

PYHSICIAN EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into as of the Effective Date indicated on the signature page of this Agreement, by and between **ABC, PLLC**, a Tennessee medical professional limited liability company, ("Group") and the individual physician whose name and signature appear on the signature page of this Agreement ("Physician").

WITNESSETH:

WHEREAS, Group is a professional group practice engaged in the practice of medicine in the State of Tennessee;

WHEREAS, Physician is an individual residing in the State of Tennessee who is (or by not later than the Employment Date shall be) duly licensed to practice medicine in the State of Tennessee;

WHEREAS, Group wishes to employ Physician on a full-time basis to provide professional services on behalf of Group; and

WHEREAS, Physician wishes to be so employed;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. Scope of Employment. (a) From and after the Employment Date (see subsection 11(b)), Physician shall devote substantially his or her full time and energy to the practice of medicine on behalf of Group, and to practice medicine solely as an employee of Group, except as may be otherwise agreed to by Group in writing. Physician shall represent himself or herself professionally only under such business or clinic name as shall be approved or designated by Group, and shall practice at the office location designated by Group. Physician understands that Group has final authority and responsibility for determining the work schedule of and fee schedule for professional services rendered by employees of Group.

(b) Physician may engage outside of this Agreement in activities that utilize his or her professional knowledge but do not involve the direct delivery of patient care services, such as teaching, lecturing, publishing, inventing, consulting in legal matters, and participating in quality assurance or utilization review activities, so long as such activities are engaged in at times when Physician is not scheduled to provide services to Group and do not otherwise interfere with his or her employment obligations under this Agreement.

2. Compensation for Services. (a) Group shall compensate Physician for all services rendered by Physician under this Agreement as follows:

(i) Annual Base Compensation at the rate of \$_____ per annum, prorated and paid in arrears according to Group's regular employee payroll schedule. In the event of

termination of this Agreement for any reason Physician shall be entitled to Base Compensation for all time worked up to, but not including, the effective date of termination, on a prorated basis. Physician shall be entitled to no compensation from Group in excess of the prorated Base Compensation earned as of the termination date plus any accrued, allowable expenses.

(ii) In addition to Annual Base Compensation, Physician shall be entitled to incentive compensation in an amount equal to _____
_____.

(b) Physician understands and agrees that any and all monies due to or received by Physician on account of the rendering of patient care services or otherwise in the professional practice of medicine from and after the Effective Date of this Agreement, regardless of the time and place such services are delivered, shall be the exclusive property of Group. The compensation paid to Physician under this Agreement shall constitute full compensation to Physician for services rendered under this Agreement, and Physician shall not seek additional compensation from any source for services rendered under this Agreement.

(c) Any honoraria, speaking fees, or royalties paid to Physician as a result of professional speaking, writing, inventions made, or patents issued, whether related to medical matters or otherwise, as a result of any activity permitted under Section 1(b) of this Agreement shall be deemed earned outside of the scope of this Agreement and shall be the sole property of Physician.

3. Billing. (a) Only Group shall be entitled to bill for or otherwise receive payment from the patient or any third party for services provided by Physician under this Agreement. Physician shall have no right to receive, nor shall Physician attempt to bill for or collect, payment from the patient or any third party for services provided by Physician under this Agreement, except as directed by Group, in the name of and for the sole benefit of Group.

(b) Physician shall cooperate with and assist Group in the preparation and documentation of claims for services rendered by Physician under this Agreement. Physician agrees to cooperate and comply with the terms of applicable utilization management and similar cost management protocols, and to do all things necessary and appropriate to maximize reimbursement to Group for services rendered by Physician under this Agreement, to the extent consistent with law and with the best clinical interests of the patient.

4. Medicare Program Regulation. Physician is responsible for understanding and complying with applicable law pertaining to the provision of services to the beneficiaries of Medicare and other state and federal health care programs, and to billing and collection for such services. Physician shall provide, document, and request reimbursement for personal and identifiable health care services rendered to patients in a manner consistent with applicable legal requirements, and in such a manner as to qualify for reimbursement under applicable health benefit programs.

5. Working Facilities. Group shall assure that Physician has appropriate office space, support staff, supplies, equipment, and such other facilities and services as Group deems necessary and appropriate to his or her position and for the performance of Physician's duties.

6. Professional Relationships. Group and Physician each acknowledges and agrees that the business relationship between Group and Physician as established by this Agreement does not, and shall not be construed to, alter or in any way affect the legal, ethical, and professional relationship between Physician and patients cared for by Physician, nor shall anything contained in this Agreement abrogate any right, privilege, or obligation arising out of or applicable to the physician-patient relationship.

7. Clinical Records. Physician shall assure that appropriate clinical records are prepared with regard to all professional services provided by Physician under this Agreement. All such records shall be prepared and maintained according to prudent record keeping procedures and as required by law. All clinical records prepared and maintained with regard to services rendered under this Agreement shall be and remain the property of Group, notwithstanding any termination of this Agreement.

8. Professional Liability Insurance. Group shall, at all times during the initial and any renewal term of this Agreement, provide at its sole cost and expense professional and general liability insurance coverage for Physician in such amounts and with such carrier or carriers as Group shall deem necessary and appropriate.

9. Expenses. Ordinary and necessary business expenses incurred by Physician in performing his or her duties under this Agreement, including but not limited to professional dues, subscriptions, licenses, and continuing education expenses, shall be borne by Group, *provided* that such expenses shall not include any expense not deemed an ordinary and necessary business expense under applicable Internal Revenue Service guidelines, and *provided further* that such expenses shall not exceed \$2,500 per annum. Physician shall have no authority to enter into any contract binding Group or to create any obligation on behalf of Group unless otherwise expressly approved by Group.

10. Employee Benefits. Physician shall be entitled to three (3) weeks of paid time off each year, in accordance with Group's leave policies, to be used for purposes of vacation, illness, or continuing medical education. Physician shall be entitled to receive or participate in all employee benefits generally available to employees of Group in accordance with the terms of Group's employee benefit plans in effect from time to time. The governing body of Group may increase, decrease, or discontinue any benefit plan at any time without notice to or the consent of Physician.

11. Term. (a) The term of this Agreement shall begin on the Effective Date stated on the signature page of this Agreement, and shall thereafter continue in effect unless and until terminated as hereinafter provided.

(b) This Agreement shall be final and legally binding on the parties from and after the Effective Date, but Physician's term of employment under this Agreement shall not begin until the date he or she is first licensed to practice his or her profession in the State of Tennessee, or the

Commencement Date stated on the signature page of this Agreement, whichever is later (the “Employment Date”).

12. Voluntary Termination. Either party may terminate this Agreement at any time, with or without cause, by giving written notice thereof to the other party at least ninety (90) days prior to the effective date of termination.

13. Termination For Cause. Group may terminate this Agreement immediately upon written notice to Physician on the occurrence any of the following events:

- (a) the failure of Physician to correct any material breach of this Agreement to the reasonable satisfaction of Group within thirty (30) days following written notice from Group specifying such breach;
- (b) any unprofessional or illegal conduct by Physician which is injurious to the good name and reputation of Group or may subject Group to legal liability, including, but not limited to, Physician’s conviction of a felony;
- (c) a pattern of inexcusable neglect, or one or more instances of gross negligence or willful neglect of duty by Physician in the performance of this Agreement;
- (d) the inability of Group to obtain or maintain professional liability insurance coverage for Physician from the insurance carrier that provides coverage for Group and its other physician-employees at rates equal to or less than 150% of the highest rate then in effect for any other Group physician-employee in Physician’s specialty;
- (e) Physician’s violation of any law governing Group as an employer or relating to the rights of Group employees;
- (f) Physician’s failure to abide by policies and procedures established by Group that are applicable to all physician-employees of Group, including but not limited to policies and procedures relating to substance abuse;
- (g) the use of alcohol or of an illegal or controlled substance which materially impairs the ability of Physician to effectively perform Physician’s duties and obligations under this Agreement;
- (h) the exclusion of Physician from participation in Medicare, Medicaid, or any other state or federal health care program; or
- (i) in the event Group determines in good faith that Physician is for any reason unable or unwilling to provide patient care services in a manner consistent with professionally recognized standards of medical care, or that termination is otherwise necessary to protect the health, safety, or well-being of Group’s patients.

14. Automatic Suspension and Termination. Physician's employment under this Agreement shall be suspended automatically and immediately upon the occurrence of any of the following events:

- (a) the revocation, termination, restriction, suspension, or lapse of Physician's license to practice medicine in the State of Tennessee or of Physician's DEA permit;
- (b) the revocation, termination, restriction, or suspension of Physician's hospital admitting privileges at any hospital within a thirty (30) mile radius of any Group clinical office site (but only if such action gives rise to fair hearing rights under such hospital's medical staff bylaws); or
- (c) the revocation, termination, restriction, suspension, or lapse of Physician's professional liability insurance coverage other than as a result of nonpayment of premium or other default on the part of Group.

The effect of automatic suspension under the provisions of this Section 14 shall be that Physician shall immediately cease any and all patient-care activity, shall immediately notify Group of the event causing such suspension and provide such documentation of the event as may be reasonably requested by Group, and shall for the term of the suspension be entitled to no compensation except as may otherwise be determined by Group in its sole discretion. All other provisions of this Agreement shall remain in full force and effect during the term of any such suspension, unless and until this Agreement is terminated as provided herein. Any suspension under this Section 14 shall continue unless and until a written notice of reinstatement is provided to Physician by Group, in Group's sole discretion. Any suspension under this Section that continues for an uninterrupted thirty (30) day period shall be deemed permanent, and this Agreement shall be deemed terminated.

15. Relationship Between the Parties. The parties recognize that the governing body of Group shall own the assets and manage the business affairs of the practice. Nothing contained in this Agreement shall be construed to give Physician any interest in the physical assets or the accounts receivable of Group, whether used in or produced by Physician in providing patient-care services or otherwise, nor shall anything in this Agreement be construed to give Group any right to control the professional judgment of Physician in providing patient care services. Physician shall not engage in direct purchasing or otherwise contract with any person on any subject on behalf of Group. Further, if approached by any person seeking to contract with Group, Physician shall expressly state that Physician has no authority to either negotiate or enter into any obligations on behalf of Group, and Physician shall refer such person to the President of Group.

16. Limitations on Physician's Activities Upon Termination.

(a) *Noncompetition and Nonsolicitation.* In consideration of the employment or continued employment of Physician under this Agreement, Physician agrees that in the event his or her employment with Group is terminated for any reason, voluntarily or involuntarily, with or without cause, or in the event Physician voluntarily leaves the employment of Group during the term of this Agreement or any extension hereof:

(i) Physician will not engage in the practice of medicine, either directly or indirectly, actively or passively, under contract or otherwise, as an employee, owner, partner, agent, stockholder, director, or otherwise, for a period of one (1) year within either a ten (10) mile radius from the primary practice site of Physician while employed by Group, or within Shelby County, Tennessee; and

(ii) in addition to, and separate from, the foregoing agreement not to compete, Physician agrees that he or she will not, at any time within one (1) year after any termination of his or her employment hereunder: (1) treat, or solicit for treatment by himself or herself or any person or entity other than Group, any person who has received medical treatment from Physician while Physician was an employee of Group, regardless of whether such person was treated by Physician prior to the Effective Date of this Agreement; or (2) offer employment to, solicit, engage by contract, or enter into any business relationship whatsoever with any person who is now or at any time during the term of this Agreement becomes an employee or service contractor of Group.

(b) *Remedies.* Physician understands and agrees that any breach of the covenants contained in this Section 16 will cause irreparable injury and damages to Group for which there is no adequate remedy at law, and as to which money damages cannot be readily ascertained. Accordingly, Physician consents in such event to the granting of injunctive relief against any continuing breach, together with retrospective relief in the form of liquidated damages equal to _____ percent (%) of all fees or other income generated or obtained by Physician or through his or her efforts as a result of the breach. In the event Group is granted injunctive relief as provided for herein, whatever portion of the one (1) year term stated in subsection (a) had not expired at the time the breach first occurred shall be tolled by the breach, and shall begin to run again as of the date permanent injunctive relief is granted. Physician shall be liable to Group for all costs reasonably incurred by Group in pursuing enforcement of the provisions of this section, including but not limited to reasonable attorneys fees and court costs.

(c) *Buy-Out.* As an alternative to the remedies otherwise afforded by this Section 16, Physician may elect to buy out his or her obligations under this Section 16 at any time after the end of the twelfth (12th) month following the Employment Date by completing each of the following steps: (i) providing proper written notice to Group of Physician's termination of this Agreement; (ii) including in such written notice a statement that Physician is exercising his or her election under this Section 16, subsection (c); and (iii) paying to Group a dollar amount equal to his or her actual collections net of contractual adjustments during the six (6) highest months of the most recent twelve (12) months prior to the termination of this Agreement. Payment of the buyout amount hereunder shall give Physician the right to contact the patients he or she has personally treated as well as the right to obtain copies of charts with regard to those patients, upon payment of \$5.00 per chart to cover the cost of reproduction.

(d) *Survival of Terms.* The parties acknowledge and agree that the provisions of this Section 16 have been specifically bargained for, are reasonably necessary to protect the legitimate business interests of Group, and shall survive termination of this Agreement for any reason.

17. **Notices.** Except as otherwise provided elsewhere in this Agreement, all notices required to be given under this Agreement shall be sufficient if given in writing and sent by United States Certified Mail, postage prepaid, return receipt requested, to the appropriate party at the address given following the signature lines at the end of this Agreement, or, alternatively, to Group at its registered office address and to Physician at his or her most current home address as shown in the personnel records of Group. Notice given by mail shall be effective as of the mailing date. Notice given by any other means shall be effective upon delivery.

18. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter addressed herein. Any prior or contemporaneous agreement, promise, or representation, whether oral or written, relating to the subject matter of this Agreement and not expressly set forth or referenced in this Agreement or a proper amendment hereto shall be of no force or effect.

19. **Amendment.** This Agreement may be amended only by the mutual written consent of the parties, and no oral modification or amendment shall be permitted.

20. **Assignment.** This Agreement and Physician's rights and obligations hereunder may not be assigned or transferred by Physician. Group may assign this Agreement, and its rights and obligations hereunder, to any person that controls, is controlled by, or is under common control with Group, or which is merged with or into Group, or that purchases all or substantially all of the assets of Group.

21. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and their successors and permitted assigns.

22. **Waiver.** Any of the terms or conditions of this Agreement which may be waived may be waived in writing at any time by any party hereto which is entitled to the benefit thereof. Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.

23. **Remedies.** Nothing in this Agreement shall be construed to limit the lawful remedies available to either party in the event of breach of any provision of this Agreement. The provisions of this Agreement and the performance of each party hereunder may be enforced by any right or remedy available at law or in equity.

24. **Severability.** In the event that any provision of this Agreement is rendered invalid or unenforceable, such provision shall be severed from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect, *provided, however,* that if the effect of the severance of such unenforceable provision is to substantially deprive Group of the benefit of the services of Physician or the revenues derived therefrom, or to substantially deprive Physician of the benefit of compensation for services rendered, this Agreement may be terminated by the party so deprived immediately upon written notice to the other party.

25. Headings or Captions. The headings or captions provided throughout this Agreement are for reference purposes only, shall not be considered in construing the terms and conditions of this Agreement, and shall not in any way affect the meaning or interpretation of this Agreement.

26. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Tennessee.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

28. Buy-In. (a) *Third Year.* In the event Physician remains employed by Group as of the first (1st) day of the thirty-seventh (37th) month following the Employment Date stated in Section 11(b) of this Agreement, he or she shall have the opportunity to purchase shares (or other equity interest then pertaining) in Group. The number of shares held by each stockholder, and the number of shares available for purchase by Physician, shall be determined on an objective basis, commensurate with the number of years of continuous employment of the Physician and the productivity of the Physician in terms of average annual net receipts generated. The purchase price shall be determined by dividing the fair market value of the assets of Group (not including goodwill) by the number of shares that will be outstanding following the issuance of Physician's shares, and multiplying the quotient by the number of shares issued to Physician.

(b) *Earlier Sale of Practice.* In the event of any agreement to sell or transfer of all or substantially all of the assets or stock of Group at any time following the end of the twelfth (12th) month and prior to the beginning of the thirty-seventh (37th) month of Physician's employment under this Agreement, the buy-in described in subsection (a) of this Section shall be accelerated and concluded as a condition precedent to such sale or transfer.

29. Effective Date. The Effective Date of this Agreement (as described in subsection 11(a)) shall be: _____.*

30. Commencement Date. The intended date of commencement of Physician's employment under this Agreement (the "Commencement Date," as described in subsection 11(b)) shall be: _____.*

ABC, PLLC (“Group”)

_____*
(“Physician”)

By: _____

President

Date: _____

Address for notices to be sent:*

Date: _____

Address for notices to be sent:*

*** PLEASE DO NOT SIGN THIS AGREEMENT UNLESS ALL BLANKS HAVE BEEN COMPLETED.** Please provide a street address (not a post office box) for notices.

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