and non-physician healthcare professionals to provide care in, among other departments, its emergency room.

26. The negotiations centered largely on the pricing surrounding the physicians and non-physicians. The parties agreed that the pricing would be distilled in a subsidy that would be calculated based upon the difference in projections for Practice Expenses and Practice Revenue, with Fayette responsible for the difference between the two.

27. Ultimately, the parties agreed that Practice Expense would be cost of physician staff wages, fees paid to locums companies⁴, fees paid for medical scribes,⁵ administrative expenses, and agreed upon eleven percent management fee.

28. Ultimately, the parties agreed that Practice Revenue would be calculated as the expected revenue per patient in the emergency room multiplied by expected volume of patients in the emergency room.

29. Because Practice Revenue and Practice Expense would, inevitably, be projections, the parties discussed and agreed to a readjustment provision that would be applicable and invoked on a quarterly basis during the period of the contract (which the parties agreed to be three years from the date of execution with automatic one year renewals absent cancellation by either party).

30. However, during the negotiations, Fayette knowingly and consistently provided inflated volumes such that it would undercut the subsidy that it would be paying Siskin and Cardinal during the course of the contract.

31. On or about August 28, 2014, Fayette informed Siskin that the correct volume is 15,000. At this time, Fayette had been well aware that it would not produce such volumes, as it had internal documentation demonstrating the downward trend in volume for its emergency rooms for the prior years. Such documentation had been concealed until 2017.

32. On or about September 11, 2014, Fayette received documentation with an ER Physician detail sheet that calculated “conservative” average patient payment of \$98.85. However,

⁴ Locums companies are implied within the recruiting costs component of Practice Expense definition within the Agreement, and Cardinal had been led to believe that such costs would be financed. Fayette never had any intention of funding them.

⁵ The hospital agreed, in writing, to finance fifty percent of the medical scribe cost, however, never funded any of it, and never had any intention of funding them.

upon information and belief, this had been a known drastic overstatement of the amounts that it had previously been collecting from its patients during the foregoing years.

33. On or about November 5, 2014, Fayette provided documentation that contended it would have annual patient volume of 20,000 (albeit inclusive of the ER and urgent care facility). Fayette understood at this time that figure would represent a substantial increase in volume, and, as stated earlier, it was experiencing a downward trend in volume in the years preceding the contract's execution such that its statement represented a false representation, made with malice.

34. On or about December 4, 2014, Fayette provided documentation that contended it would have annual patient volume of 20,000 (albeit inclusive of the ER and urgent care facility). Fayette understood at this time that figure would represent a substantial increase in volume, and, as stated earlier, it was experiencing a downward trend in volume in the years preceding the contracts execution such that its statement represented a false representation, made with malice.

35. At or around this same time, Fayette misrepresented the "payor mix." A payor mix in the medical field describes the mix of payment sources from which the hospital receives payment. The high-end payor mix would be comprised of premier insurance carriers, such as Blue Cross / Blue Shield, by way of example. The lower-end payor mix would be comprised of largely Medicaid, Medicare, and Self-Payor, by way of example. The payor mix is known to be directly correlated to the expected revenue per patient, in that, the high end payor mix would result in higher revenue per patient and the low end payor mix would result in lower revenue per patient. In projecting revenues, the payor mix is critical.

36. Because of declining industry in Connorsville, Indiana, the payor mix would decline during the contract period. While such information had been known and available to

Fayette, Fayette steadfastly represented that the payor mix would remain consistent and that no known changes in the community would impact the payor mix.

37. The foregoing *merely* represents a sample of the specific lies from Fayette concerning the volume and payor mix – and, by extension, revenue per patient -- upon which Cardinal relied in calculating its practice revenue.

38. Indeed, because it had been so confident that the annual patient volume would equal or exceed 15,000, and the collection / revenue per patient would exceed the negotiated for amount (ultimately, \$92.26) based on that which it had been told by Fayette, Cardinal agreed to reduce its hourly rate for its doctors from \$180 to \$160.⁶

39. Ultimately, as discussed within, the result of the misconceptions caused by Fayette’s frauds about its collection/revenue per patient and the volume of patients expected during the course of negotiations resulted in a significant shortfall between the projected subsidy and that which would be required to make up the differential between the Practice Revenue and Practice Expense.

40. Additionally, during the course of negotiations, Cardinal was misled about a “fail safe” that the agreement, purportedly, would have for the benefit of Cardinal and Fayette. However, at no time, did Fayette intend to permit that fail safe to benefit Cardinal.

41. The parties discussed a readjustment and/or reevaluation provision whereby if it turns out that the parties projections had been incorrect, the parties would be able, on a quarterly basis, to “true-up” by paying each other the difference in the real distinction between Practice Expenses and Practice Revenue (*i.e.*, volume and revenue per patient).

⁶ Adding color to the extent of Cardinal’s concession, a local competitor to Fayette – Richmond Hospital – is advertising positions for healthcare professional for \$240 per hour, with an additional \$50,000 signing bonus, and \$100,000 for student loan relief.

42. However, Fayette understood, whereas Cardinal did not, that it would take multiple quarters for the billing service selected by them – discussed below – to provide volumes and collection rates on patients such that a reconciliation would be possible. Thus, it would be impossible for Fayette to seriously intend to permit reconciliations that it knew would be impossible.

43. Fayette did not have any intention to permit the exercise of the readjustment and reevaluation provisions for the subsidy because, first, it would undercut their prior frauds with relation to the Practice Revenue, and second, would be impossible under the data flow from the billing servicer.

44. As a direct result of its beliefs (caused by Fayette’s misrepresentations) concerning volumes, patient revenues, and the readjustment provisions, in March 2015, Cardinal entered into an Agreement for Physician Services Emergency Department with Fayette (the “Agreement”). A true and correct copy of the Agreement is attached at Exhibit A.

45. In August 2016, Cardinal assigned the Agreement to Siskin, and informed Fayette of the assignment. Fayette, through an email from its Vice President and CFO, Sam Bell Jent, acknowledged and agreed to the assignment.

The Agreement

46. Under the Agreement, Siskin agreed to “provide physicians ... continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians” at Fayette. Agreement, § 1.1. Siskin also agreed to provide a Medical Director responsible for “leadership, planning, organization, staffing, coordination, and evaluation for emergency department activities.” Agreement, § 1.2 & Ex. C.

47. As consideration for its services, Siskin received the right to “bill and collect any professional fees and charges for services rendered” by its Physicians. Agreement, § 3.2. Fayette acknowledged, however, that these billings would not fully compensate Siskin for the costs and expenses of staffing Fayette’s emergency room. Thus, Fayette agreed to pay Siskin a monthly subsidy of \$59,723 (the “Subsidy”). Agreement, § 3.1 & Ex. B.

48. As outlined in Exhibit B of the Agreement, Fayette represented to Siskin that its annual patient volume was 15,000. Agreement, Ex. B. Based on this volume, and an agreed upon collection rate of \$92.26 per emergency room patient, Fayette and Siskin assumed that Siskin would generate \$1,383,941.72 in “Practice Revenue” each year. *Id.*

49. The parties further assumed that Siskin would incur \$1,401,600 in physician salary expense, plus another \$478,671 in practice expenses. *Id.* The parties also factored in a margin of 11% Siskin would need to realize on expenses it would incur. *Id.* These expenses, totaling \$2,087,100, would exceed practice revenue by \$703,159, resulting in Fayette agreeing to pay a subsidy of \$59,723 per month to Siskin. *Id.*

50. Fayette further agreed “to re-evaluate the subsidy quarterly, and adjust based upon demonstrated volume, revenue, and practice expenses.” Agreement, Ex. B.

Fayette Breaches the Agreement and Defames Siskin

51. Siskin satisfied its obligations under the Agreement by providing high-quality emergency room physician services on a 24/7 basis.⁷

⁷ Fayette cannot dispute this fact. Fayette continues to poach some, and has tried to poach, all of the medical staff introduced to it by Siskin and OPYS. Another component of Fayette’s in-patient facility is still staffed by OPYS, and Fayette has contacted previous hospitalist physicians asking them to come back to be contracted by Fayette, despite providing OPYS with no notice of intent to cancel or terminate the existing agreement. OPYS and Siskin are “best in class” within their industry and profession, and Fayette knows it and manifests that it knows it through its conduct.

52. However, patient volumes have been lower than the 15,000 represented by Fayette. For the period June 1, 2015 through December 31, 2017, the actual number of patient visits to Fayette's emergency room were 3,828 lower than Fayette represented in the Agreement. Moreover, Siskin's actual collection rate per patient was \$86.15, approximately \$6 lower than the figure used to calculate the Subsidy. Siskin experienced higher expenses as well. For example, the parties assumed Siskin would secure physician services at a rate of \$160 per hour, but the actual hourly cost for physician services has been more than \$190 per hour for each year.

53. Because demonstrated actual volume, revenue, and practice expenses were different than those set forth in Exhibit B of the Agreement, Siskin made numerous demands that Fayette fulfill its contractual obligation to adjust the Subsidy.

54. Despite these numerous demands, Fayette has refused to do so. As a result of Siskin's higher practice expenses and lower practice revenue, and Fayette's breach of its obligation to adjust the Subsidy, Siskin has been underpaid by *at least* \$1,478,907.34 for the period June 1, 2015 to December 31, 2017.

55. Curiously, during the period between January 1, 2018 and June 30, 2018, Fayette, upon demand from Siskin, started to finance the monthly subsidy at approximately \$102,000. Such figure, by Fayette's own admission, had been readjusted upward from the prior subsidy in an amount that doubled the prior subsidy to account for the shortfalls in projected revenue and increase practice expenses that had been plaguing OPYS and Siskin for the entire contract period. However, despite their concessions, Fayette never readjusted the subsidy for the period from June 1, 2015 through December 31, 2017.

56. Rather, in addition to failing to adjust the Subsidy, Fayette failed to pay the Subsidy *at all* for the months of July, August and September 2018. Siskin again made numerous demands

that Fayette cure its contractual breaches and pay the Subsidy. Siskin could not continue to staff Fayette's emergency room, and provide high-quality service to Fayette's patients, without receiving any compensation for its services. Siskin told Fayette that its breaches would cause Siskin to be unable to make payroll and essentially put Siskin out of business. Fayette refused to pay the Subsidy and offered no justification whatsoever for its failure to do so. Instead, Fayette, despite conceding that historical volumes, patient revenue and practice expenses for the contract period justified a far higher subsidy than received for the entire contract period, recanted that position and started a "fishing expedition" for data from OPYS and Siskin so as to stall and delay payment such that it could make other arrangements for its emergency room staffing.

57. Unsurprisingly, given Fayette's repeated failure to pay Siskin for its services, Siskin informed Fayette that it would no longer perform services under the Agreement if Fayette did not cure its contractual breaches and pay the Subsidy by September 13, 2018. Fayette again failed to cure, and Siskin terminated the Agreement due to Fayette's many material breaches.

58. Fayette owes Siskin \$204,662 for the unpaid July and August 2018 Subsidy payments, and a pro-rated Subsidy payment of \$47,754.56 for September 2018. In addition, Siskin is owed further compensation for 2018 due to Fayette's refusal to adjust the Subsidy.

59. While it failed to make any payments, and stalled and delayed through its "data fishing expedition," Fayette then replaced Siskin by "poaching" (i.e., hiring on or contracting with physicians Siskin was using to staff Fayette's emergency room). Under section 1.3 of the Agreement, Fayette must pay Siskin \$28,000 for any physician Fayette hires who had been referred or assigned by Siskin to Fayette during the term of the Agreement. Thus, Fayette owes Siskin an additional \$82,000 because Fayette has hired on or contracted with Drs. Ramesh Sharma, Richard Baldwin, and Dominic Maga – all three physicians who were assigned by Siskin to Fayette under

the Agreement. Fayette has failed to pay this amount as well, resulting in yet another breach of the Agreement.

60. Fayette has continuously called all the physicians that had been staffed in its hospitals, despite knowledge of their business (and, contractual) relationship with Cardinal. The result of such conduct has been, and will be, that the roster of doctors that Cardinal, Siskin, and OPYS, at large, have available to fill their obligations to existing and future customers will be depleted. Depleting the quality physicians with which OPYS has developed relationships is to destroy OPYS, itself.

61. On or about April 2018 through September 15, 2018, Fayette, similarly, has “brought in” its own nursing staff – nursing practitioners –for Siskin’s physicians which is, disallowed, under the contract. When confronted by Siskin in regards to this matter, Fayette unquestionable and unequivocally promised to provide a credit and payment, within the subsidy calculation, for the lost volume attributable to this nurse practitioner “swap out.” The credit should amount to approximately 15 patients per day, five days per week from April 2018 through September 2018.

62. In a final blow, Fayette’s CEO recently defamed Cardinal in the local Indiana media, providing an interview that resulted in publication in various local news and trade publications, stating: “The hospital recently changed the company providing physicians in the emergency room. ‘We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,’ White said. “We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.’ **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented**

before payment and both sides did not come to an agreement after several months of negotiations.”

63. The results of the foregoing are far from limited to the amounts clearly due because of the failure to fund any subsidy in the third quarter of 2018, and the failure to readjust the subsidy for the entire contract period.

64. Fayette’s conduct has resulted in a lack of liquidity that would have paid for the doctors that Cardinal and ultimately Siskin had been required to pay, and rather than simply not funding the physicians, Cardinal did whatever it could do to find the funds to finance the doctors salaries.

65. However, because of the hole in its balance sheet and income statement created by the foregoing frauds and thefts by Fayette, Siskin needed to fund its physicians at Fayette with merchant cash advances, a type of factoring agreement where its future receipts are sold at a significant discount.

66. Under that financing regime/tranche to recoup the approximately \$1,800,000 not paid under the subsidy, the financing that Siskin and Cardinal had been required to pursue to finance the doctors working in Fayette (along with other operational expenses that it had and could not fund because of the frauds by Fayette) cost in excess of \$3,000,000.

67. Even with its best efforts, Siskin could not pay certain doctors, and because of that, has and continues to lose credibility and goodwill within the local healthcare community. The “fake news” perpetrated by Fayette further underscores the harm done to OPYS goodwill.

68. The frauds, poaching and thefts discussed herein have left Siskin, Cardinal and their corporate parent, OPYS, and affiliate entities, with an unreasonable financial burden. Given the

high quality doctors and management services provided by OPYS and its affiliates, including Siskin and Cardinal, none of this should have occurred.

COUNT I

(Breach of Contract as for Fayette)

69. Siskin alleges and incorporates by reference the allegations in the paragraphs above.

70. The Agreement is a valid and enforceable contract.

71. Siskin has performed its obligations and all conditions precedent to its claim for breach have been satisfied, waived or excused.

72. Fayette breached the Agreement by failing to pay the Subsidy, failing to adjust the Subsidy, and failing to pay Siskin fees owed under Section 1.3.

73. Fayette's material breaches of the Agreement have proximately caused damage to Siskin in an amount to be proven at trial in excess of \$3,000,000.

COUNT II

(Fraud as for Fayette)

74. Siskin and OPYS allege and incorporate by reference the allegations in the paragraphs above.

75. Fayette misrepresented to Siskin and OPYS that its data supported a projection that annual patient volume for the ER was 15,000 patient visits, along with the misrepresentation that the readjustment provision would be honored and that its data supported a projection that anticipated collection / revenue rate per patient payment, first of approximately \$98, and then, \$92, as detailed more fully above. Such representations were false, constituted a misrepresentation of then existing fact, and was made by Fayette knowingly or with reckless disregard for the truth.

76. Siskin and OPYS reasonably and detrimentally relied on Fayette's false representation by entering into the Agreement.

77. As a result of Fayette's fraud, Siskin and OPYS has been damaged in an amount to be proven at trial but in no event less than \$3,000,000.

COUNT III

(Defamation as for Fayette and Randy White)

78. Siskin and OPYS allege and incorporate by reference the allegations in the paragraphs above.

79. On October 4, 2018, in a various local media Fayette CEO's provided an interview, stating: "The hospital recently changed the company providing physicians in the emergency room. 'We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,' White said. "We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.' **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented before payment and both sides did not come to an agreement after several months of negotiations.**"

80. These statements were made maliciously, and published in various Indiana media outlets.

81. These statements regarding Siskin's and OPYS' performance as a physician staffing company, are defamatory *per se*.

82. Siskin and OPYS have been damaged by Fayette's defamatory statements in an amount to be proven at trial.

COUNT IV

(Unjust Enrichment as for Fayette)

83. Siskin and OPYS allege and incorporate by reference the allegations in the paragraphs above.

84. Siskin provided physician services to Fayette from June 2015 to September 13, 2018.

85. Fayette has realized a benefit from Siskin's services but has not compensated Siskin for its services.

86. Fayette has been unjustly enriched at the expense of Siskin in an amount to be proven at trial of no less than \$1.7 million.

COUNT V

(Tortious Interference With Business as for Fayette)

87. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

88. Siskin, Cardinal and OPYS have a valid business relationship with the doctors that it recruits and staffs at various hospitals including and particularly with the doctors that it staffed at Fayette.

89. Fayette had knowledge of such relationships.

90. By its actions and omissions, including its efforts to poach the doctors and interfering with OPYS, Siskin and Cardinal's ability to finance their salaries, Fayette has intentionally and with malice interfered with that business relationship.

91. No justification exists for the interference with that business relationship.

92. OPYS, Siskin and Cardinal have been harmed, substantially, by the efforts to poach and interference with the ability to finance the doctors salaries in an amount to be proven at trial, inclusive of the damages caused by their inability to staff other emergency rooms and hospitals that they would have otherwise been able to staff had their recruitment and roster not been interfered with maliciously by Fayette.

COUNT VI

(Promissory Estoppel as for Fayette)

93. Siskin alleges and incorporates by reference the allegations in the paragraphs above.

94. Fayette promised that it would provide a credit within the construct of the subsidy for the nurse practitioners that had swapped into Fayette in lieu of the physicians provided by Cardinal in an amount of volume equivalent to approximately fifteen patients per day for five days per week from April 2018 through September 15, 2018.

95. Siskin reasonably relied upon that promise and expected remuneration and payment in full for it in the context of the monthly subsidy payments that it should have been receiving.

96. The promise was so definite and substantial in its terms that it had been reasonably relied upon by Siskin.

97. Injustice can only be avoided by enforcement of the promise.

COUNT VII

(Permanent Injunction)

98. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

99. Fayette has intentionally, maliciously, and in violation of its contractual agreements sought to “poach” every doctor that had been provided to it by Siskin, or Cardinal.

100. Fayette has, thus, violated its contract with Siskin and has tortuously interfered with OPYS, Siskin and Cardinal’s business relationships with the doctors on its roster. The doctors are Cardinal, Siskin, and OPYS’s business.

101. For these claims, Siskin and OPYS ought to prevail as trial.

102. Absent injunctive relief, Fayette will continue to attempt to steal the doctors from OPYS, Siskin and Cardinal, and without such doctors, OPYS, Siskin and Cardinal will be unable to perform its essential function of staffing emergency rooms.

103. The overall Indiana community is benefitted by having its emergency rooms staffed.

104. No harm would be caused to Fayette by not poaching the doctors on the OPYS, Siskin, and Cardinal roster.

105. For the foregoing reasons, and to prevent the irreparable harm that would occur absent OPYS, Siskin and Cardinal having the business relationship with its most material assets – its doctor roster, a permanent injunction should be entered preventing Fayette from contacting any and all doctors that have been placed their, at any time, by Siskin or Cardinal.

WHEREFORE, Siskin and OPYS request that the Court:

- A. Enter judgment in Siskin’s and OPYS’ favor;
- B. Award Siskin and OPYS damages according to proof;
- C. Award Siskin and OPYS their attorneys’ fees and costs;
- D. Punitive and exemplary damages;

- E. Pre-judgment and Post-judgment interest; and
- F. Award Siskin and OPYS all other appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Ryan M. Hurley

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*Attorney for Plaintiffs Siskin Physicians,
LLC, and OPYS Holdings, Inc.*

21C01-1810-PL-000757

Fayette Circuit Court

Filed: 10/9/2018 10:40 AM
Clerk
Fayette County, Indiana

Exhibit A

**FAYETTE REGIONAL HEALTH SYSTEM, INC.
AGREEMENT FOR PHYSICIAN SERVICES
EMERGENCY DEPARTMENT**

This is an Agreement ("Agreement") dated November , 2014, by and between CARDINAL PHYSICIANS, LLC., an Indiana limited liability company ("CARDINAL") wholly owned by OPYS Holdings, Inc. and FAYETTE REGIONAL HEALTH SYSTEM, a business located at 1941 Virginia Ave, Connersville, IN 47331 ("FRHS") to provide Emergency Department Physician Staffing on the following terms:

WITNESSETH:

WHEREAS, FRHS sometimes hereafter called ("Hospital") operates a hospital located at 1542 S Bloomington St. Greencastle, Indiana; and

WHEREAS, CARDINAL is located at 155 E. Market Street, Suite 425, Indianapolis, Indiana 46204, and was established by Andre T. Creese, M.D. ("Creese").

WHEREAS, Creese is willing to provide physician services to FRHS through CARDINAL as an independent contractor.

NOW, THEREFORE, in consideration of the mutual covenants as contained herein, the parties agree as follows:

1. DUTIES AND RESPONSIBILITIES

1.1 Services.

1.1-1 CARDINAL agrees to provide physicians ("Physicians"), continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians and to perform those services for FRHS as more particularly described in Exhibit "A", which is attached hereto and made a part hereof ("Services").

1.1-2 CARDINAL agrees to provide a Medical Director ("Director"), continuously, twenty-four hours daily, seven days per week, to perform Services as a Medical Director and to perform those Services for FRHS as more particularly described in Exhibit "C", which is attached hereto and made a part hereof.

1.1-3 Physicians shall perform the Services at FRHS on a regular basis pursuant to a schedule agreed upon by the parties.

1.1-4 CARDINAL agrees to provide Physicians that will work closely with FRHS to help improve the Emergency Department, and resultantly help increase the annual patient

volume.

1.1-5 CARDINAL agrees to provide Physicians that will work closely with FRHS and ensure Physicians engagement and performance in the following Emergency Department metrics:

1.1-5.1 Patient Satisfaction

1.1-5.2 Quality

1.1-5.3 Sustainability

1.1-6 FRHS agrees to provide CARDINAL with monthly Hospital, Emergency Department, and Physician specific patient satisfaction, quality, sustainability, and related metric data and historical trends.

1.2 Reporting. For non-clinical matters, Physicians shall report to the President / CEO of FRHS. For clinical matters, Physicians shall report to FRHS's Medical Director of Emergency Service, or to Vice President of Emergency Medicine in the absence of the Medical Director.

1.3 Permanent Placement. FRHS agrees to pay CARDINAL within thirty (30) days of hiring Twenty-eight Thousand Dollars (\$28,000) for each referred by or assigned by CARDINAL to FRHS who is hired independently of CARDINAL by FRHS or any of its affiliates during the term of this Agreement or within two years of the termination of this Agreement.

1.4 FRHS Policies. The Services are to be performed in accordance with the policies of FRHS, which include the Bylaws and rules of FRHS, the Bylaws and rules of the medical by the Board, FRHS personnel policies and other established policies, practices and procedures of FRHS, as well as all laws, rules and regulations of the State of and Federal governments.

2. QUALIFICATIONS OF PHYSICIANS

2.1 Licensure. Each Physician shall hold and continue to hold an unlimited license to practice medicine in Indiana and shall comply with regulations and standards of professional conduct adopted by the Medical Licensing Board of Indiana. Physicians shall remain board certified. Any Physician failing to meet such requirements shall be promptly replaced by CARDINAL.

2.2 Medical Staff Privileges. Physicians will agree to remain active staff members in good standing of FRHS's Medical Staff and shall participate in regular staff activities and responsibilities.

3. COMPENSATION, BILLING AND ASSIGNMENT

3.1 Compensation. FRHS shall pay CARDINAL, during the term hereof, for all Services to be performed by Physicians such compensation as described in the attached Exhibit "B".

3.2 Billing. CARDINAL will bill and collect any professional fees and charges for services rendered by Physicians, including those Services covered by the Medicare and Medicaid Programs. Cardinal shall be responsible for collection of such fees and Physicians will assign any such fees to FRHS and such fees will be counted as practice revenue for purposes of calculations under Exhibit B. Accounting See Exhibit B.

4. TERM AND TERMINATION

4.1 Term. The Agreement shall be effective as of March 1, 2015 (the "Effective Date") until February 28, 2017 (the "Initial Term").

4.1-1 After the Initial Term, the term shall automatically renew for a period of twelve (12) months unless written notice of non-renewal has been given by one party to the other no later than sixty days prior to any one year anniversary of the Effective Date.

4.1-2 Annual Review. Beginning with the 5th day prior to the end of the Initial Term, or any renewal term thereof, the Agreement shall be subject to review at the request of either party hereto.

4.2 Termination. The Agreement may be terminated as follows:

4.2-1 Termination for Specific Breaches by Physicians. FRHS may terminate this Agreement immediately in the event: (1) CARDINAL does not satisfactorily replace any of the Physicians that fail in any substantial manner to provide the Services and such non-performance continues for a period of fifteen (15) days after CARDINAL has been notified by FRHS of the non-performance, or (2) CARDINAL fails to satisfactorily replace any of the Physicians that die, or becomes disabled whether by reason of injury, illness or otherwise, to the extent that any of the Physicians is unable to perform the Services, with the reasonable accommodations required by law, for a period exceeding thirty (30) calendar days, excluding any leave of absence requested by any Physician and approved in writing by FRHS prior to the beginning of such disability; (3) CARDINAL fails to satisfactorily replace any Physician whose medical staff privileges at FRHS shall be reduced or terminated in compliance with procedural provisions set forth in the Medical Staff Bylaws, or any Physician who ceases to be licensed to practice medicine in the State of Indiana; (4) CARDINAL fails to

satisfactorily replace any Physician that has been convicted of a felony or other crime involving moral turpitude; or (5) CARDINAL fails to satisfactorily replace any Physician whose action is likely to damage the professional reputation and standing of FRHS or any of its affiliated organizations, or any of its employees, contractors or associated or affiliated physicians and any such action has not been removed or corrected to the reasonable satisfaction of FRHS within ten (10) days of notice thereof to CARDINAL by FRHS. Termination of the Agreement under this paragraph 4.2-1 shall automatically terminate the terminated Physician's privileges at FRHS without a hearing under FRHS's fair hearing process unless otherwise required by State or Federal law. The parties agree that FRHS's request that CARDINAL terminate a Physician constitutes an administrative action, and the Physician shall not be entitled to the fair hearing process enumerated under the Medical Staff Bylaws as a result of such request nor shall it be reportable matter to the National Practitioner Data Bank unless otherwise required by Law.

4.2-2 Termination without Cause. Either party may terminate this agreement, after twelve (12) months of Physician service, for any or no reason prior to the expiration of its term by providing at least one hundred twenty (120) days written notice. Such termination shall be without penalty except as expressly delineated elsewhere in this agreement (i.e., educational loan repayment, etc.)

4.3 Effect of Termination. If CARDINAL fails to satisfactorily replace a Physician whose medical staff privileges are revoked or suspended in compliance with procedural provisions set forth in the Medical Staff Bylaws, the Agreement will be subject to termination.

5. EQUIPMENT, FACILITIES AND SUPPORT STAFF

5.1 FRHS shall provide and maintain facilities, equipment, supplies and support staff as FRHS reasonably deems necessary for Physicians' performance of the Services under the terms of the Agreement.

6. INSURANCE

6.1 Professional Liability. Physicians shall become and remain qualified healthcare providers pursuant to Indiana's Medical Malpractice Act.

6.2 Certificate of Insurance. CARDINAL will, at its expense, provide Physicians with professional liability insurance which includes tail coverage.

6.3 Indemnification. CARDINAL and its Physicians shall indemnify and hold harmless FRHS including and without limitation, FRHS's agents, members of the FRHS's Board, officers, employees, invitees and any of FRHS's other contractors, from and

against all claims, losses, costs, damages and expenses relating to injury or death of any person which results from or arises in connection with (1) any breach of the Agreement by Physicians; or (2) any gross negligence or willful act or omission by Physicians.

- 6.3-1 FRHS shall indemnify and hold harmless CARDINAL and its Physicians from and against all claims, losses, costs, damages and expenses relating to injury or death of any person which results from or arises in connection with (1) any breach of the Agreement by FRHS; or (2) any negligent or willful act or omission by FRHS personnel.

7. ALLOCATION OF TIME AND ACCESS TO BOOKS AND RECORDS

7.1 Allocation of Time. In order that FRHS may be reimbursed under Part A of Medicare for Medicare's share of the compensation paid for Part A Services, it is necessary to have an allocation agreement, and that either Physicians keep an actual daily log of his/her time spent providing Part A Services or that periodic time studies be conducted. The parties agree to use the periodic time methodology and agree to keep and maintain such records as are acceptable to the Part A Fiscal Intermediary under Medicare.

7.2 Access to Books and Records. In order to assure that compensation paid to FRHS for Services rendered by Physicians is included in determining the proper reimbursement to FRHS under Medicare and Medicaid, the parties agree that if this Agreement is determined to be a contract within the purview of Section 1861(V)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated in implementation thereof at 42 CFR part 420, CARDINAL will agree to make available to the Comptroller General of the United States, the Department of Health and Human Services ("HHS") and their duly authorized representative, the books, documents and records of Physicians, and such other information as may be required by the Comptroller General or Secretary of HHS to verify the nature and extent of the costs of Services provided by Physicians. If Physicians carry out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000.00) or more the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records.

- 7.2-1 If CARDINAL refuses to make the books, documents and records available for said inspection and FRHS is denied reimbursement for said Services as a result of CARDINAL's refusal, CARDINAL will indemnify FRHS for FRHS's loss or reduction in reimbursement. The obligation of CARDINAL to make records available shall extend for four (4) years after the furnishing of the latest Services under this Agreement.

7.3 Quarterly Review of Books CARDINAL will provide FRHS with a quarterly written review of the books.

8. STATUS OF THE PARTIES

8.1 Independent Relationship. In performing the Services, FRHS and CARDINAL will agree that Physicians are acting as employees of CARDINAL and not as agents or employees of FRHS. CARDINAL and Physicians will agree to pay, as they become due, all Federal and State income taxes, as well as other taxes, including self-employment taxes, and to hold FRHS harmless from any and all such taxes, penalties, or interest which might arise by CARDINAL's or Physicians' failure to do so. This provision shall survive the expiration or termination of this Agreement.

8.2 Medical Decisions. FRHS will not direct or control the independent medical acts, decisions, or judgments of Physicians in their rendering of Services.

8.3 Ownership. The ownership and right of control of all reports, records, and supporting documents prepared by Physicians, ("Records") pursuant to the Services provided under this Agreement, shall vest exclusively in FRHS.

8.3-1 Physicians will agree not to remove the Records from FRHS; provided, however, shall have right of access to the Records for legitimate reasons. The Records, and the information in the Records shall be privileged and Physicians will not disclose or release same without the written permission of FRHS except when required by law.

9. GENERAL PROVISIONS

9.1 Confidentiality of Materials. Physicians will agree to not disclose to others, either during the term of this Agreement or subsequent to termination, any data, forms, reports, systems or other materials containing confidential information specific to FRHS without the prior written consent of FRHS.

9.2 Notices. Notices or communications required by the Agreement or permitted by the Agreement shall be given to the respective parties by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses unless either party shall otherwise designate its new address by written notice:

CARDINAL
CARDINAL PHYSICIANS, LLC
155 E Market Street, Suite 425
Indianapolis, IN 46204

With copy to:
James O. Cole, Esq.
10 Nurmi Drive
Fort Lauderdale, FL 33301

FRHS
FAYETTE REGIONAL HEALTH SYSTEM
1941 Virginia Ave,
Connersville, IN 47331

- 9.3 Assignment. FRHS may assign the Agreement without the written approval of CARDINAL to any successor entity operating the facility now operated by FRHS or to a related or an affiliated organization. CARDINAL may not assign its rights or delegate its duties under the Agreement to any other person or entity.
- 9.4 Waiver of Breach. The waiver by either party hereunder of a breach or violation of any provision of the Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.
- 9.5 Compliance with Laws The parties intend and in good faith believe that the Agreement will not violate any State or Federal law, including the Internal Revenue Code and the proscriptions against private inurement and private benefit. In the event that either party reasonably believes subsequently that any provision of the Agreement is contrary to the Internal Revenue Code, the Fraud and Abuse Statute, the Stark Act or any other law, then the parties shall reform the Agreement to eliminate the problematic provision. In the event the parties are unable to reform the Agreement, then either party may terminate the Agreement upon thirty (30) days written notice to the other party.
- 9.6 Governing Law. The Agreement shall be construed and governed by the laws of the State of Indiana.
- 9.7 Severability. In the event that any provision of the Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of the Agreement

shall remain valid and enforceable according to its terms.


9.8 Confidentiality of Agreement Terms. FRHS and CARDINAL agree that the terms and conditions of the Agreement shall remain confidential. No party hereto shall distribute the Agreement or any part thereof or reveal any of the terms of the Agreement to parties other than their employees or agents who have valid reason to know except as required by law.

9.9 Amendments. This Agreement may be amended only by an instrument in writing signed by the parties.

9.10 Execution. This Agreement and any amendments shall be executed in duplicate copies on behalf of FRHS and CARDINAL. Each duplicate copy shall be deemed an original, but both duplicate originals together constitute one and the same instrument

IN WITNESS WHEREOF, the duly authorized officers and representatives of FRHS and CARDINAL have executed this Agreement the 25 day of ~~November 2014~~ March 15

FAYETTE REGIONAL HEALTH SYSTEM, INC.

BY: 
Randy White
President/ & CEO

CARDINAL PHYSICIANS, LLC

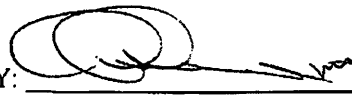
BY: 
Andre T. Creese
Managing Member

Exhibit A

POSITION SUMMARY:

Performs patient care assignments according to established policies and procedures with some degree of independence. She/he must be able to demonstrate effective interpersonal skills and an understanding of the roles of various allied health care professionals. Maintains acceptable standards of care.

POSITION DUTIES:

- Promote positive patient relations in emergency department, providing competent patient care.
- Maintain open communication with staff, problem solves as necessary.
- Promote a cooperative and collaborative working environment among all clinical disciplines involved in patient care.
- Maintain an effective working relationship with the medical staff, administration, and other departments.
- Maintain an acceptable level of clinical skills.
- Carry out and document assignments in a manner that meets or exceeds standards established by Indiana State Department of Health, Center for Medicare and Medicaid Services, the Joint Commission, and other regulatory agencies.
- Correct any identified deficiencies in assigned areas as identified by external review.
- Initiate patient care in a timely manner. Assume full responsibility for patients treated during scheduled work shifts.
- Provide care for occupational medicine patients with appropriate and timely follow-up care and work restrictions.
- Respond to emergencies outside of the department when required.
- Maintain expertise and certifications for assigned tasks and procedures within the Emergency Department.
- Fulfill continuing education requirements to maintain required number of CEUs for all credentials.
- Fulfill Active Medical Staff responsibilities including Medical Staff and assigned Medical Staff committee meetings. Make appropriate referrals for specialty medical services and communicate with those specialty physicians as appropriate.
- Report quality of care issues promptly to appropriate individuals.
- Follow patient care protocols established and complete them within the time constraints within the protocols.

ENVIRONMENTAL AND JOB HAZARDS:

Physician may be exposed to blood borne pathogens, infectious diseases and other hazardous wastes, (i.e. Hepatitis, HIV, Tuberculosis).

PHYSICAL AND MENTAL DEMANDS:

The position requires a considerable amount of walking, stooping, pulling, lifting, feeling, hearing, and repetitive motions. Physician must be able to lift in excess of 50 lbs. on occasion. The position requires visual and hearing acuity sufficient for verbal communication.

MISCELLANEOUS:

Attendance to at least one in-service orientation each year to review hospital policies and procedures is mandatory. Stay abreast of all laws, rules and regulations that apply to the areas supervised. Seek out changes and updates to laws, rules and regulations, and briefs affecting Physician on their responsibilities. Assure all supervised employees comply fully with all applicable laws, rules and regulations. Comply with all employment policies of FAYETTE REGIONAL HEALTH SYSTEM. Comply with Federal and hospital requirements in the areas of protected health information and patient privacy. Comply with federal and hospital requirements in the areas of protected health information and patient privacy.

PERFORMANCE:

Physicians will be managed, led, and incentivized, to work closely with FRHS satisfactorily attain agreed upon performance, quality, metrics and objectives.

This job description is in no way intended to imply or state that these are the only duties to be performed. Some duties may be assigned and other duties assigned as required at FRHS's sole discretion.

EXHIBIT B

CARDINAL COMPENSATION

In consideration of the rendition of Emergency Department Services of the Physicians, FRHS agrees to pay CARDINAL a monthly subsidy totaling Fifty-Nine-Thousand-Seven-Hundred-Twenty-Three Dollars and Zero Cents (\$59,723.00) based on the following assumptions:

ASSUMPTIONS

ER Patient Payor Mix

Medicare	28.0%
Medicaid	25.8%
Medicaid Managed	3.5%
Commercial	11.3%
Champus	0.0%
Workers Compensation	1.1%
Blue Cross	10.7%
Self Insured	19.7%

ER Demographics

Annual Patient Volume	15,000
Admit Rate	10.8%

Projected Revenue Calculations

Practice Revenue	\$ 1,383,941.72
Staff Physician Salaries Expense	\$ -1,401,600.00
Practice Expense	\$ -478,671.31
Cardinal Margin 11% of Total Expenses	\$ -206,829.84
Annual Subsidy	\$ -703,159.43
Monthly Payment of Annual Subsidy	\$ -58,596.62

Both parties agree to re-evaluate the subsidy quarterly, and adjust based upon demonstrated volume, revenue, and practice expenses. Any patient volume based increase in practice revenue will be applied to reduce the subsidy payment obligation of FRHS. Subsidy Payments will be made in full by ACH on the first Monday of every month, for Services rendered during the previous month.

EXHIBIT C

EMERGENCY DEPARTMENT MEDICAL DIRECTOR RESPONSIBILITIES

1. The Medical Director ("Director"):
 - 1.1 Director is to provide leadership, planning, organization, staffing, coordination, and evaluation for emergency department activities.
 - 1.2 Director is responsible for all medical administration, personnel, and activities in the emergency department.
 - 1.3 Director has the responsibility for ensuring the ethical practice of emergency medicine within the department.
 - 1.4 Director directly supervises and has responsibility for emergency physicians in clinical and assigned administrative duties.
 - 1.5 Director acts as liaison with hospital administration and medical staff.
 - 1.6 Director as department head should be a member of the hospital executive committee and represent the interests of emergency medicine.
 - 1.7 Director should be concerned with physician scheduling.
2. The Director should present a written annual report to the emergency committee, hospital administration, and executive committee, detailing departmental progress, problems, and solutions.
3. Department Management
 - 3.1 Director promotes and participates in a collaborative, interdisciplinary ED leadership team.
 - 3.2 Director collaborates with nursing leadership and ED Leadership team to ensure that departmental performance meets or exceeds standards described in medical staff rules and regulations, the hospital bylaws, departmental policies, the JCAHO Manual of Accreditation, and in other appropriate local and national standards.
 - 3.3 Director works with ED leadership team to ensure that the department meets or exceeds its defined objectives for improvement, growth, and expansion of services.
 - 3.4 Director cooperates with hospital administration and nursing leadership to develop a team of personnel managers for the emergency

department (clerical, nursing, and others), teaching them by precept and example to manage.

- 3.5 In conjunction with the ED leadership team, Director helps build enthusiasm, stability, teamwork, and competence among employees through supervision, individualized evaluation and counseling, training, and praise for a job well done.
 - 3.6 Director ensures departmental policies are known, understood, and implemented by the emergency physicians.
 - 3.7 Director monitors correctness and appropriateness of the emergency department records; implements corrective intervention as required in association with medical records and quality assurance mechanisms.
 - 3.8 Director participates in personnel, purchasing, and procedural changes in the emergency department, in cooperation with appropriate personnel and hospital managers.
 - 3.9 Director is available for counseling, advice, information, and general support to the physicians and other department members.
 - 3.10 Together with nursing leadership, Director ensures adequacy of EMS communications and physician EMS command.
 - 3.11 Director maintains a department office and is accessible during usual business hours for routine department business.
4. Liaison
- 4.1 Director shall ensure that the emergency department has effective communications with the following individuals and groups:
 - 4.1-2 Patients and their families
 - 4.1-3 Hospital administration
 - 4.1-4 Nursing leadership and clerical supervisors.
 - 4.1-5 Hospital department heads
 - 4.1-6 Medical staff
 - 4.1-7 Lab and radiology for follow-up and evaluation of tests initiated in the ER
 - 4.1-8 Industry
 - 4.1-9 Paramedic and EMS system
 - 4.1-10 Clergy

5. Recruitment-Orientation

5.1 Director establishes an active process for identifying and recruiting emergency physicians.

5.2 Director reviews and verifies credentials, training, and education of emergency physicians, and mid-level staff in cooperation with the appropriate organizational credentialing office.

5.3 Director designs a formal orientation process for new department members.

6. Department Meetings

6.1 Director schedules regular departmental meetings and decides on the final agenda and special guests.

6.2 Director encourages open forums for departmental communications and problem solving by all ED personnel.

7. Committees - Hospital/Department

7.1 Director serves on hospital medical staff executive committee.

7.2 Director assures emergency department representation on all appropriate committees.

7.3 Director encourages participation of emergency physicians on hospital medical staff committees.