

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA		PROOF OF CLAIM
Name of Debtor: Hutcheson Medical Center, Inc.		Case Number: 14-42863-pwb
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or entity to whom the debtor owes money or property): Michael Czarnecki, M.D.		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (if known) Filed on: _____
Name and addresses where notices should be sent: Chambliss, Bahner & Stophel, P.C. 605 Chestnut Street, Suite 1700 Chattanooga, TN 37450 Telephone number: (423) 757-0220 email: jroebuck@chamblisslaw.com		
Name and addresses where payment should be sent (if different from above): MD Total Care, PLLC P.O. Box 8308 Chattanooga, TN 37414 Telephone number: (423) 710-3864 Email: wyndiwhite@mdtotalcare.com		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$30,397.83 If all or part of your claim is secured, complete item 4. If all or part of your claim is entitled to priority, complete item 5. Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis For Claim: <u>Money Loaned</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if your claim is secured by a lien on property or a right of setoff, attached required documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(____).
Amount entitled to priority: \$ _____		
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
7. Documents: Attach are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of		

Hutcheson Med POC



00279

running accounts, contracts, judgments, mortgages, security agreements. If the claim is secured, box 4 has been completed and redacted copies of documents providing evidence of perfection of a security interest. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, ☐ I am a guarantor, surety, indorser, or other codebtor.
(Attach copy of power of attorney, if any.) or their authorized agent. (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Jeffrey W. Maddux

Title: Attorney for Michael Czarnecki, M.D.

Company: Chambliss, Bahner & Stophel, P. C.

/s/ Jeffrey W. Maddux, BPR No. 838351

March 9, 2015

Address and telephone number (if different from notice address above.):

(Signature)

(Date)

Liberty Tower – Suite 1700

605 Chestnut Street

Chattanooga, TN 37450

Telephone number: 423-757-0296

email: jmaddux@chamblisslaw.com

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

In Re:

Hutcheson Medical Center, Inc.

Case No. 14-42863-pwb
Chapter 11

Debtor.

CREDITOR: MICHAEL CZARNECKI, M.D.

SUMMARY OF UNSECURED CLAIM

TOTAL OF CLAIM.....\$30,387.84

Balance for services rendered pursuant to two agreements with Hutcheson Medical Center, Inc.;
Professional Services Agreement entered into on February 15, 2012 and the Medical Director
Agreement entered into on March 19, 2013.

Current Balance pursuant to the Professional Services Agreement:	\$21,587.84
Current Balance pursuant to the Medical Director Agreement:	<u>\$ 8,800.00</u>
Total Due:	\$30,387.84

Documents

Attached: Professional Services Agreement – dated February 15, 2012 (19 pgs.) Ex. A
Medical Director Agreement – dated March 19, 2013 (8 pgs.) Ex. B

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is entered into as this 15th day of February, 2012 (the "Effective Date") by and among Hutcheson Medical Center, Inc. (the "Hospital") and Michael Czarnecki, M.D. ("Physician"), each referred to herein as a "Party" and collectively the "Parties."

RECITALS

WHEREAS, Hospital owns, operates and is commonly known as Hutcheson Medical Center located in Fort Oglethorpe, Georgia;

WHEREAS, Hospital facilities includes, among other services and centers, an acute care hospital ("Facility");

WHEREAS, Hospital has identified a need for pulmonology consultation call coverage at the Facility to provide consultative services for inpatients as requested by Hospital medical staff physicians (the "Services");

WHEREAS, Physician is, or by the Effective Date will be, a medical doctor duly licensed to practice medicine in the State of Georgia and having training and experience in the specialty of pulmonology (the "Specialty"); and

WHEREAS, Hospital desires that the services of a qualified physician be available to the Facility to provide the professional medical services in the Specialty on an as-needed basis.

NOW, THEREFORE, for and in consideration of the foregoing recitals (which are hereby made a part of this Agreement) and of the mutual covenants, promises, agreements, obligations and conditions contained herein, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Services.

1.1. Provision of Services. Upon and subject to the terms and conditions set forth herein, Physician shall provide the professional and administrative services as more particularly set forth in Schedule I hereto, which is incorporated herein by reference (collectively, the "Services").

1.2. Coverage/Availability. Physician shall work with Hospital to establish a call coverage schedule to provide the Services during the nights when call coverage for Specialty services is not available. Specifically, Hospital and Physician shall establish a schedule and during the twenty-four hour "Shift" when Specialty coverage is not available, and Physician agrees to be available to provide such call coverage. Notwithstanding the foregoing, the parties acknowledge that the Services shall be shared by Physician and other physicians, on terms mutually agreed to by Physician and Hospital. Physician acknowledges and agrees that the Services Physician provides under this Agreement shall be in addition to Physician's call

coverage requirements as set forth in the Hospital's Professional Staff Bylaws. Physician shall respond to a request for Services, and if necessary, be attendant on the premises at the Facility, as applicable, to enable Physician to perform Services under this Agreement during such hours as may be mutually agreed upon by Physician and the Hospital. Physician shall respond to any requests for Services within thirty (30) minutes upon receipt of a request. If requested by the Hospitalist physician to be in attendance on site, Physician shall respond and report to the Facility to provide services on site in a timely manner. Physician will work that number of hours per month as scheduled by the Hospital and determined on a monthly basis.

2. Physician Responsibilities.

2.1 Medical Staff Privileges; Other Responsibilities. During the term of this Agreement, Physician shall at all times be and remain an active member in good standing of the active medical staff of Hospital, with appropriate clinical privileges in the Specialty to perform the Services. Physician may perform services only within the scope of Physician's granted clinical privileges. Throughout the term of this Agreement, Physician shall be board certified or board eligible in the Specialty provision of the Services. Additionally, throughout the term of this Agreement, Physician shall provide evidence satisfactory to Hospital that Physician has had a current health screening and is current on all immunizations and other vaccinations as required by Hospital policies and procedures.

2.2 Good Standing. Physician represents and warrants, and Physician acknowledges that Hospital may independently verify, that Physician has never been suspended, excluded, barred or sanctioned by Medicare, Medicaid, or any other state or federal health care program, or convicted of any criminal offense related to health care.

2.3 Performance Standards. Physician shall provide all Services in accordance with and in a manner consistent with:

(a) Licensure and accreditation standards applicable to Hospital and the Facility.

(b) Diligent efforts, professional skill and judgment, and recognized standards of professional practice in the community.

(c) Applicable laws, regulations, and accreditation requirements, including but not limited to laws and regulations regarding the confidentiality of patient medical records and patient information.

(d) The Principles of Medical Ethics of the American Medical Association.

(e) All provisions of the Bylaws and the Rules and Regulations of the medical staff of Hospital, as may be amended from time to time.

(f) All accreditation requirements, standards and guidelines of the

Joint Commission ("TJC"), and all such requirements, standards and guidelines promulgated by TJC under the direction of Hospital's staff, including without limitation, compliance with: (i) education, training, licensure, certification, registration and competency requirements specified by Hospital, including assessments of knowledge, skill, abilities, experience, references and compliance with continuing education; (ii) recent health status screenings as required by law, regulation or Hospital policy; (iii) verification of current education and training consistent with the responsibilities and as required by law, regulation, or accreditation standards; (iv) periodic performance evaluations to demonstrate competency; (v) verification of orientation and training completed and signed by Physician; and (vi) the preparation, completion, and execution of statements of competency verifying that all of the foregoing conditions have been met for Physician. Physician will, upon request, allow Hospital personnel access to the records for the purposes of audits performed by Hospital to verify compliance with the provisions of this Section.

(g) All applicable policies, procedures, rules and regulations of Hospital and the Facility, as may be amended from time to time, including but not limited to the confidentiality of patient medical records and patient information as well as the policy on outside vendors.

(h) Medicare, Medicaid, and other governmental health plan standards and conditions of participation.

(i) Physician represents, warrants and covenants that Physician will not provide Services pursuant to this Agreement while Physician is under the influence of alcohol or any illegal substance. Any breach of this provision shall be deemed a material breach of the Agreement; and

(j) Physician shall endeavor to work with the staff of the Hospital and its Facilities and with other participants in a spirit of teamwork and cooperation. To the extent not done prior to the Effective Date of this Agreement, Physician must attend and complete the general orientation session given by Hospital about Hospital's hospital facilities and its policies, procedures, rules and regulations.

(k) Physician shall at all times abide by the Hospital's Code of Conduct and Ethics, attached hereto as Exhibit A and incorporated by this reference, and the Hospital's Compliance Program, including participation in any relevant compliance training as may be requested by the Hospital.

(l) Physician shall comply with the applicable laws and regulations that govern healthcare providers, including without limitation the Patient Ethics and Self Referral laws and the Anti-kickback Statute and the implementing regulations.

2.4 Representations, Warranties, and Covenants. To induce the Hospital to

enter into this Agreement, Physician represents and warrants to and covenants with the Hospital as follows:

(a) Physician is fully authorized to practice medicine in the State of Georgia and holds all appropriate licenses from the Georgia Board of Medical Examiners. No license heretofore granted to Physician to practice medicine in any other jurisdiction has been suspended, surrendered, restricted, reduced, revoked or terminated.

(b) Physician has completed full training in an accredited residency program in the Specialty and is board certified in the Specialty. If Physician is not board certified, Physician is board eligible and in active pursuit of board certification.

(c) As of the Effective Date, Physician has reported to Hospital in writing any and all existing formal claims, demands or suits alleging professional negligence.

(d) No medical staff or similar privileges granted to Physician by any hospital or similar institution have been denied, suspended, revoked, curtailed, reduced or limited in any manner, nor has Physician resigned or voluntarily reduced or limited any such privileges in response to or subsequent to any investigation or disciplinary action instituted with respect to his/her care of patients.

(e) Physician has, and during the term of this Agreement shall maintain, a current narcotic number issued by the DEA. No DEA or similar number held by Physician has ever been denied, suspended, restricted, limited, surrendered, cancelled or revoked by any state or federal agency.

(f) Physician is a participating provider under the Medicare and Medicaid programs as well as all other third party payor contracts with the hospital, and during the term of this Agreement, shall maintain rights to participate in the Medicare, Medicaid, and any other governmental healthcare program or third party payor contracts as may be required to enable Physician to perform the Services hereunder.

2.5 Reporting. Physician shall promptly inform Hospital in writing of the occurrence of any of the following:

(a) Physician's license to practice medicine in Georgia or in any other jurisdiction, or DEA registration, expires or is restricted, limited, suspended, terminated or revoked;

(b) Physician's board certification in the specialty is restricted, limited, suspended, terminated or revoked;

(c) Physician's clinical privileges at any other hospital or health care facility are restricted, limited, suspended, terminated or revoked, or are voluntarily relinquished pending investigation;

(d) Physician is named as the target or subject of any investigation relating to allegations of fraud, abuse, or other violations of state or federal health care laws;

(e) Physician has been suspended, excluded, barred or terminated from participation in Medicare, Medicaid, or any other state or federal health care program, or otherwise restricted, limited or sanctioned by any such programs, or convicted of a criminal offense related to health care. Physician shall notify Hospital promptly if any such action is proposed to be or is taken against Physician;

(f) Physician receives a formal claim or demand alleging professional negligence, or a complaint is filed against Physician or Physicians employer in any case involving an allegation of professional negligence, or a settlement is entered into by or a judgment is entered against Physician or Physician's employer in any case involving an allegation of professional negligence on the part of Physician. Physician will from time to time provide Hospital with information about such claims, demands or suits as it may request;

(g) Physician is terminated or denied participation in any third-party payer program; and

(h) Physician fails at any time to meet any other standards set out in Sections 2.1, 2.2 or 2.3 of this Agreement.

2.6 Peer Review Quality Assurance/Quality Improvement ("QA/QI") Activities. The quality of care of patients and rendition of Services shall be subject to review in accordance with all peer review and complaint procedures in effect from time to time at Hospital pursuant to the Medical Staff Bylaws and Rules and Regulations of Hospital. Physician shall (a) support and participate in Hospital Medical Staff utilization review, quality assurance, quality improvement, peer review, clinical protocol and guideline development and implementation, and similar programs and committees; and (b) shall be responsible for all quality assurance as it relates to Physician, the Services and the Programs provided hereunder. Physician shall communicate with and work cooperatively with the appropriate QA/QI Committee of Hospital, and shall communicate results of quality assurance activities to Hospital as required by Hospital's QA/QI Policies and Procedures, Medical Staff Bylaws, and Rules and Regulations of the Medical Staff. Physician shall also participate in the quality reporting initiatives established by the Centers for Medicare and Medicaid Services.

2.7 Insurance. Physician shall obtain and maintain throughout the remainder of the term of this Agreement professional liability insurance covering Physician in an amount of

not less than One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) annual aggregate, or such other reasonable amount as may be agreed upon by the Parties hereto or required from time to time by Hospital to maintain medical staff membership at Hospital facilities. Upon obtaining such insurance, Physician shall deliver to Hospital a certificate of insurance reflecting the existence of the required insurance coverage. Physician shall provide at least thirty (30) days advance written notice to Hospital before any insurance coverage required herein to be obtained by Physician is cancelled or modified.

2.8 Confidentiality. Physician acknowledges that Hospital considers confidential information that will be made available to Physician for purposes of performing the Services under this Agreement, and, expects that Physician shall not, without the prior written consent of the Hospital, disclose the confidential information as defined by this Agreement and the applicable Georgia laws and regulations. Physician shall comply with the following obligations:

(a) Physician shall not: (a) use, disclose, or reverse engineer the Trade Secrets as defined by Georgia Law and as set forth below or the Confidential Information, as defined below, for any purpose other than to provide the Services under this Agreement, provided the disclosure of patient information pursuant to the explicit written direction of the patient who is the subject of such information shall not be a breach of this covenant provided that such disclosure complies with applicable law and Hospital policies and procedures; (b) upon the termination of this Agreement for any reason, (i) retain Trade Secrets or Confidential Information, including any copies existing in any form (including electronic form) which are in Physician's possession, custody, or control, or (ii) destroy, delete, or alter the Trade Secrets or Confidential Information without Hospital's prior written consent.

"Confidential Information" means (i) information of Hospital, to the extent not considered a trade secret under applicable law, that (a) relates to the business of Hospital, (b) possesses an element of value to Hospital, (c) is not generally known to Hospital's competitors, and (d) would damage Hospital if disclosed, and (ii) information of any third party provided to Hospital which Hospital is obligated to treat as confidential, including, but not limited to, information provided to Hospital by its licensors, suppliers, patients, referral sources, customers, or clients. Confidential Information includes, but is not limited to, (i) future business plans, (ii) the composition, description, schematic or design of products, future products or equipment of Hospital or any third party, (iii) communication systems, audio systems, system designs and related documentation, (iv) advertising or marketing plans, (v) information regarding independent contractors, employees, clients, licensors, suppliers, customers, patients, referral sources, or any third party, including, but not limited to, patient lists compiled by Hospital and patient information, (vi) information concerning Hospital's or a third party's financial structure and methods and procedures of operation, (vii) information pertaining to agreements with third-party payers, (viii) patient charts or records, including, but not limited to, test results and reports, nurses notes, operative notes, diagnoses or treatment plans, (ix) contracts with any payer or payee of medical services, and (x) contracts with preferred provider organizations, health maintenance organizations or any other managed care entities or arrangements. Confidential Information shall not include any information that (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure, (ii) has been independently developed and disclosed by others without violating this Agreement or the legal rights of any party, or (iii)

otherwise enters the public domain through lawful means.

"Trade Secrets" means information of the Hospital, and its licensors, suppliers, clients, and customers, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, strategic plans, a list of actual customers, clients, licensors, or suppliers, or a list of potential customers, clients, licensors, or suppliers which is not commonly known by or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy

(b) Confidential Information consisting of patient medical records and patient information shall be used by Physician solely for the purposes of providing Services hereunder. Physician shall maintain the confidentiality of such records and information in accordance with this Agreement and applicable laws and regulations, and shall enter into such agreements with Hospital as may be required by Hospital in connection with applicable laws and regulations, including without limitation, the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH), and regulations adopted pursuant thereto. Physician agrees to comply with the Hospital policies and procedures related to privacy, security and confidentiality protections of patient information.

(c) Confidential Information related to peer review, utilization review and quality assurance or performance improvement programs shall remain confidential and shall not be disclosed to any third party. Such information shall remain privileged and Physician shall not use or disclose such information without the prior written consent of Hospital. Physician acknowledges such privilege protections shall be held by the Hospital.

(d) The obligations under this Section 2.8 shall apply (a) with regard to the Trade Secrets, remain in effect as long as the information constitutes a trade secret under applicable law; and (b) with regard to the Confidential Information, provided under this Agreement, remain in effect for so long as the Confidential Information is considered Confidential Information under Georgia laws. The confidentiality, property, and proprietary rights protections available in this Agreement are in addition to, and not exclusive of, any and all other rights to which Hospital is entitled under federal and state law, including, but not limited to, rights provided under copyright laws, trade secret and confidential information laws, privilege protections and laws concerning fiduciary duties.

(e) Section 2.8 shall survive the expiration or termination of this Agreement.

3. Hospital Obligations. The Hospital shall provide at its expense adequate physical facilities, equipment, supplies, and non-physician personnel as it deems necessary to enable Physician to perform the Services under this Agreement at the Facility. All equipment and supplies furnished by the Hospital shall remain the property of the Hospital. Physician shall

immediately notify Hospital either in person or by telephone followed by a written report, of any defect, malfunction or other deficiency of equipment used in connection with the Services. Facilities, equipment, supplies and personnel provided by the Hospital shall be used by Physician only in connection with the performance of duties hereunder involving patients of the Facility.

4. Term of the Agreement. The term of this Agreement shall be for one (1) year ("Initial Term") commencing on the Effective Date, unless earlier terminated as provided in this Agreement and shall automatically renew for successive one (1) year terms ("Renewal Term(s)) following the expiration of the Initial Term or Renewal Term, as applicable, unless either party provides at least thirty (30) days written notice prior to the expiration of the then current term of its intent not to renew the Agreement.

5. Termination of the Agreement.

5.1 Termination by Notice. Either Party may terminate this Agreement upon thirty (30) days' prior written notice to each other Party.

5.2 Termination by Agreement. In the event that the Parties shall mutually agree in writing, this Agreement may be terminated on the terms and date specified and mutually agreed upon by the parties.

5.3 Termination on Notice of Default. The Hospital may terminate this Agreement upon a material breach of or default under this Agreement by Physician if the Hospital has served upon Physician written notice describing the claimed breach or default and giving notice of termination under this Section 5.3, and the breach or default is not cured within thirty (30) days after such written notice is given. Physician may terminate this Agreement upon a material breach of or default under the Agreement by the Hospital if Physician has served upon the Hospital written notice describing the claimed breach or default by the Hospital and giving notice of termination under this Section 5.3, and the breach or default is not cured within thirty (30) days after such written notice is given.

5.4. Additional Grounds for Termination by the Hospital. The Hospital may, in its sole discretion, terminate this Agreement for cause immediately upon written notice to Physician. For the purposes of this Agreement, a "cause" giving rise to Hospital's right to terminate this Agreement shall include, but not be limited to, any of the following events:

(a) Any failure of Physician to be approved for and appointed to or reappointed to the Medical Staff of Hospital or to exercise Specialty privileges by the Hospital's Board of Trustees, or any failure of Physician to meet and maintain compliance with the requirements of such medical staff membership, or any termination, suspension, expiration, restriction, limitation, or material reduction of Physician's medical staff membership or clinical privileges at Hospital, or any of the Hospital's facilities.

(b) Failure of Physician to become licensed to practice medicine in the State of Georgia or to meet and maintain compliance with the requirements of

applicable State of Georgia licensing and certification requirements.

- (c) Failure of Physician to maintain board certification in the specialty.
- (d) The expiration, revocation, suspension, restriction, curtailment or limitation of the DEA registration of Physician.
- (e) The suspension, exclusion or debarment of Physician from any of the Medicare, Medicaid, or other third party payor health care programs.
- (f) Any representation or warranty in this Agreement with respect to Physician is false in any material respect.
- (g) The death of Physician.
- (h) Any inability of Physician to perform full time medical practice by reason of disability, if such disability continues for a period of sixty (60) continuous days. In the event Physician is disabled for less than sixty (60) continuous days and then returns to full time medical practice under the terms of this Agreement, but is unable to continue a full time practice after such return for a period of sixty (60) continuous days and is again disabled, then such days of disability or disabilities will be added together and the total deemed to be a period of continuous disability.
- (i) Failure of Physician to maintain and uphold the medical standards and ethics as provided for and referred to herein and the Rules and Regulations and Bylaws of the Medical Staff of the Hospital.
- (j) Any intentional or negligent act or omission by Physician that materially injures or may injure the reputation or interests of the Hospital.
- (k) An act of fraud or theft by Physician, or the conviction of Physician of any felony or any crime involving moral turpitude or any crime relating to health care.
- (l) Any failure of Physician to comply with Section 2.7 or Section 2.8 of this Agreement.

The provisions of this Section 5.4 shall not be construed to modify or limit any provision in Sections 5.1 through 5.6 of this Agreement and other provisions of this Agreement regarding termination, which shall be applicable at all times.

5.5 Third Party Reimbursement Changes. Subject to Sections 5.6 and 5.7 below, the Parties agree that in the event there should be a material change in the present structure of third party reimbursement for services (Medicare, Medicaid, managed care organizations, other private payors, and the like), which would require the Parties to restructure

this service arrangement or which would so materially affect either or all of the Parties hereto that continued performance by either party under this Agreement shall become impossible or intolerable, then, in such instance, the Parties shall cooperate and renegotiate this Agreement in good faith and in such a manner that the essence of the Agreement is maintained to the greatest extent possible. Renegotiation of the terms of this Agreement shall commence promptly after either Party gives written notice to the other Party of such change in third party reimbursement. Immediately upon the giving of such notice, the Parties shall suspend performance of all noncomplying (in the opinion of the Party giving such notice) obligations hereunder pending renegotiation of this Agreement. If the Parties are unable to renegotiate this Agreement within thirty (30) days after the date of such notice, then either Party may by written notice to the other Party immediately terminate this Agreement.

5.6 Compliance With Law, Legislative or Administrative Change. The Parties hereby acknowledge and agree that:

(a) There is no requirement that Physician or Physician's employer make any referrals to, or be in a position to make or influence referrals to, or otherwise generate business for, Hospital, the Facility or other Hospital facilities as a condition for entering into and performing under this Agreement. There is no requirement that the Hospital, the Facility or any Hospital facilities make any referrals to, or be in a position to make or influence referrals to, or otherwise generate business for, Physician or Physician's employer as a condition for entering into and performing under this Agreement.

(b) Physician is not restricted from establishing staff privileges at any other health facility.

(c) The amount or value of the benefits provided to Physician hereunder shall not vary based on the value or volume of any referrals between Physician and the Hospital, the Facility or any other Hospital facility, or based on any business otherwise generated by Physician or Physician's employer for the Hospital, the Facility or any Hospital facilities.

(d) It is the intent of the parties that this Agreement comply with existing federal, state, and local law, including without limitation the Ethics in Patient Referrals Act and the Medicare Anti-Kickback statute, as well as various rules, administrative rulings and procedures, laws and ordinances, statutes and regulations, and interpretations thereof, relating to the Hospital's obligations to the hospital authority under applicable state law. It is also the intent of the Parties that this Agreement shall satisfy relevant exceptions set forth in the Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn and accompanying regulations (42 CFR Part 411), and, to the extent possible, safe harbor provisions published at 42 C.F.R. § 1001.952 pursuant to the Medicare Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, as amended from time to time and interpretations of the foregoing. Accordingly, if any Party determines in good faith that this Agreement fails to comply with such laws and regulations or other federal or state legislative or

administrative regulations, or interpretations thereof, then such Party may, immediately upon written notice to each other Party specifying the grounds therefore, suspend performance of all non-complying obligations under this Agreement (including but not limited to any obligation to pay the compensation set forth in Schedule II below). Immediately thereafter, the Parties shall confer in good faith and attempt to modify this Agreement to comply with applicable law, and performance of all non-complying obligations hereunder shall be suspended until such modifications have been completed. If the Parties cannot promptly agree that a modification is necessary to comply with applicable law or satisfy relevant safe harbors and exceptions, or if the Parties cannot promptly agree upon the terms of such a modification, then any Party may immediately terminate this Agreement upon written notice to each other Party.

5.7 Financial Arrangements Following Termination. Should any Party terminate this Agreement before the expiration of its term, Hospital on the one hand, and Physician, on the other hand, shall not enter into any financial arrangement for the Services covered by this Agreement until the expiration of the initial twelve (12) months commencing with the Effective Date in compliance with the terms of 42 U.S.C. § 1395nn et sec and regulations adopted pursuant thereto, and 42 U.S.C. § 1320a-7b(b) and regulations adopted pursuant thereto.

6. Compensation.

6.1 Payment for Services; Documentation of Services. For the Services provided under this Agreement at the Facility, The Hospital will pay Physician the sum set out in Schedule II to this Agreement, at the time specified in Schedule II and conditioned upon the documentation and other terms set out in Schedule II and Schedule III to this Agreement, all of which are incorporated into this Agreement by reference.

6.2 Fair Market Value. Hospital and Physician stipulate that the compensation set forth in Section 6.1, reflects fair market value for the Services and has not been determined based on the volume or value of referrals among the Parties or other business generated among the Parties. The Hospital has considered (i) its high level of uncompensated care patients that present to the Emergency Room; (ii) the severity of the illnesses that are encountered in the Emergency Room; (iii) the likelihood of having to respond to call when providing call coverage for the Emergency Room; (iv) the likelihood of having to respond to a request for inpatient consultative services for an uninsured patient when on call; and (v) the degree of inpatient care typically required of the specialty for patients that initially present at the Emergency Department. The parties further agree to evaluate the fair market value compensation for the Services described herein each year at least thirty (30) days prior to the expiration of each Contract Year, as defined below, to confirm that the compensation arrangement conforms to fair market value standards. Contract Year means twelve (12) consecutive months commencing with the date last written with the signatures at the end of this Agreement.

6.3 Billings. All professional fee billings and collections from any payor for

professional clinical services provided under this Agreement shall be the property of Physician. Hospital shall not be responsible for billing or processing any Physician claims for professional services. Physician shall not separately bill patients or any third party payors or other parties for any technical or facility based services provided to Hospital patients under this Agreement. Charges for the professional component of services or procedures performed by Physician shall be fair, reasonable and competitive with fees charged for similar professional services by private physicians practicing the Specialty in Hospital's Service Area. Charges for equipment, supplies, services of non-physician Hospital personnel, and other Hospital provided goods or services shall be established by Hospital and collections from such charges shall be the property of Hospital. Physician and Hospital shall each cooperate with the other as requested in the completion of any necessary forms for third-party reimbursement and in billing for their respective items and services in compliance with statutes, rules, and procedures applicable to the responsible payors. The parties shall review this Agreement, the patient mix and the volume of pulmonology calls on an annual basis to determine if the consideration and structure of this arrangement shall be modified prospectively to ensure compliance with applicable laws.

6.4 Tax Withholdings. Hospital shall not withhold or in any way shall not be responsible for payment or withholding of any federal, state, or local income taxes, unemployment compensation, or workers compensation for Physician. Physician shall be responsible for payment of any and all taxes owed in connection with the payment received by Physician under this Agreement. If it is determined by any state or federal taxing authority that Physician should have been treated as an employee of the Hospital for tax purposes, then Physician hereby agrees to be responsible for and to reimburse the Hospital for any and all said taxes and for any related penalties claims, losses, damages, costs, expenses, assessments, deficiencies or interest that may arise or accrue in connection therewith. This Section 6.4 shall survive the expiration or termination of this Agreement.

7. Relationship of the Parties.

7.1. Independent Contractor. Physician, on the one hand, and the Hospital on the other hand, shall be independent, one from the other. In the performance of the Services under this Agreement, Physician is an independent contractor, and not an employee or agent of Hospital or Facility. This Agreement sets forth results to be achieved by Physician and standards to be satisfied by Physician, but does not create the relationship of an employer and employee. Physician shall not hold himself out to be or represent to anyone that Physician is an employee of the Hospital or Facility or that Physician's relationship to them is other than independent contractor. Physician recognizes and agrees that because Physician is not an employee of Hospital or Facility, Physician will not participate in any pension plan or other benefit plan for employees or be entitled to any fringe benefits of employees of Hospital or Facility.

7.2. Performance Standards. Physician shall exercise professional judgment in performance of those duties which Physician has undertaken herein and shall exercise those duties to promote the interest of Hospital's and Facility's patients, as applicable. Any provision of this Agreement to the contrary notwithstanding, the Hospital and Facility, as applicable, shall neither have nor exercise any control or direction over the methods or means by which Physician performs the Services contemplated herein; the sole interest of Hospital and Facility is to ensure

that the Services to be performed hereunder are performed in a competent, efficient, and satisfactory manner. Physician shall exercise Physician's best medical judgment freely and completely, within the framework of applicable standards of care, the Medical Staff Bylaws and Rules and Regulations of the Medical Staff of Hospital, and state and federal laws governing the treatment and admission of patients.

7.3 Remuneration to Referral Source. This Agreement will impose no restriction upon the right of Physician to establish staff privileges at or refer and admit patients to any other health care facility.

8. Access to Records. Physician shall, until the expiration of four (4) years after furnishing Services pursuant to this Agreement, make available, upon written request by the Secretary of the Program of Health and Human Services, or upon request by the United States Comptroller General, or any of their duly authorized representatives, this Agreement, and books, documents and records of Physician that are necessary to certify the nature and extent of costs under this arrangement. Furthermore, if Physician carries out any of the duties of this Agreement through a subcontract, the value or cost of which is ten thousand dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary of Health and Human Services, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

9. Indemnification.

9.1 Physician. Physician shall defend, indemnify, and hold harmless the Hospital and its respective officers, trustees, directors, employees, and affiliates for any and all liabilities, claims, demands, obligations, costs, fees, expenses (including without limitation reasonable attorneys fees and expenses, and costs of litigation and settlement), fines, taxes, assessments, penalties and deficiencies which the Hospital may incur where such (i) arises out of or relate to Physician's performance of Services under this Agreement or other actions, omissions of Physician; or (ii) is incurred as a result of the negligence, malpractice, or breach of contract (including, without limitation, breach of this Agreement) of Physician.

9.2 Hospital. Hospital shall indemnify and hold Physician harmless from and against any claims, causes of action, demands or liabilities arising from any negligent act of Hospital in the performance of this Agreement; provided however, the indemnity of the Hospital is hereby expressly limited to the coverages, amounts, procedural requirements, and other limitations specified by any local, state, or federal law or regulation limiting the liability of the Hospital or its trustees, officers, employees, or agents, and this indemnity is expressly subject to the provisions of such laws, as such now exist or may hereafter be amended, revised, or interpreted. Hospital shall not be obligated for any amounts in excess of the limitations of liability provided in the Hospital self-insurance trust agreement, as that agreement now exists or may hereafter be amended or restated from time to time.

9.3 Survival. The provisions of Sections 9.1 and 9.2 shall survive the expiration or termination of this Agreement.

10. Other Reports. Physician shall, in accordance with Hospital policies, as applicable, cause to be promptly submitted to Hospital from time to time at the request of Hospital documentation of Services rendered pursuant to this Agreement. Additionally, Physician shall timely prepare and file such records, medical records, billing information, and additional and supplemental reports relating to Services and medical services rendered by Physician in the medium and format requested by Hospital and be prepared to analyze and interpret such reports upon the request of Hospital.

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Hospital and Physician and their respective successors and permitted assigns.

12. Assignment. This Agreement is not assignable by Physician, and Physician may not delegate responsibility for the performance of any Services, duties and obligations hereunder to any other person or entity without prior written approval from the Hospital.

13. Notice. Whenever under the terms of this Agreement, written notice is required or permitted to be given by a Party to each other Party, such notice shall be deemed to be sufficiently given upon delivery if personally delivered, or within three (3) business days after being deposited in the United States Mail in a properly stamped envelope, certified mail, return receipt requested, addressed to the party to whom it is to be given at the address set forth below:

If to Physician: At the address set out in Schedule IV to this Agreement.

If to the Hospital: At the address set out in Schedule IV to this Agreement.

A Party may change its address for purposes of this Agreement by giving notice of such change to each other Party in accordance with the provisions of this Section.

14. No Waiver. The waiver by a Party of an instance of breach or nonperformance of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach or nonperformance of such provision or of any other provision of this Agreement.

15. Governing Law. This Agreement shall be construed and enforced pursuant to the laws of the State of Georgia.

16. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of any such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, scope,

activity or subject, it shall be construed by limiting and reducing it, so as to be valid and enforceable to the extent compatible with the applicable law or the determination by a court of competent jurisdiction.

17. Entire Agreement. Other than those agreements as set forth on the Master List (as defined in Section 21), this Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements, negotiations, arrangements, writings, or other documents heretofore entered into by the Parties.

18. Amendments. No amendments or modification of the terms and conditions of this Agreement shall be valid unless made in writing and signed by each of the Parties.

19. Captions. The captions and other headings in this Agreement are inserted solely as a matter of convenience and for reference and shall not be used as a part of this Agreement or in construing this Agreement.

20. Expenses of Enforcement. Should it be necessary for a Party hereto to institute legal action, in a court of law or equity, to enforce any provision of this Agreement, the substantially prevailing party in such action shall be entitled to recover his/her or its, as applicable, expenses of litigation, including, without limitation, reasonable attorneys fees and expenses.

21. Other Agreements. In accordance with the terms of 42 CFR § 411.357(d)(1)(ii), the Hospital shall maintain a list of all separate arrangements entered into between the Hospital and Physician (the "Master List") in such a manner that preserves the historical record of any and all agreements between the parties. The Master List maintained by the Hospital shall be updated centrally and shall be available for review by the Secretary of the Department of Health and Human Services upon request.

22. No Third Party Beneficiaries. The parties acknowledge and agree that the terms, conditions and benefits of this Agreement are not intended to confer upon any third party and no third party shall have any rights, interest, or benefits under the terms of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, each of the Hospital has caused this Agreement to be executed by its duly authorized officers and its seal to be affixed, and Physician has executed, sealed, and delivered this Agreement.

HOSPITAL: HUTCHESON MEDICAL CENTER, INC. By: <u>Roger D. Forgy</u> Name: <u>Roger D. Forgy</u> Title: <u>President & CEO</u> Date: <u>2-18-13</u>	PHYSICIAN: By: <u>[Signature]</u> Name: <u>MICHAEL T. FRANKEL M.D.</u> Date: <u>2/10/13</u>
---	---

SCHEDULE I
SERVICES

Physician shall provide integrated and comprehensive pulmonology consultation call coverage on an as needed basis in shifts or hours as assigned by the Medical Director or his designee to ensure constant and continuous medical coverage necessary to make available such pulmonology consultative services to patients in need of such services. Such services shall be provided during those times when the Hospital lacks pulmonology call coverage and a mutually agreed upon schedule is established with the Hospital.

Physician shall be available to provide pulmonology consultation call coverage, including for inpatient consultations as well as emergency room and outpatient consultations during the Shift. Physician agrees to report on site to the Facility to provide such care upon request or as determined medically necessary by the Physician during the Shift.

Physician shall assist in development of new programs and services at the reasonable request of Hospital and attend committee meetings as reasonably necessary to ensure appropriate provision of clinical services at Hospital. Physician shall also assist with ongoing staff education at Hospital by participating in weekly grand rounds to maintain and improve quality medical care and competence of Hospital support staff.

At all times Physician is providing services to Hospital under this Agreement, Physician agrees to abide by Hospital's Code of Conduct, Behavioral Standards, and Medical Staff Bylaws and act in a manner consistent with Hospital's stated mission, vision and values statements.

Physician will provide consultations to patients and admit such patients to an acute care unit as necessary.

Physician will coordinate medical services and activities with the attending physician and the assigned case manager that promote best practice as measured by improved patient outcomes and increased efficiency.

Physician will provide a history and physical or written consultation on all patients within twelve (12) hours of admission and comply with the TJC standards, Medical Staff Rules and Regulations and applicable laws related to the timely documentation of medical records and clinical information.

Physician will provide prompt, discharge follow-up information to referring physician. Discharge summaries to be completed at the time of discharge and made available to referring physicians within 24 hours. If the patient has an ongoing relationship with a physician on the Medical Staff, the history and physical will be available within twelve (12) hours to share with such physician.

Physician will work with case managers and other hospital personnel to ensure proper chart documentation and coding on all patients.

Physician will work with the Director of Quality Improvement and other staff in developing more efficient patient care protocols and clinical pathways to address and support the quality initiatives and performance improvement processes, including the applicable data collection efforts.

Physician will respond to requests for consultations within thirty (30) minutes when he/she is scheduled to provide services. Physician shall report on site to the Facility when requested during such scheduled time.

Physician shall not engage in or maintain simultaneous call coverage obligations at other facilities during the scheduled time for Services under this Agreement.

Physician will collaborate with Quality Improvement/Clinical Outcomes Department to ensure all activities meet the highest level of accreditation compliance (such as Georgia Department of Community Health Regulations, CMS and TJC Standards).

Physician will work cooperatively and support Hospital's efforts to improve customer/patient satisfaction, including active participation in the complaint and grievance procedures at the Hospital.

Physician will perform and interpret necessary diagnostic tests and procedures as needed for hospital patients, for which the physician is qualified.

Physician will complete a health and physician assessment of all patients according to the TJC Hospital Standards or other regulatory agencies or review organizations.

All Physician notes will be in legible form if handwritten or will be dictated and will use approved terminology and abbreviations and within the information systems provided for use within the Hospital.

SCHEDULE II
PAYMENT FOR SERVICES

In consideration for coverage of Services as defined in Hospital's Medical Staff Bylaws, Medical Staff Rules and Regulations and this Agreement, Hospital will pay for Services rendered at a rate of Eight Hundred and no/dollars (\$800.00) per twenty-four (24) hour shift period scheduled by Hospital when the Physician shall provide the call coverage obligations described herein. Compensation for Services is contingent on Physician's responsiveness to Hospital calls within thirty (30) minutes as specified in Hospital's Medical Staff Bylaws and Medical Staff Rules and Regulations. Further, compensation for Services requires that Physician is not simultaneously on-call at another medical facility to ensure appropriate response time as defined above.

Physician shall submit an invoice for the Services rendered in the form described on Schedule III to the Chief Financial Officer by the 15th day of the calendar month. Provided the invoice is received and approved, such compensation shall be payable before the end of a calendar month for Services rendered during the immediately preceding calendar month. Prior to and as a condition for receiving monthly payment hereunder, Physician shall furnish reasonably contemporaneous written time records, signed and certified as accurate by Physician, that document for each day during the immediately preceding month the hours worked by Physician and the Services provided each day, all in a form approved by Hospital (a sample of which is attached as Schedule III to this Agreement). Such time records shall be submitted to Hospital no later than the 15th day of the calendar month for Services rendered during the immediately preceding calendar month. No payment under this Agreement shall be used for any purpose other than Physician's compensation for the Services provided hereunder and shall not otherwise inure to the benefit of any other person or entity.

The parties further agree to evaluate the fair market value compensation for the Services described herein each year at least thirty (30) days prior to the expiration of each Contract Year, as defined below, to confirm that the compensation arrangement conforms to fair market value standards. Contract Year means twelve (12) consecutive months commencing with the date last written with the signatures at the end of this Agreement.

EXHIBIT B

MEDICAL DIRECTOR AGREEMENT

This **MEDICAL DIRECTOR AGREEMENT** (the "Agreement") entered on February 18, 2013, to be effective on March 19, 2013 ("Effective Date"), by and between **HUTCHESON MEDICAL CENTER, INC.**, hereinafter referred to as ("HMC") and **MICHAEL CZARNECKI, M.D.** hereinafter referred to as ("Physician").

WITNESSETH:

WHEREAS, HMC is an acute care facility which operates a pulmonary medicine department ("Department") that requires physician and medical director services; and

WHEREAS, Physician is qualified to provide and furnish certain medical management, medical administration and clinical administrative services for the Department; and

WHEREAS, the Hospital, in order to carry out its objective to provide quality pulmonary medicine services to the community, desires to avail itself of the medical management and clinical administrative services of Physician and to engage Physician to provide clinical management and administration services related to the Department; and

WHEREAS, Physician desires to provide such services to the Hospital.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, it is understood and agreed by the parties hereto as follows:

1. **APPOINTMENT.** Hospital hereby designates and appoints Physician to serve as the Medical Director of the Department for the Hospital. Physician hereby accepts such appointment in accordance with the terms and conditions set forth herein.

2. **RESPONSIBILITIES OF PHYSICIAN.**

(a) **Performance of Services.** Physician shall perform such services as are appropriate to the position of Medical Director of the Department, including, but not limited to, the services described in Exhibit "A" (the "Services"). In supplying and performing the Services, Physician represents and covenants that he/she shall perform such Services faithfully, diligently and to the best of Physician's ability, and in such manner as is customarily performed by one holding a principal medical administrative oversight position in a similar medical or healthcare facility. Physician represents and warrants that neither execution and delivery of this Agreement, nor the rendering of Services by Physician hereunder violates any other contract or agreement to which Physician is a party or by which Physician is bound or which would preclude Physician from performing the Services required by him/her hereunder. Physician shall perform his/her duties hereunder in accordance with the bylaws, rules and regulations of the Hospital and of the medical staff of the Hospital (the "Medical Staff").

(b) **Compliance with Applicable Statutes, Laws, Rules and Regulations:**

(i) General. Physician agrees that he/she shall comply with all applicable federal, state, and local laws, rules, all policies, rules, and regulations that Hospital has adopted or may adopt from time to time, including, but not limited to, those related to enforcement of any regulatory compliance; the medical staff bylaws of Hospital; and the applicable standards of The Joint Commission.

(ii) Access to Records. Upon the written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, either party hereto will make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available up to four (4) years after the rendering of such services. If Physician carries out any of the duties of this Agreement through a subcontract with a value of Ten Thousand and No/100 Dollars (\$10,000) or more over a twelve (12) month period with a related individual or organization, Physician agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Sec. 1395x(v)(1) and the regulations promulgated thereunder. If Physician is requested to disclose any books, documents, or records relevant to this Agreement for the purpose of an audit or investigation relating directly the provision of services under this Agreement (e.g., a governmental investigation of billing practices or services provided to Hospital patients), Physician shall notify Hospital of the nature and scope of such request and shall make available to Hospital, upon written request, all such books, documents, or records.

(iii) Regulatory Compliance. It is the intention of the parties hereto that this Agreement and the arrangements described herein are and shall at all times be conducted in compliance with all applicable statutes, rules, regulations and requirements of all federal, state and local commissions, boards, bureaus, and agencies having jurisdiction over the Hospital and the operations of the Hospital, including, but not limited to, the false claims, false representations, anti-kickback and other provisions of the Medicare/Medicaid fraud and abuse laws (42 U.S.C. § 1320a-7(b), et seq.) and the physician self-referral provisions of the federal Stark II statute (42 U.S.C. § 1395nn). In the event that the Hospital determines at any time, in its reasonable discretion, that this Agreement or the arrangement described herein may potentially violate any healthcare statute, law, rule or regulation, as any of the foregoing are interpreted and/or enforced by any state or federal regulatory or enforcement agency, department, division or office, then Hospital shall immediately notify Physician of such potential illegality, and recommend reasonable amendments to this Agreement to bring the Agreement and the arrangements described herein into compliance with any such laws. In the event the Hospital and Physician are unable or unwilling to agree on modifications proposed by the Hospital, then the Agreement may be immediately terminated by the Hospital.

(iv) The Hospital and Physician each acknowledge their obligations under the Privacy Regulations and the Security Regulations promulgated pursuant

to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and agree to comply with the obligations set forth in the Business Associate Agreement, attached hereto as Exhibit "B" and incorporated by this reference.

3. FEE. In consideration for the Services rendered by Physician pursuant to this Agreement, Hospital shall pay Physician a fee in the amount of One Hundred Thirty-Seven and 50/100 Dollars (\$137.50) per hour (the "Fee") . Hospital and Physician acknowledge that the Hospital has set the Fee with the understanding that the cap on this Fee is Sixteen Thousand and Five Hundred Dollars (\$16,500) per year for the performance of Services hereunder. Physician and Hospital acknowledge and agree that such Fee represents, to the best of their knowledge and belief, a fair market value fee for the Services to be provided by Physician hereunder. Physician shall submit monthly time sheets, in the form of the time sheet attached hereto as Exhibit "C", on or about the first day of the month following the month in which Services are rendered. Hospital shall pay the Fee due to Physician hereunder not later than fifteen days after receipt and approval by Hospital of the invoice and accompanying time sheets from Physician.

4. INDEPENDENT CONTRACTOR. Hospital and Physician acknowledge and agree that, in performing the Services herein specified, Physician is acting as an independent contractor. In no event shall this Agreement be construed to create an employer/employee relationship, a partnership, joint venture or similar relationship or a principal/agent relationship between the parties hereto. Physician agrees that he/she shall be solely responsible for the payment of all such wages, taxes, withholdings, fees, fringe benefits, and contributions to insurance, pension, workers' compensation, or other withholding or benefit pursuant to any law or regulation.

5. INDEMNIFICATION. Physician agrees to indemnify and hold harmless Hospital and any of Hospital's parent, affiliates, subsidiaries or related entities, and the shareholders, members, directors, managers, officers, employees and agents of each of them (collectively, the "Hospital Indemnified Parties"), from and against any and all claims, demands, causes of action, losses, costs, and liabilities, including reasonable attorney's fees, incurred by the Hospital Indemnified Parties, or any of them, in defending or compromising actions brought against any of them arising out of or related to (i) the provision of Services or the performance of duties by Physician in his/her private medical practice or pursuant to this Agreement, including, but not limited to, claims for personal injury and professional malpractice, and (ii) breach by Physician of any of Physician's representations, warranties, covenants, or obligations hereunder.

6. INSURANCE. Physician shall obtain and shall maintain at all times during the term of this Agreement, at his/her sole expense, professional liability insurance in the minimum amounts as specified in the medical staff bylaws of the Hospital's Medical Staff.

7. REQUIRED DISCLOSURES. Physician hereby represents and warrants that each of the following are true and correct as of the date hereof, and Physician covenants that each of the following shall remain true and correct at all times during the term of this Agreement:

(a) Physician is a member in good standing of the active Medical Staff of Hospital, and Physician's membership on the Medical Staff of Hospital, or of any other hospital,

has never been revoked, suspended, not renewed, terminated, conditioned or limited in any way, and Physician has never voluntarily resigned from the medical staff of any hospital or voluntarily relinquished his/her clinical privileges at any hospital in order to avoid the commencement or prosecution of an adverse action against Physician under any such medical staff bylaws; and

(b) Physician has never been excluded from participation in the federal Medicare or any state Medicaid program; been convicted of a violation of the federal Anti-Kickback Statute, a federal anti-fraud statute or any other federal or state criminal healthcare law; or been held civilly liable for breach of the federal False Claims Act, Stark II statute, or a federal or state civil health care law or statute, or settled allegations that Physician had violated any of the foregoing laws or statutes.

8. TERM. The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall continue for twelve (12) executive months following the Effective Date. This Agreement shall automatically renew at the end of the Initial Term, and at the end of each renewal term, for successive terms of one (1) year each, unless either Hospital or Physician elect not to renew this Agreement by giving the other party written notice of such non-renewal not less than thirty (30) days prior to the end of the then-current term. The parties agree that, if this Agreement is terminated for any reason during the Initial Term, the parties will not enter into an agreement or arrangement pursuant to which Physician will provide the same or substantially similar services to the Services provided hereunder until such time as the Initial Term would have expired.

9. TERMINATION.

(a) Either party may terminate this Agreement at any time without cause by giving the other party not less than thirty (30) days prior written notice of such termination.

(b) Either party may terminate this Agreement upon the occurrence of either of the following events:

(i) Breach by the other party of any material provision of this Agreement, which breach is not cured by the breaching party within five (5) days of receipt of written notice of breach by the breaching party, specifying such violation with particularity;

(ii) Adjudication of the other party as a bankrupt, liquidation of the other party for any purpose, or appointment of a receiver to take charge of the other party's affairs, provided each appointment remains undischarged for sixty (60) days.

(c) Hospital may terminate this Agreement immediately upon written notice to Physician upon the occurrence of any of the following events:

(i) Any of the representations, warranties or covenants of Physician set forth in Section 7, above, becomes false or misleading;

(ii) The death of Physician;

(iii) Conduct which affects the quality of professional care provided to patients or the performance of duties required hereunder and which would, in fair and reasonable judgment of Hospital, be deemed prejudicial to the best interest and welfare of the Hospital and/or its patients; or

(iv) Breach of the confidentiality provisions of Paragraph 10 hereof.

(d) As of the date of termination, except as otherwise expressly provided herein, Hospital shall be released from any responsibility or obligations hereunder except that Physician shall be paid all sums due under this Agreement up to the date of such termination.

10. CONFIDENTIALITY. During the Term, and upon the termination or expiration of this Agreement, the Physician (1) shall hold the Confidential Information and Trade Secrets (as both terms are defined below) in strictest confidence and trust, and (2) shall take all reasonable steps to protect the Confidential Information and Trade Secrets from disclosure and shall in no event take any action causing, or fail to take the action necessary, and within the control of the Physician, in order to prevent the disclosure any Confidential Information or Trade Secrets, and (3) shall not, directly or indirectly, without the prior written permission of the Hospital, use, duplicate, reproduce, distribute, disclose or otherwise disseminate, divulge or disclose the Confidential Information or Trade Secrets. If any disclosure of the Confidential Information or Trade Secrets is required of the Physician by judicial or administrative process, then the Physician shall provide the Hospital with prompt notice so that the Hospital may seek a protective order or other appropriate remedy and/or waive compliance with this Agreement and shall take reasonable steps, or not oppose reasonable steps taken by the Hospital, to protect and maintain the confidentiality of the Confidential Information or Trade Secrets, as the case may be. The Physician's nondisclosure and confidentiality obligations set forth in this paragraph shall remain in effect for so long as the owner of the Trade Secrets or Confidential Information is entitled to protection of its rights in such Trade Secrets or Confidential Information under Georgia law..

For purposes of this Agreement, the term "Confidential Information" shall mean any and all data and information relating to Hospital's business (a) of which Physician became aware as a consequence of the services provided under this Agreement or any other arrangement or relationship with the Hospital; (b) which has value to the Hospital and is not generally known to its competitors; and (c) which is treated by the Hospital as confidential (whether or not such material or information is marked "confidential"). "Trade Secrets" shall mean the whole or any portion of scientific or technical information, design, process, procedure, formula or improvement which is secret and of value to Hospital, and may include, but is not limited to, Confidential Information.

11. ENTIRE AGREEMENT; MODIFICATION. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended, altered or modified except by mutual

written agreement. All continuing covenants, duties and obligations herein shall survive the expiration or earlier termination of this Agreement.

12. SEVERABILITY. In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such unenforceable or invalid provision.

13. NO WAIVER. Any failure of a party to enforce that party's rights under any provision of this Agreement shall not be construed or act as a waiver of said party's subsequent right to enforce any of the provisions contained herein.

14. CHOICE OF LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

15. NOTICES. All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by Federal Express or Express Mail, and shall be deemed to have been duly given when delivered personally or when deposited in the United States Mail, postage prepaid, or then deposited with Federal Express, addressed at the address the Physician provides to the Medical Staff and if to the Hospital at 100 Gross Crescent Circle, Fort Oglethorpe, Georgia 30742, Attn: Administrator.

16. ASSIGNMENT: BINDING EFFECT. Physician may not assign or transfer any of his/her rights, duties, or obligations under this Agreement, in whole or in part, without prior written consent of Hospital. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed in duplicate by their proper representatives and have set their hands and seals hereto on the day and year first above written.

HUTCHESON MEDICAL CENTER, INC.

BY: Ross I. Tang

PHYSICIAN

BY: [Signature] *no* *1/2/88*

EXHIBIT "A"**MEDICAL DIRECTOR SERVICES**

1. Physician shall serve as the Medical Director for the Pulmonary Medicine Department ("Department").
2. Description of Services to be provided by Physician:
 - (a) Participating in the development of a system providing a plan of care for each patient which requires services from the Department.
 - (b) Reviewing all Hospital policies related to patient care at least annually.
 - (c) Reviewing all new patient care standards prior to their implementation.
 - (d) Providing liaison among the Medical Staff, Hospital and its staff, residents, attending physicians, and others, as needed, to assure effective coordination and implementation of the treatment plan.
 - (e) Advising the Chief Executive Officer of the Hospital as to the adequacy of the Services, equipment and support staff.
 - (f) Assisting in the development and implementation of the Hospital's marketing plan, including but not limited to, public relations, participating in community education, speaking engagements, and the establishment of specialty programs.
 - (g) Participating in the development and implementation of a continuous quality assessment and improvement program.
 - (h) Participating in establishing standards, policies, procedures and guidelines designed to meet the needs of the Hospital and assure the provision of adequate comprehensive services.
 - (i) Assisting in the development and coordination of, and participating in continuing education and in-service training programs for the Hospital's Medical Staff and other personnel.
 - (j) Attending monthly committee meetings and reviewing, as appropriate, minutes of those committee meetings.
 - (k) Reporting directly to, making relevant recommendations to, and receiving administrative direction from the Chief Executive Officer of the Hospital.