

B10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA</b>		<b>PROOF OF CLAIM</b>
<b>Hutchenson Medical Center, Inc.</b>		Case Number: <b>4:14-42863</b>
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 other entity to whom the debtor owes money or property):  Jose Herrera		<b>COURT USE ONLY</b>
Name and address where notices should be sent:  c/o David J. Fulton, Esq. 701 Market St. Suite 1000 Chattanooga, TN 37402  Telephone number: 423-648-1880                      email: djf@sfglegal.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above):  Telephone number:    email:		<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: <b>\$156,250.00</b>		
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. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <b>Salary/Administrative Expenses</b> (See instruction #2)		
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 the claim is secured by a lien on property or a right of setoff, attach required redacted 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 the time case was filed, included in secured claim, if any: \$ _____  Basis for perfection: _____  Amount of Secured Claim: \$ _____  Amount Unsecured:  <b>\$156,250.00</b> administrative(salary2014-2015, \$50,000/2015, \$106,250)
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 \$12,475*) 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).  <b>Amount entitled to priority:</b> \$ _____
<input type="checkbox"/> Up to \$2,775* 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)(____). \$ _____
*Amounts are subject to adjustment on 4/01/16 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 for the purpose of making this proof of claim. (See instruction #6)		





## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** (the "Agreement") entered on July 8, 2014, to be effective on July 8, 2014 ("Effective Date"), by and between **HUTCHESON MEDICAL CENTER, INC.** ("Employer") and **Jose Herrera, M.D.** ("Physician").

### RECITALS

**WHEREAS**, Employer owns and operates an acute care hospital providing services in North Georgia and Southeast Tennessee (the "Hospital") and operates physician practices through its affiliate;

**WHEREAS**, Physician is duly licensed and authorized to practice medicine, without restriction, in the State of Georgia;

**WHEREAS**, in order to provide needed health care services in the Hospital, Employer has determined that it was desirable to engage physician to perform medical services; and

**WHEREAS**, Physician has the expertise and training to perform professional services on behalf of Employer.

**NOW, THEREFORE**, the parties, for and in consideration of the mutual and reciprocal covenants and agreements hereinafter contained, do contract and agree as follows:

### ARTICLE I NATURE OF EMPLOYMENT

Employer shall employ Physician as, and in the specific capacity of, a physician engaged in the practice of anesthesiology, and Physician's duties shall include professional inpatient and outpatient hospital services, inpatient consultative services and emergency room consultative coverage services to patients. Physician accepts such employment to provide such services at the Hospital, including all hospital provider-based locations and the Hospital clinic(s) at locations designated by the Employer and listed on the attached Exhibit "A". Physician shall make all professional medical decisions concerning the treatment of patients under his/her care, independent of any direction or control of Employer; provided, however, that Physician shall practice within the parameters of acceptable standards of care, in compliance with all applicable laws and regulations, within the rules and regulations established by contractual agreements with Employer, and within the quality criteria required of physicians who provide services for Employer. Physician agrees to be bound by all policies, procedures, rules, regulations and contractual requirements as applicable to the Employer and its employees.

### ARTICLE II

**REPRESENTATIONS AND WARRANTIES OF PHYSICIAN**

Physician represents and warrants to Employer that the following is true and accurate as of the Effective Date of this Agreement and will be true and accurate throughout the term of this Agreement:

A. As of the Effective Date, Physician is licensed to practice medicine in the State of Georgia without any restrictions.

B. As of the Effective Date, Physician shall maintain medical staff privileges at hospitals designated by Employer that are in regions where the Physician provides services, including the Hospital (referred to herein as "Designated Hospitals"), which privileges are provisional or active, as applicable, and in good standing and are free from any restriction, condition, suspension, curtailment, disciplinary action or revocation.

C. Physician has obtained and currently maintains all appropriate numbers, certifications and licenses necessary to dispense narcotics and controlled substances.

D. Physician's license to practice medicine in any state is not limited, conditioned, withdrawn, suspended, curtailed, placed on probation, or revoked.

E. Physician is not a subject of a reprimand, sanction, or disciplinary action by any national, state or local licensure board, specialty board or professional society, or by any national, state or local governmental agency, including Medicare and Medicaid, or by any third-party payor.

F. No claim has ever been made and no final judgment or agreed settlement has ever been entered into against Physician (or anyone else) involving or alleging malpractice by Physician that exceeds One Hundred Thousand and no/100 Dollars (\$100,000.00) that has not been reported to the National Practitioner Data Bank or previously disclosed in writing to Employer.

G. Physician's membership appointment or re-appointment on or to the medical staff of any hospital, and Physician's medical staff membership and clinical privileges at any hospital, are not suspended, curtailed, conditioned or revoked.

H. Physician is not currently being treated for or reprimanded, sanctioned or disciplined for any form of abuse of controlled substances.

I. There is no prohibition, limitation or restriction against Physician including, but not limited to, any covenant not to compete or any covenant not to solicit patients, referral sources or employees, which would prohibit, limit or restrict Physician's ability to enter into this Agreement or to perform the duties and obligations contemplated herein.

J. The execution and delivery of this Agreement by Physician does not, and the performance by Physician of the duties and obligations contemplated hereby will not, violate or constitute an occurrence of default of any obligation of an agreement, instrument, order, judgment, decree or other arrangement to which the Physician is a party.

### **ARTICLE III DUTIES OF PHYSICIAN**

#### A. Professional Duties

(1) Physician will provide physician services and services customarily performed by a physician who specializes in anesthesiology as an employee of Employer, at the Hospital, and at other locations designated by Employer, all in accordance with the standards of the professional and ethical practice of medicine. Physician's professional services shall include consultation coverage as described below.

(2) Physician shall perform his duties in accordance with the schedule that shall be mutually acceptable to Physician and Employer to ensure coverage for the Physician's patients. Physician shall not perform or provide any professional medical services, administrative services or other professional activities to any party other than Employer without the prior written consent of Employer.

(3) The Physician's call coverage obligations may be set up on a rotation basis with the other physicians providing services at the Hospital, and shall be based upon a rotation and schedule that is mutually agreed upon by the parties ("Call Coverage"). The Call Coverage schedule shall be documented on Exhibit B, as amended from time to time and incorporated herein by reference. When called from the Hospitals, Physician or his/her appropriate delegated extender, as applicable, shall be responsible to respond within thirty (30) minutes upon receipt of call.

(4) Physician shall maintain membership in good standing in the applicable professional society for the Physician, attend professional conventions, participate in professional societies, participate in continued medical education seminars and conferences as required by Georgia licensure, and shall do all things necessary to maintain and improve his/her professional skills.

B. Medical Staff Membership. Physician shall promptly apply for, shall obtain and at all times during the term of this Agreement, maintain membership in good standing on the provisional and active medical staff, as applicable, of the Hospitals. Physician shall hold and maintain clinical privileges necessary and sufficient to enable Physician to provide medical services in practice of anesthesiology.

C. Medical Records. Physician shall maintain timely, accurate and complete physician office and hospital medical records on patients treated by Physician as required by Employer and in accordance with applicable laws and regulations. Subject to

applicable Georgia law, during the Term of this Agreement, all medical files and patient records for patients treated by the Physician shall be maintained exclusively at the Employer office or Hospital, as applicable. Physician shall document into the electronic health record system all clinically relevant data related to the services rendered for a patient within seventy-two (72) hours following the patient encounter. Physician shall not sell, transfer, or assign any right to medical files or patient records to any third party. Upon the termination of this Agreement for any reason, Employer and Hospital shall have the exclusive possession of all medical files and patient records now or hereafter owned, prepared or maintained by Physician for patients treated at the Employer office or Hospital, respectively. Upon termination of the Agreement and in accordance with the applicable laws and regulations, Physician may obtain a copy of the medical records related to his or her patients for treatment, payment and healthcare operations; provided the Physician shall not access, use or disclose the records unless the respective patient has signed a valid authorization, as required by applicable State and Federal laws for Physician's continuing care of any patient, or to the extent necessary for Physician to review any prior care in response to any question about prior care covered by these records, or to defend any legal action brought or threatened against Physician. Physician shall comply with the Employer and Hospital's policies and procedures regarding the development and implementation of the electronic health record system and support Employer's efforts to achieve meaningful use measures in a timely manner.

D. Coding. Physician hereby agrees that he/she shall accurately and correctly document all procedures, services and supplies provided by him (including services and supplies "incident to" such services and supplies) in all patient charts and in all insurance and third-party payor claim forms to be submitted by Physician ("Coding"). Physician hereby agrees that all Coding for all such services and supplies provided by him/her shall be in compliance with (A) applicable statutes, regulations, and federal, state, or private payor health care program requirements; and (B) all written policies and procedures of Employer, including, but not limited to, all compliance plans of Employer and the bylaws, rules and regulations of the Hospitals' medical staffs. Physician hereby agrees to indemnify, defend, and hold harmless Employer, its members, officers, directors, employees and representatives, from and against all claims, losses, liabilities and expenses (including fees and disbursements of counsel) incurred by them by reason of, or in connection with, any failure of Physician to comply with, or any breach of, Physician's obligations under this Section. Physician hereby expressly acknowledges and agrees that while Employer and its employees and agents may give advice to Physician regarding Physician's Coding, Physician is specifically responsible for assuring that patient files are properly documented to support such Coding and the medical necessity determined by Physician. Physician shall be responsible for any repayments, recoupments, liabilities, or obligations to payors for inadequate or inaccurate medical record Coding or billing documentation by Physician for the services performed under this Agreement.

E. Prohibited Acts. Physician shall not, without consent first being given by Employer:

(1) Use, sell, assign, transfer, lease, mortgage, pledge or otherwise attempt to dispose of money or property belonging to Employer, or pledge Employer's credit, except in the usual and regular course of business and on account of, or for the benefit of, Employer;

(2) Assign, transfer, pledge, compromise, release or discharge any claims or debt due to Employer, or enter into any contract for the account of Employer;

(3) Commit, or suffer to be committed, any act whereby Employer's property may be subject to attachment or seizure;

(4) Make, draw, execute, accept or endorse any bill of exchange, promissory note, commercial paper or other engagement for the payment of money, or its equivalent, nor cause Employer to become a guarantor, surety or endorser, or give any note for any person whomsoever; or

(5) Purport to hire or discharge any employee of Employer, it being understood and agreed that any such power or powers are vested solely in the Employer.

Physician shall indemnify and hold harmless Employer from and against any and all liabilities incurred as a result of Physician's breach of any of the restrictions set forth in this Section E.

F. Outside Activities. Except as described herein, Physician shall devote his/her full, entire and undivided professional efforts diligently and faithfully to performance of the services pursuant to this Agreement, and he/she shall not, either alone or in conjunction with any person or entity, either directly or indirectly, undertake any professional business, except for the benefit of Employer or engage in any other trade or business without the prior written consent of Employer during the Term of this Agreement. In the event that Physician either practices medicine, conducts research or participates in other medically related activities outside of this Agreement with Employer and without the use of Employer's resources (including accepting medical directorships, providing legal testimony or developing medically related inventions), for which Physician is compensated in money or otherwise receives remuneration, including any consulting fees or other compensation, during the Term of this Agreement or any renewal thereof, any such monetary compensation and the value of any such other compensation received therefrom shall be deemed to be income of Physician and shall not be paid to, nor considered part of, the compensation from Employer to Physician. Any such amounts shall be paid directly to Physician, provided Employer is notified of such outside activities and the outside activities shall not interfere with the duties required in this Agreement or create a conflict of interest.

G. Automobile Coverage. Physician shall keep in full force and effect automobile insurance on Physician's automobile used in Physician's practice of medicine with liability limitations of not less than \$300,000/500,000, or such limits as enable the Physician to obtain an umbrella liability policy with minimum coverage of \$1 million.

**ARTICLE IV**  
**EMPLOYER OBLIGATIONS AND DUTIES**

A. Office Space and Equipment. During the Term, Employer shall provide Physician with such clinical office space that shall contain all such space equipment, furnishings and supplies, as Employer reasonably determines are necessary to enable Physician to provide professional services described in this Agreement.

B. Office Staff. Employer shall employ for the purposes of the Hospital operations such personnel for reception, telephone answering, patient scheduling, nursing services, billing, record filing, and assistance to Hospital as Employer may reasonably determine are necessary for the efficient and orderly performance by Physician of his clinical or administrative duties under this Agreement. Employer shall have the right to compensate, discipline, suspend or terminate such office personnel.

C. Compensation. In exchange for the services performed by Physician, Employer agrees to remit compensation in accordance with Article VI.

**ARTICLE V**  
**PATIENT FEES/BILLING/CONTRACTING**

A. Fees. Employer shall have exclusive authority to determine the fees, or a procedure for establishing the fees, to be charged to patients treated by Physician in the course of his/her employment by the Employer. Employer shall provide for the posting of payments received via U.S. mail and from documentation of electronic funds transfers for all medical services provided by Physician pursuant to this Agreement and all billing shall be performed by Employer's personnel.

B. Billing and Assignment. Except through the Employer, Physician will not independently bill any party for any services provided pursuant to this Agreement. All forms of remuneration paid to Physician by any patient, hospital patient, third party or third-party payor by virtue of the professional services rendered by Physician during the Term of this Agreement (including, but not limited to patient care, medical procedures and clinical services performed during Hospital business hours) shall belong to the Employer. Physician shall promptly remit to the Employer any amounts received by him/her for services provided pursuant to this Agreement. Physician hereby expressly assigns to Employer all emoluments, remuneration, fees or other compensation, whether in cash or in kind, tangible or intangible, that Physician earns from any medically-related activities and services rendered to Hospital patients.

C. Provider Agreements. Physician shall participate as a provider in all preferred provider, health maintenance organization or similar contracts, whether providing for fee-for-service, capitation, or other reimbursement methods, into which Employer has previously entered or hereafter may enter, if Physician's services are required. Physician shall cooperate with Employer in its programs of monitoring



resources, quality and cost effectiveness of treatment of patients enrolled in programs subject to the terms of such agreements. At the direction of Employer, Physician shall apply for and shall take all steps necessary to become and to remain a member of, or a participating physician in, the third-party payor programs and Physician hereby appoints Employer with his power of attorney to execute the applicable agreements on his behalf to participate in the provider agreements.

## **ARTICLE VI** **COMPENSATION**

A. Base Salary. In exchange for the delivery of services pursuant to this Agreement, Employer shall pay an Annual Base Salary of Three Hundred Seventy-Five Thousand and no/100 Dollars (\$375,000.00), payable in twenty-six (26) equal installments subject to local, state and federal withholdings.

B. Employee Benefits. Employer shall provide Physician with the opportunity to participate in the same health, life and disability insurance benefits provided to other professional employees of Employer, as such benefits may change from time to time. Physician shall be eligible for such benefits subject to such terms, conditions and regulations contained in such benefit programs. Physician acknowledges, stipulates and agrees that Employer offers such programs in its discretion, and that Employer therefore reserves the right to modify, reduce, cancel or otherwise change them as it deems necessary or appropriate in the exercise of such discretion. During the initial thirty (30) days of employment, Employer will reimburse Physicians for the expenses incurred from COBRA coverage to ensure Physician maintains health benefits. Notwithstanding any other provision set forth in this Agreement, if there is any conflict between the provisions of this Agreement and the provisions governing the Employer's current benefit programs, the terms set forth in the current benefit programs shall control.

C. Retirement Plan. Physician will be eligible to participate in the Employer's retirement plan, subject to all the terms and conditions, including, meeting the eligibility requirements and the vesting schedule. Any contribution made to the plan on behalf of the Physician by the Employer shall be deducted or offset from the compensation otherwise owed to the Employee. Physician acknowledges, stipulates and agrees that Employer offers such programs in its discretion, and that Employer therefore reserves the right to modify, reduce, cancel or otherwise change them as it deems necessary or appropriate in the exercise of such discretion. Notwithstanding any other provision set forth in this Agreement, if there is any conflict between the provisions of this Agreement and the provisions governing the Employer's current benefit programs, the terms set forth in the current benefit programs shall control.

D. Vacation. Physician shall receive eight (8) weeks of vacation per calendar year which shall be subject to scheduling to support patient coverage and patient scheduling. Any vacation days or paid holidays not taken during a calendar year shall be forfeited. Physician shall not be entitled to carryover any unused days to the next calendar year and Employer shall be under no obligation to pay for unused days in the

event of a termination of this Agreement. Any and all vacations shall be scheduled in advance and subject to approval of Employer.

E. Continuing Medical Education. Physician shall be reimbursed up to a total amount of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00) per calendar year to be used for continuing education related to the Physician's practice or required to maintain board certification and the travel expense necessary and related to such courses. For partial years of employment, the CME reimbursement shall be prorated. In addition to payment for such expenses, Physician may utilize five (5) days for attendance at CME events. Any time off to attend CME must be scheduled in advance and subject to the approval of the Employer.

F. Professional Dues And Licenses. Employer shall pay Physician's license fees and renewal fees which are required by the Georgia Composite Board of Medical Examiners, the Drug Enforcement Administration, and any other licenses or registrations required by law in order for Physician to practice medicine and to prescribe, dispense, or otherwise handle pharmaceutical agents required by this Agreement. In addition, Employer shall pay Physician's dues and membership fees for hospital medical staff membership, third-party payer programs and professional medical societies as approved by Employer. Employer will provide an annual stipend amount of Five Hundred and no/100 Dollars (\$500.00) which shall be prorated for partial years of employment for actual documented expenses for dues for professional organizations that Employer will pay on behalf of Physician.

G. Professional Liability Insurance. During the Term of this Agreement, Employer shall pay for and maintain in force professional liability insurance coverage insuring Employer and Physician for professional errors, omissions, negligence, incompetence, and malfeasance with the limits of liability in the amount of One Million and no/100 Dollars (\$1,000,000.00) for each occurrence, with a per annum aggregate limitation of Three Million and no/100 Dollars (\$3,000,000.00).

## **ARTICLE VII** **TERM AND TERMINATION**

A. Term. The term of this Agreement shall commence on the date that Physician first begins providing services hereunder (the "Effective Date") and shall end on the date that is twelve (12) months after the Effective Date (the "Initial Term"). The Term will automatically renew at the end of the Initial Term, and at the end of each renewal term thereafter, for consecutive terms of one (1) year each ("Renewal Term"), unless one party gives the other party notice of its intent not to renew the Agreement at least ninety (90) days before the end of the Initial Term or the then-current Renewal Term. "Term" shall refer to the Initial and Renewal Term, as applicable.

B. Termination for Cause by Physician. Physician may terminate this Agreement for cause in the event that Employer breaches any material provision of the Agreement and fails to cure the breach within thirty (30) days of receipt of written notice.

C. Termination for Cause by Employer. Immediately upon the occurrence of any of the following events, Employer shall have the unilateral right in its sole discretion to terminate Physician's employment:

(1) Physician's license to practice medicine or license to prescribe medications in the State of Georgia or any other state is terminated, revoked, not renewed, suspended, restricted, conditioned, or limited in any way;

(2) Physician is charged with or indicted for a felony, or is convicted of any misdemeanor offense involving moral turpitude;

(3) Physician ceases to be a member in good standing of the medical staff, as applicable, of Hospitals, or Physician's clinical privileges are revoked, terminated, suspended, limited, restricted or conditioned in any way, including proctoring, at the Hospitals or any other health care facility where Physician obtains or maintains medical staff membership;

(4) Physician becomes addicted to, or dependent upon, any drug or alcohol, or otherwise commits a violation of Employer's substance abuse policy;

(5) Physician acts in an unprofessional, unethical or fraudulent manner, or engages in any other act (including, without limitation, sexual harassment), that discredits or is detrimental to the reputation of the Employer, as determined by the Employer's Executive Management Team representative;

(6) Physician is found guilty of unprofessional or unethical conduct by, or is expelled, suspended or forced to resign from, any medical professional board, institution, organization or society;

(7) Any representations or warranties set forth in Article II hereof is false or misleading as of the Effective Date of this Agreement, or becomes false or misleading at any time during the Term of this Agreement;

(8) Physician engages in any conduct that, if not immediately remedied, would jeopardize either the health, safety or welfare of any patient or person, or the safety or regular functions of the Employer, which conduct is not corrected by Physician immediately upon verbal communication by Employer;

(9) Physician breaches any material provisions of the Agreement and fails to cure the breach within thirty (30) days of receipt of written notice;

(10) Physician is excluded, suspended, or terminated from participation in any state or federal healthcare program; or

(11) Employer is unable to secure medical malpractice insurance coverage for Physician.

D. Termination Without Cause. Employer may, without cause, terminate this Agreement at any time by providing ninety (90) days prior written notice of such termination which shall be effective on the ninetieth (90<sup>th</sup>) day following the date of such notice, provided that Employer shall have the right to dismiss Physician from any or all of his/her duties during such notice period and that Physician shall continue to receive his compensation, as defined in Article VI, until the end of the expiration of the notice period. In the event Physician elects not to provide services during the ninety (90) day notice period, Employer shall not have any obligation to remit payment to Physician following the date Physician ceased providing services.

E. Effect of Termination.

(1) Post Termination Payments. After termination of the Physician's employment hereunder for any reason whatsoever, Employer shall not be obligated to pay to him/her, or in the event of his/her death or mental incompetence, to his/her personal representative, any additional compensation or fringe benefits, except for payment for services rendered prior to the date of termination.

(2) Return of Employer's Property and Records Upon Termination. Immediately upon termination of Physician's employment for any reason whatsoever, Physician shall return to Employer any and all Records and Property belonging, in whole or in part, to Employer. "Records" means all information, however recorded or stored, including, without limitation, documents, facsimiles, video and audio tapes, computer discs and printouts, microfiche, hand-written notes, files, binders, books, booklets, plans, reports, pictures, graphs, slides, articles and any and all other forms of physically or electronically stored information. "Property" shall mean all records, memoranda, contracts of any kind, electronic equipment and office equipment and furnishings of all kinds, including, identification and access cards of any kind, and computer hardware and software that is the property of Employer.

(3) Cooperation. Following any notice of termination, Physician shall cooperate with Employer in all matters relating to the winding up of his/her pending work on behalf of Employer and the orderly transfer of any such pending work to other professional employees of Employer as may be designated by the Board of Directors of Employer.

(4) Tail Insurance. In the event this Agreement is terminated for cause by Employer or without cause by Physician, Physician shall be responsible for purchasing tail insurance coverage in the same amounts of coverage provided by Employer for acts or omissions occurring during the term of this Agreement unless Physician has completed the initial two (2) years of employment. If applicable, Physician shall purchase such tail coverage within fifteen (15) days upon the termination of this Agreement and if Physician fails to purchase such tail insurance coverage, Employer may

in its discretion purchase the tail insurance coverage and Physician shall either reimburse Employer for such costs or Employer may withhold the cost of the premium from any future payments due and owing to Physician, if applicable and in the sole and absolute discretion of Employer. If this Agreement is terminated by Employer without cause or upon the nonrenewal of this Agreement or if Physician successfully completes two years of employment with Employer, Employer may purchase such tail insurance coverage.

### **ARTICLE VIII RESTRICTIVE COVENANTS**

A. Confidentiality. Physician represents and warrants that: (a) Physician is not subject to any legal or contractual duty or agreement that would prevent or prohibit Physician from performing Physician's duties for Employer or complying with this Agreement, and (b) Physician is not in breach of any legal or contractual duty or agreement, including any agreement concerning trade secrets or confidential information, owned by any other person or entity.

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 described below, for any purpose other than Employer's Business, except as authorized in writing by Employer, provided, however, that any 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 Employer policies and procedures; (b) during Physician's employment with Employer, use, disclose, or reverse engineer (i) any confidential information or trade secrets of any former employer or third party; (ii) any works of authorship developed in whole or in part by Physician during any former employment or for any other party, unless authorized in writing by the former employer or third party; or (c) upon the termination of Physician's employment 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 Employer's prior written consent.

The obligations under this Article VIII shall: (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, remain in effect during Physician's employment and for as long as the applicable law requires confidentiality. 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 Employer is entitled under federal and state law, including, but not limited to, rights provided under copyright laws, trade secret and confidential information laws, and laws concerning fiduciary duties.

"Confidential Information" means (i) information of Employer, to the extent not considered a trade secret under applicable law, that (a) relates to the business of

Employer, (b) possesses an element of value to Employer, (c) is not generally known to Employer's competitors, and (d) would damage Employer if disclosed, and (ii) information of any third party provided to Employer which Employer is obligated to treat as confidential, including, but not limited to, information provided to Employer 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 Employer 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, (vi) information concerning Employer'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 Employer, 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. Reasonable Restrictions. Physician represents and warrants, acknowledges and agrees that (i) the restrictions set forth herein are reasonable in terms of scope, duration, and geographic area and operate merely as a partial restraint of trade, (ii) the protections afforded hereunder are necessary to protect legitimate business interests, (iii) he/she has reviewed this Agreement, (iv) he/she fully understands the legal and economic consequences hereof, (v) he/she has assessed the respective advantages and disadvantages to him/her hereunder and (vi) has concluded that the consideration flowing to him/her hereunder and in connection with this Agreement more than offsets any detriment arising from the execution of and compliance with this Agreement.

C. Enforcement. The various covenants of this Article are intended to be separate and divisible provisions. In the event the provisions of the preceding subparagraphs shall be deemed to create a restriction which is unreasonable as to duration, scope or geographical area or any of them, the parties agree that the provisions

of this Article and its subparagraphs shall be enforceable for such duration, scope and geographical area as any court of competent jurisdiction may determine to be reasonable. Physician hereby agrees that in the event of a breach or threatened breach of any provision or covenant of this Article VIII, irreparable harm and damage will be done to Employer. Accordingly, Physician agrees that, in such event Employer shall be entitled to seek an injunction or restraining order to restrain and enjoin such breach or threatened breach by Physician.

#### **ARTICLE IX MISCELLANEOUS**

A. Compliance with Laws. Physician and Employer shall each comply with all applicable laws and regulations in performing his/her or its obligations under this Agreement. If any provision of this Agreement shall reasonably be determined by either party to violate any applicable law or regulation, then the parties shall promptly and in good faith amend this Agreement as may be necessary or advisable to comply with such law or regulation. Any such amendment of this Agreement shall, to the extent practical, preserve to each party the economic and other benefits afforded such party in the original Agreement. If Physician does not agree to make those changes that Employer reasonably determines are necessary in order for this Agreement to comply with applicable laws and regulations, then Employer shall have the right to terminate the Agreement after thirty (30) days written notice to Physician. Such notice under this Section will be considered a for cause termination event under this Agreement. Neither party shall knowingly make or receive any payment that would be prohibited under state or federal law. The terms of this Section shall survive the expiration or termination of this Agreement for any reason.

B. Assignment. Neither party shall assign its rights or delegate its obligations under this Agreement without the prior written consent of the other, except that Employer may assign this Agreement to an affiliate or subsidiary controlled by or under common control with Employer.

C. Amendment. This Agreement may be amended at any time by a written agreement executed by Physician and Employer.

D. Governing Law/Venue. This Agreement shall be subject to and governed by the laws of the state of Georgia regardless of the fact that Physician may be or may become a resident of a different place. The venue for any civil litigation between the parties hereto or arising out of or resulting from this Agreement is Walker County, Georgia, and the parties hereto irrevocably submit themselves to the jurisdiction of the General Court of Justice in Walker County, Georgia, and waive any right they have or may have to any other jurisdiction.

E. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and contains all of the agreements between the parties hereto with respect to the subject matter hereof and supersedes any and all other agreements,

either oral or in writing, between the parties hereto with respect to the subject matter hereof.

F. Notices. All notices, requests, demands, and other communications to be given hereunder shall be in writing, and shall be deemed to have been duly given upon receipt if delivered or mailed, certified mail, return receipt requested, postage prepaid:

If to Physician:

\_\_\_\_\_  
\_\_\_\_\_

or at such other address as may be furnished to Employer in accordance with this Section; and

If to Employer: Hutcheson Medical Center, Inc.  
Attn: Chief Executive Officer  
100 Gross Crescent Circle  
Ft. Oglethorpe, Georgia 30742

or at such other address as may be furnished to Physician in accordance with this Section

G. Access to Books and Records. Upon the written request of the Secretary of the Department of Health & Human Services, or the Comptroller General, or any of their duly authorized representatives, Physician shall make available those contracts, books, documents, and records necessary to certify 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 or obligations of this Agreement through a subcontract with a value of Ten Thousand and no/100 Dollars (\$10,000.00) or more over a twelve (12) month period with a related organization, until the expiration of four (4) years after the rendering of such services pursuant to such subcontract, Physician shall include this requirement in any such subcontract. The parties hereby acknowledge that this Section G expressly survives the expiration or termination of this Agreement for any reason.

H. Headings. The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand express provisions of this Agreement.

I. No Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation hereof.

J. No Third-Party Beneficiaries. This Agreement is entered into by and between the parties signing it and for their benefit. There is no intent by either party to



create or to establish third party beneficiary status or rights or their equivalent in any subcontractor or other party which may be affected by the operation of this Agreement, and no such third party shall have any right to enforce or enjoy any benefit created or established under this Agreement.

K. Confidentiality. The terms and provisions of this Agreement are deemed confidential to the parties hereto and shall be revealed only to the authorized management, employees or agents of said respective parties, to governmental or supervisory officials or other parties where legally required to be revealed, or as part of a legal proceeding in which this Agreement is a part of the basis for such proceeding. Under no circumstances may either party disclose this Agreement or any portion hereof, to any individual or entity other than its own authorized management, employees or agents without first obtaining the consent of the other party hereto in writing prior to such disclosure. This Section K shall be considered a material provision of the Agreement.

L. Arbitration. Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Ft. Oglethorpe, State of Georgia, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The prevailing party shall not be responsible for any fees or expenses associated with the arbitration process, including legal fees and the losing party shall be responsible for payment of all arbitration fees and legal fees of the prevailing party.

  
\_\_\_\_\_  
Physician Initials

  
\_\_\_\_\_  
Employer Initials


M. Indemnification. Subject to the insurance coverage provided by Employer Physician hereby agrees to indemnify, defend, and hold harmless Employer and its parent organization, employees, officers, directors and agents, from any claim, loss, damage, cost, expense or liability arising out of or relating to the willful misconduct or grossly negligent performance or nonperformance by the Physician of any services to be performed or provided by him or her under this Agreement unless the damages arise from a medical malpractice claim that is covered by the professional liability coverage of Employer through a self-insured or commercial insurance policy. This protection shall include any loss, damage, fine, penalty, fee or expenses caused by or arising from the gross negligence or willful misconduct of Physician to provide documentation to support the billings of services rendered to third-party payors, including without limitation, governmental payer programs

N. Authority to Contract. Each party represents and warrants that the party is authorized to enter into this Agreement and to be bound by the terms of it.

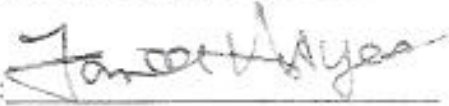
O. Further Assurances. Each party shall execute and deliver any and all additional instruments and documents and do any and all such other acts and things as may be reasonably necessary or expedient to effectuate fully this Agreement and to carry out the relationship contemplated by this Agreement.

P. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

PHYSICIAN:

  
\_\_\_\_\_  
By: Joe Herrera, M.D.  
Date: 7/8/14

EMPLOYER:

Hutcheson Medical Center, Inc.  
By:   
\_\_\_\_\_  
Its: CEO  
Date: 7/7/14

*EXHIBIT A*

Hutcheson Medical Center  
100 Gross Crescent Circle  
Fort Oglethorpe, GA 30742

Hutcheson on the Parkway  
4750 Battlefield Parkway  
Ringgold, GA 30736

# Northern District of Georgia Claims Register

[14-42863-pwb Hutcheson Medical Center, Inc.](#)

**Judge:** Paul W. Bonapfel      **Chapter:** 11  
**Office:** Rome                      **Last Date to file claims:** 05/01/2015  
**Trustee:** Ronald L. Glass      **Last Date to file (Govt):**

<b>Creditor:</b> (19393425) Jose Herrera MD c/o David J. Fulton, Esq. 701 Market St. Suite 1000 Chattanooga, TN 37402	<b>Claim No: 179</b> <i>Original Filed</i> Date: 10/07/2015 <i>Original Entered</i> Date: 10/07/2015	<b>Status:</b> Filed by: CR Entered by: David J. Fulton Modified:
Amount claimed: \$156250.00		

*History:*

<a href="#">Details</a>	<a href="#">179-1</a>	10/07/2015	Claim #179 filed by Jose Herrera MD, Amount claimed: \$156250.00 (Fulton, David )
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*Description:* (179-1) administrative(salary 2014-2015, \$50,000/2015, \$106,250)

*Remarks:*

## Claims Register Summary

**Case Name:** Hutcheson Medical Center, Inc.  
**Case Number:** 14-42863-pwb  
**Chapter:** 11  
**Date Filed:** 11/20/2014  
**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$156250.00
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**

	<b>Claimed</b>	<b>Allowed</b>
<b>Secured</b>		
<b>Priority</b>		
<b>Administrative</b>		