

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:

HUTCHESON MEDICAL CENTER, INC.

Debtor.

CHAPTER 11

CASE NO. 14-42863-pwb

**MOTION FOR PAYMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIM IN
THE AMOUNT OF \$46,066.83**

COMES NOW NHP-Parkway Physicians Center, LLC ("NHP"), pursuant to 11 U.S.C. § 503 and Rule 9013 of the Federal Rules of Bankruptcy Procedure, and moves the Court for the entry of an order directing Debtor, Hutcheson Medical Center, Inc. ("Debtor"), to immediately pay to NHP its allowed administrative claim in the amount of \$46,066.83 (the "Motion"). In support of this Motion NHP respectfully shows the Court as follows:

JURISDICTION

1.

The Court has jurisdiction with respect to this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

BACKGROUND

2.

Prior to and after the Petition Date, NHP leased certain office space to the Debtor in the Parkway Physicians Center, a medical office building owned by NHP and located at 4700 Battlefield Parkway, Ringgold, Georgia.

3.

The Debtor failed to timely pay postpetition rent due and owing to NHP under the leases. As a result, on March 4, 2015, NHP filed its Motion for Payment of Administrative Expense

Hutcheson Med POC



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[Docket No. 169] (the “Prior Motion”) seeking payment of unpaid postpetition rent due and owing under the leases.

4.

On the eve of the hearing on the Prior Motion, NHP and Debtor agreed to entry of a consent order that resolved the Prior Motion. The Court entered its consent Order on Motion for Payment of Administrative Expense on April 7, 2015 [Docket No. 197] (the “Order”). A true and correct copy of the Consent Order is attached hereto as “**Exhibit 1**”.

5.

Pursuant to the Order, the Court ordered that “NHP shall have an allowed, administrative expense claim pursuant to 11 U.S.C. § 503(b)(1) in the amount of \$101,066.83.” Despite its allowed administrative claim in the amount of \$101,066.83, NHP agreed to compromise its claim in a lower amount of \$75,000, provided, however, that the Debtor actually pay the claim in accordance with a six-payment payment schedule set forth in Paragraph 3 of the Order. Paragraph 5 of the Order states as follows:

In the event Hutcheson fails to timely make any of the payments set forth in Paragraph 3 of this Order, counsel to NHP shall provide counsel to Hutcheson with written notice of Hutcheson’s failure to timely make the payment If payment is not made within five days of receipt of such written notice, then the NHP Administrative Claim shall be extinguished. Instead, NHP shall retain an allowed administrative claim for the full amount of the NHP Administrative Claim (\$101,066.83) less any payments made by Hutcheson to NHP pursuant to Paragraph 3 of this Order.

6.

The Debtors made the first four payments set forth in Paragraph 3 of the Order, totaling \$55,000, but failed to make the 5th and 6th payments, each in the amount of \$10,000, due on or before July 31, 2015 and August 31, 2015, respectively.

7.

On August 19, 2015, counsel to NHP provided the written notice set forth in Paragraph 5 of the Order notifying the Debtor of its failure to make the required payment of \$10,000 required on or before July 31, 2015 (the "Notice"). The Notice provided as follows:

Notice is hereby given that Debtor has failed to make its payment of \$10,000.00 on or before July 31, 2015 as required by Paragraph 3 of the Order. Pursuant to Paragraph 5 of the Order, if payment is not made within five days of the date of this Notice, then the NHP Administrative Claim (as defined in the Order) shall not be extinguished, but shall be an allowed administrative claim for the full amount of the NHP Administrative Claim less any payments made by the Debtor under to Paragraph 3 of the Order.

A true and correct copy of the Notice is attached hereto as "**Exhibit 2**".

8.

The Debtors failed and refused to make the payment of \$10,000 within five days of the Notice. The Debtors also failed to make the payment of \$10,000 required on or before August 31, 2015. As a result, pursuant to the Order, NHP has an allowed administrative claim in the amount of \$46,066.83 (\$101,066.83 less the \$55,000 in payments made by the Debtor pursuant to the Order).

ARGUMENT

9.

NHP respectfully requests that the Court enter an order directing the Debtor to immediately pay to NHP its allowed administrative claim in the amount of \$46,066.83. The Order is clear: NHP was awarded an allowed administrative claim in the amount of \$101,066.83. NHP agreed to compromise the claim in the amount of \$75,000, subject to the Debtor actually paying the claim. The Debtor failed to pay the claim, NHP gave the notice required by the Order, and the Debtor failed to timely cure. As a result, NHP is once again required to file a Motion requesting that this Court order the Debtor to comply with its basic

obligation under the Bankruptcy Code to timely pay postpetition administrative claims as they come due.

10.

NHP notes that the Debtor is timely paying its attorneys on a monthly basis in this case. Attorneys' fees are administrative claims, just like NHP's claim. No provision of the Bankruptcy Code provides that administrative claims for professional fees are accorded higher priority than administrative claims for postpetition rent, or that administrative claims for professional fees should be paid immediately while all other administrative creditors must wait until the end of the case to hope that things work out. All administrative claims are entitled to equal treatment. If the Court does not order the immediate payment of NHP's allowed administrative claim, the Court should enter an order directing the Trustee to cease all payments to the retained professionals in this case. NHP reserves all rights to object to the payment of any professional fees in this case, and to seek disgorgement of any professional fees paid, unless NHP's allowed administrative claim is paid immediately in full.

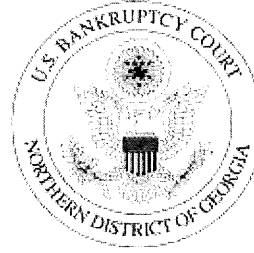
Respectfully submitted this 23rd day of September, 2015.

/s/ David E. Gordon
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*Attorneys for NHP-Parkway Physicians
Center, LLC*

Exhibit 1

(Consent Order)



IT IS ORDERED as set forth below:

Date: April 7, 2015

A handwritten signature in black ink, reading "Paul W. Bonapfel".

Paul W. Bonapfel
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:

HUTCHESON MEDICAL CENTER, INC.

Debtor.

CHAPTER 11

CASE NO. 14-42863-pwb

**ORDER ON MOTION FOR
PAYMENT OF ADMINISTRATIVE EXPENSE**

This matter came before the Court upon the Motion for Payment of Administrative Expense filed by NHP-Parkway Physicians Center, LLC ("NHP") on March 4, 2015 [Docket No. 169] (the "Motion"). A hearing on the Motion was held on March 24, 2015 at 2:00 p.m. By Notice of Hearing dated March 4, 2015, NHP provided parties in interest with adequate notice of the Hearing. While no formal objection to the Motion was filed, prior to the Hearing counsel to Hutcheson Medical Center, Inc. ("Hutcheson") and Hutcheson Medical Division, Inc. ("HMD",

together with Hutcheson, the “Debtors”) engaged in discussions with counsel to NHP in order to resolve any informal objections of the Debtors to the Motion, which discussions resulted in the agreement between the Debtors and NHP memorialized in this Order. No other party asserted any objection to the entry of the relief set forth in this Order.

The Court having reviewed the record in this case, and it appearing that due and adequate notice has been provided, and for good cause shown, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Motion is granted to the extent set forth herein.
2. NHP shall have an allowed, administrative expense claim pursuant to 11 U.S.C. § 503(b)(1) in the amount of \$101,066.83 (the “NHP Administrative Claim”).
3. Hutcheson shall pay to NHP the sum of \$75,000.00, cash, payable as follows:
(1) \$25,000.00 on or before March 31, 2015; (2) \$10,000.00 on or before April 30, 2015;
(3) \$10,000.00 on or before May 31, 2015; (4) \$10,000.00 on or before June 30, 2015;
(5) \$10,000.00 on or before July 31, 2015; and (6) \$10,000.00 on or before August 31, 2015.
4. If Hutcheson timely makes all of the payments on or before the due date (or within the applicable cure period) set forth in Paragraph 3 of this Order, such payments shall be accepted by NHP in full satisfaction of the NHP Administrative Claim, and the NHP Administrative Claim shall be deemed extinguished.
5. In the event Hutcheson fails to timely make any of the payments set forth in Paragraph 3 of this Order, counsel to NHP shall provide counsel to Hutcheson with written notice of Hutcheson’s failure to timely make the payment. Such written notice shall be provided via email to aray@swlawfirm.com, rwilliamson@swlawfirm.com, and fhayes@hutcheson.org and to the Committee via email to kurzweild@gtlaw.com and hartle@gtlaw.com and shall be

deemed received when sent. If payment is not made within five days of receipt of such written notice, then the NHP Administrative Claim shall not be extinguished. Instead, NHP shall retain an allowed administrative claim for the full amount of the NHP Administrative Claim (\$101,066.83) less any payments made by Hutcheson to NHP pursuant to Paragraph 3 of this Order.

6. Hutcheson shall vacate Space 140 of the Parkway Physicians Center (as defined in Paragraph 3 of the Motion) on or before 11:59 p.m. on Friday March 27, 2015.

7. To the extent that the Leases (as defined in Paragraph 3 of the Motion) were not previously terminated or rejected prior to entry of this Order, they are hereby deemed rejected pursuant to 11 U.S.C. § 365.

8. This Order shall have no effect on (i) NHP's unsecured, prepetition claim against the Debtors including, without limitation, NHP's right to assert an additional claim or claims for rejection damages or to amend its filed proof of claim or (ii) any party-in-interest's right to object and/or assert defenses to any such claim(s) .

9. The Court shall retain jurisdiction to enforce and interpret this Order.

[END OF DOCUMENT]

Prepared and presented by:

MCKENNA LONG & ALDRIDGE LLP

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Exhibit 2

(Notice)

DENTONS

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August 19, 2015

VIA E-MAIL ONLY

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Re: In re Hutcheson Medical Center, Inc.; Chapter 11 Case No. 14-42863-pwb; Notice of Default Under Order on Payment of Administrative Expense [Docket No. 197].

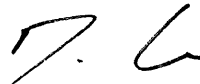
Dear Sirs & Madam:

This law firm represents NHP-Parkway Physicians Center, LLC ("NHP"), a creditor and party in interest in the above-captioned Chapter 11 case of debtor Hutcheson Medical Center, Inc. ("Debtor"). Reference is made to the Court's Order on Motion for Payment of Administrative Expense entered on April 7, 2015 (the "Order"), a copy of which is enclosed herein.

Notice is hereby given that Debtor has failed to make its payment of \$10,000.00 on or before July 31, 2015 as required by Paragraph 3 of the Order. Pursuant to Paragraph 5 of the Order, if payment is not made within five days of the date of this Notice, then the NHP Administrative Claim (as defined in the Order) shall not be extinguished, but shall be an allowed administrative claim for the full amount of the NHP Administrative Claim less any payments made by the Debtor under to Paragraph 3 of the Order.

Please feel free to contact me to discuss the foregoing. NHP reserves all rights.

Very truly yours,



David Gordon

DG

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion for Payment of Administrative Expense* was served on the parties listed on Exhibit A hereto via the modes of service indicated thereon.

This 23rd day of September, 2015.

/s/ David E. Gordon
David E. Gordon
Georgia Bar No. 111877

Exhibit A
(Service List)

Label Matrix for local noticing
113E-4
Case 14-42863-pwb
Northern District of Georgia
Rome
Wed Mar 4 09:05:13 EST 2015

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