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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2009-CP-27-0331

Phillip Flexon, M.D. Respondent,

v.

PHC-Jasper, Inc., d/b/a Coastal Carolina
Medical Center, Coastal Carolina Medical
Center, Inc., Lifepoint Hospitals, Inc., and
Tenet Healthsystems, Inc., ... Defendants,

Of Whom Lifepoint Hospitals, Inc., is Appellant.

RECORD ON APPEAL
VOLUME II OF II

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1 hereto. Do you have any written agreement executed
2 by CCMC and yourself other than this one?

3 A. Executed?

4 Q. Yeah, signed.

5 A. I mean, that I signed? I don't recall
6 any. I certainly didn't sign the assignment
7 agreement.

8 Q. Okay.

9 A. So I don't recall of any.

10 Q. Okay. You received \$25,000 as a
11 signing bonus under the contract?

12 A. I did.

13 Q. Okay. And do you remember when you got
14 that?

15 A. I don't. I don't remember.

16 Q. Do you remember what circumstances
17 would require you to pay that back?

18 A. I -- they're in the contract I think.

19 Q. Okay. This contract -- I think what
20 you've said to me is that it contains the terms of
21 your agreement but other terms are to be inferred.
22 Am I understanding that properly?

23 A. Well, I think it's -- it's a logical
24 progression that when they say it's -- it's Coastal
25 Carolina's responsibility to provide personnel, to

1 provide supplies so that he can perform his
2 practice, those are general terms.

3 But there does exist a core number of
4 personnel and types of personnel. There exists a
5 core equipment list that allows for that. So
6 that's a -- where they -- they sometimes --
7 they're -- what they say is not specific, it's
8 broad, so then I -- I think that you -- well, what
9 are the specifics here? Well, you sit down with
10 the people who negotiated the contract and I -- you
11 know, I submitted a pro forma of cases that I could
12 do there --

13 Q. Uh-huh.

14 A. -- that I would do there and it
15 requires a certain type of equipment. And so you
16 would expect that that's -- the contract would --
17 would entail them obtaining those or making them
18 available to you.

19 Q. Let's assume that your -- let's assume
20 your interpretation of the contract for now is
21 saying that there are certain elements that would
22 be inferred --

23 A. Uh-huh.

24 Q. -- is this the agreement that would
25 control your relationship with CCMC?

1 A. I -- I believe it is.

2 Q. Okay. Your office was at 1010 Medical
3 Center Drive in Hardeeville, right?

4 A. Correct.

5 Q. Okay. Did you choose that location?

6 A. I did not.

7 Q. Okay. Who chose it?

8 A. As far as I know, Eric Deaton did.

9 Q. Okay. Do you think that location had
10 an adverse affect on your practice?

11 A. It wasn't an -- it was not an ideal
12 location I think. The first location that we
13 talked about in Plantation Park was -- was a better
14 one, but...

15 Q. So my understanding of your answer is,
16 yes, you think it did negatively impact your
17 practice?

18 A. I do believe it did.

19 Q. Okay. Do you have a percentage that
20 you could apply to that or an estimate about how
21 much of a hit you took because of the location?

22 A. Oh, maybe 4 or 5 percent.

23 Q. Do you believe the stock sale from
24 LifePoint to Tenet qualified as an assignment of
25 your contract?

1 A. I do not.

2 Q. Okay. Do you think you were validly
3 employed by Tenet after the CCMC -- or the stock of
4 CCMC was sold --

5 A. Well --

6 Q. -- to Tenet?

7 A. -- I mean, I went to work and they paid
8 me. I don't think we had a contractual agreement.

9 Q. If you felt that way about it and you
10 despised Tenet so much, why didn't you just quit
11 when you learned that there had been the sale of
12 stock to Tenet?

13 A. Well, that's not an easy thing to do as
14 a doctor. I had made a substantial, I thought,
15 sacrifice and to come over and -- and start a
16 practice there. And I, from the get go, met and
17 talked with people at Tenet trying to have some
18 responses to what are we going to do to solve some
19 of these problems, and didn't get anywhere. So
20 that's, you know, what led to this, you know,
21 finally happening. But you don't build a practice
22 overnight. You know, it's -- there's a little bit
23 of where do I go. I mean, I -- I have a mortgage,
24 bills, a family, a child in college.

25 Q. Yeah.

1 A. I was in a bad situation. I mean, I
2 was completely, you know -- you know, I felt
3 tricked, you know. I never would have signed that
4 contract had I known that there was a sale pending
5 to -- to Tenet.

6 Q. Did you purchase the assets in the
7 office yourself or were they provided to you?

8 A. Oh, they were provided to me.

9 Q. Who set up -- who set up cleaning or
10 cleaned the office?

11 A. Dan Gemmell.

12 Q. Okay. And was that provided by the
13 hospital to you?

14 A. It was and -- and I'm not certain it
15 was Dan Gemmell --

16 Q. Okay.

17 A. -- who did that.

18 Q. Who purchased the supplies for the
19 office?

20 A. Dan Gemmell and -- and actually --
21 and -- Dan Gemmell, Patty Brady, and Priscilla
22 Green, all three bought supplies.

23 Q. And who did it after Dan Gemmell left?

24 A. Nobody. To -- to some extent Patty
25 Brady and Priscilla Green.

1 Q. Okay.

2 A. And then Priscilla Green and then there
3 was just Patty.

4 Q. Okay. I want to talk to you about
5 marketing now. I'm going to leave some of that
6 other stuff behind --

7 A. Okay.

8 Q. -- and I'm going to talk about
9 marketing and I'm going to talk about staffing.
10 Okay.

11 A. Okay.

12 MR. MYRICK: Does anyone want to take a
13 break because I'm just going through this?

14 THE WITNESS: I'm fine.

15 MR. MYRICK: Tell me when you want to.

16 MR. HARVEY: I'm going to take another
17 little short break.

18 MR. MYRICK: Okay.

19 (A recess transpired.)

20 BY MR. MYRICK:

21 Q. Marketing, we were going to talk about
22 marketing --

23 A. Okay.

24 Q. -- and see if we can cover some ground
25 on that. Before -- before we depart entirely to

1 it, was this space leased, this office space? Who
2 leased to whom?

3 A. You know, I'm not entirely certain. I
4 think it was owned by an REIT --

5 Q. Uh-huh.

6 A. -- based in Arizona and I think that
7 the hospital maybe leased it from them and then
8 they in turn put a cost center on my practice which
9 was -- I mean, I had half the building it seemed
10 like for one ENT --

11 Q. Okay.

12 A. -- but...

13 Q. So you got overly charged with
14 overhead?

15 A. Little bit.

16 Q. Okay.

17 A. Uh-huh.

18 Q. Marketing. Explain what problems you
19 had regarding marketing, if any, of your practice?

20 A. Well, I thought -- I thought that the
21 marketing was not thought out and misdirected.
22 They -- they did the typical let's have little --
23 little lunches and go out and meet the docs. And
24 one of the things I think that they failed to
25 recognize is that -- that most or many of the

1 physicians already knew who -- you know, knew I
2 was -- who I was. It was a question of one,
3 locating me. You know, where is Flexon now.

4 And -- and then I thought that they
5 needed to actually address -- I mean, this is --
6 well, I have to say -- let me back up and say with
7 regard to LifePoint, LifePoint, you know, I signed
8 the contract and they -- they left.

9 Q. Uh-huh.

10 A. So then -- then I'm in this situation
11 with Tenet wondering what I'm going to do and so, I
12 mean, I thought that they were not able to manage
13 the practice and I thought that their marketing
14 attempts were misdirected. And -- and I think that
15 I -- I -- in order to go forward if we were going
16 to come to any type of agreement, I thought that
17 they should actually directly try to address some
18 of the -- the negative reputation they had and, you
19 know, almost separate themselves from some of the
20 things of that.

21 I think there were a lot of -- a lot of
22 those -- a lot of my older patients and -- and --
23 coming from Bluffton and Hilton Head were
24 sophisticated. They read -- they read these
25 things. And I think there could have been some

1 discussion or prints or op-eds in the newspaper
2 about, you know, well, we reorganized. We moved
3 Tenet from California to a new headquarters in
4 Texas. We're -- you know, we're totally new and
5 committed and how they were committed to, you know,
6 patient excellence and -- and patient care.

7 But when I said that to the CEO of --
8 of the hospital, Teresa Urquhart, she said it is
9 what it is. And she wanted to set up little, you
10 know, lunches to meet doctors like I was somebody
11 new to the community. And I -- I -- and with a
12 very limited budget. I think -- I think Tenet came
13 in on a shoestring. I think if that -- my belief
14 is, although there's nothing -- this is a belief.
15 This is a -- just an opinion. I think if they had
16 their -- their rather, they would have liked to
17 just close the hospital. That's -- I have nothing
18 to prove that, it's just a belief I have, an
19 opinion..

20 Q. Okay. Are most of your patients
21 self-referred or did they come in from primary care
22 physicians?

23 A. I would say the majority come in
24 from -- from physician referral. Not necessarily
25 primary care. And probably a minority are

1 self-referred.

2 Q. Okay.

3 A. But there are some that are
4 self-referred.

5 Q. So really if you were out marketing,
6 who you were supposed to be targeting are the local
7 docs?

8 A. Regional doctors --

9 Q. Regional --

10 A. -- yeah. Uh-huh.

11 Q. -- docs. And -- and Tenet was not
12 doing that, LifePoint was not doing that, Tenet was
13 not doing that?

14 A. I would --

15 Q. CCMC was not doing that?

16 A. I didn't believe that they were doing
17 it in a -- in a, you know, a constructive matter.

18 Q. Because you felt like they should have
19 addressed the issue of the ownership of CCMC by
20 Tenet and that should have been the focus?

21 A. I felt that was one of the -- the
22 tracks they should have taken. I think that they
23 should have built up or -- or helped build up a
24 network with certain types of -- of doctors who
25 tend to refer to otolaryngologists, pulmonologists

1 for sleep apnea surgery and sinus surgery that tend
2 to be a big referral. And -- and as well as
3 internists. And of course there's pediatricians
4 for tonsils and adenoids.

5 And there -- there were -- they --
6 we -- they -- they did set up some meetings with,
7 you know, the pediatricians but there again, they
8 were -- I think two of them actually did their
9 residency at Memorial and actually rotated with me
10 as residents. I mean, it was -- they knew who I
11 was.

12 Q. Uh-huh.

13 A. It's a matter of finding me.

14 Q. So given the situation, and I
15 understand that one point about trying to, you
16 know, what you view as clean up Tenet's reputation
17 and I understand you said that. But what else
18 could they have done to assist if all these doctors
19 already knew you?

20 A. Well, they knew me. It -- it was they
21 had to be able to find me, you know, where -- what
22 we were -- where we were, where my office was
23 located --

24 Q. Uh-huh.

25 A. -- a phone number, how to get ahold of

1 me, the kind of things we could do at -- at Coastal
2 and at Memorial. I mean, bear in mind, Eric
3 Deaton, one of his issues was, you know, he -- I
4 was to continue on the staff at Memorial.

5 Q. Uh-huh.

6 A. So that was -- he wanted that, he
7 wanted me on the staff at Memorial.

8 Q. And you feel like that -- that CCMC let
9 you down on letting the world know where you were,
10 all of your information?

11 A. Right.

12 Q. All right. Right.

13 A. And in some of the cases, you know,
14 some of the -- the things that I did that -- that
15 had possibly the biggest potential patient-building
16 capabilities, navigational equipment for my sinus
17 surgery, lasers, they didn't -- they didn't get the
18 equipment.

19 Q. Uh-huh. Did you ever need that
20 equipment to do a procedure and it was not provided
21 to you by a rental or borrowing it from somewhere?

22 A. Yes, and -- and -- and in this -- this
23 fashion. Initially it was going to be, well, we're
24 going to buy it, you're going to get to pick it
25 out. And so right off the bat some vendors brought

1 in demos and they rented lasers.

2 And then when Tenet took over, they --
3 they struggled with that -- that -- that trying to
4 obtain rental equipment and it was like -- it was
5 such a delay.

6 For example, if I wanted to take a
7 small tumor off with a laser, that -- I couldn't do
8 it. And I lost cases because I couldn't book the
9 sinus surgery for people who needed to have it done
10 with -- with navigational equipment, and they went
11 to other doctors.

12 Q. Could you compile a list of those
13 people?

14 A. I don't think so. I don't have the
15 records available. I don't think at this point in
16 time I could -- could do that.

17 Q. How many do you think there were?

18 A. Oh, maybe 15 to 20 patients
19 specifically that surgery had to be delayed,
20 postponed, left, because I couldn't get the -- the
21 equipment in a timely fashion. And then later on,
22 some cases where I had to schedule some cases at
23 Memorial that I would have normally wanted to do
24 at -- at Coastal.

25 Q. And what was the instrument you needed

1 to do this 15 to 20?

2 A. The two big pieces of -- of equipment
3 were a CO2 laser.

4 Q. Uh-huh.

5 A. And the sinus navigational equipment
6 for -- that would navigate and -- and you're --
7 navigate your surgery when you did endoscopic sinus
8 surgery.

9 Q. How many times a week did you have a
10 need for a CO2 laser?

11 A. It -- when I was in full practice, I
12 would have probably have used it four or five times
13 a month. A month.

14 Q. Okay. And what about --

15 A. Maybe.

16 Q. -- what about sinus navigational
17 equipment?

18 A. The time of that, you know, probably
19 one a week.

20 Q. How much does a CO2 laser cost?

21 A. Probably about \$100,000.

22 Q. How much does a sinus navigation
23 equipment cost?

24 A. Same price range. Maybe a little bit
25 more.

1 Q. Okay.

2 MR. HARVEY: Let's --

3 MR. MYRICK: Oh, yeah.

4 MR. HARVEY: -- let's mark these. Put
5 your name on them and circle what you want.

6 (Off-the-record conference.)

7 BY MR. MYRICK:

8 Q. Okay. Did you have certain payback
9 terms regarding marketing funds in your contract?

10 A. I can't remember -- remember
11 specifically, but it seems to me in there -- the
12 language in the contract is in front of us.

13 Q. Whatever it is, it is --

14 A. It is, correct.

15 Q. -- that would have controlled that
16 topic?

17 A. Yeah.

18 Q. Okay. Then staffing issues, you wanted
19 to talk about staffing issues and I think we've
20 touched on this a little bit. But what did the
21 staffing look like when you started at CCMC?

22 A. The staffing was set up as follows:

23 We -- we had contracted with an outside billing
24 group and that was Apple A Day. Dan Gemmell was
25 a -- sort of a general office manager. I think he

1 managed my practice and one or two other practices.

2 He was the over (sic) manager. I had a

3 receptionist.

4 Q. So you had about a third of Dan

5 Gemmell?

6 A. A third or a half.

7 Q. Okay.

8 A. Yeah, a third or a half.

9 Q. Okay.

10 A. And I -- I think a half. I think he
11 had Warner's, but I -- I'm not certain.

12 Q. Okay.

13 A. Warner's and my practice. I had
14 Priscilla Green, the receptionist.

15 Q. Right.

16 A. And I had Patty Brady, my nurse.

17 Q. She was an LPN?

18 A. That was the start. She's an LPN.

19 Q. Okay. And were they all full time?

20 A. Yes.

21 Q. Not -- not -- not Yingling with Apple,
22 she was --

23 A. Right.

24 Q. -- contract?

25 A. She was contracted out to do the

1 billing, right.

2 Q. But Dan Gemmell was full time -- no, he
3 wasn't.

4 A. Half. I think he was --

5 Q. He was half time.

6 A. -- half with me and half with Warner,
7 the neurologist.

8 Q. So he's a half --

9 A. Yeah.

10 Q. -- half full time employment?

11 And then Priscilla Green was full time?

12 A. Yes.

13 Q. Patty Brady?

14 A. Was full time.

15 Q. Full time. How many employees did you
16 expect to have? Is that the right staffing for
17 that office?

18 A. It -- yeah, I think that at that -- at
19 least to start off with that was -- that was --
20 that was appropriate. That was the minimal base to
21 start off with.

22 Q. How many employees does a solo ENT
23 typically have?

24 A. I -- I would say that you would have
25 probably -- if you outsource billing, I think that

1 probably three full-time employees.

2 Q. And what roles are those three
3 full-time employees?

4 A. A clinical person and an office front
5 receptionist-type person and somebody who kind of
6 manages the practice. Those would be your three --
7 usually that would be three full-time -- FTEs.

8 Q. Would that be true in startup practice?

9 A. Yeah, I think so.

10 Q. Okay.

11 A. You know, I think that where we started
12 was -- was not -- it was adequate with, you know,
13 Dan and Priscilla, and -- and Patty. That was --
14 that was a core that was -- was the base core.

15 Q. Uh-huh. And that would be what you
16 would typically find in a small town? That's like
17 the bare minimum is what you're telling me?

18 A. Yes.

19 Q. Okay. During a period here we've got
20 an ENT office billing in 2007 about \$20,000 a
21 month, right?

22 A. I -- whatever the figures show --

23 Q. Okay.

24 A. -- I don't know.

25 Q. And so if you've got all these people

1 in that office and it's billing \$20,000 a month, is
2 that a reasonable use of assets?

3 A. It -- it -- well, it is. You would --
4 as a startup, you would -- you would probably need
5 three to six months to get up to -- to -- to -- to
6 core. And that's where you should, you know, be
7 able to --

8 Q. Okay.

9 A. -- to start to get, you know...

10 Q. After six months?

11 A. It's -- three to six months, yeah.

12 Q. Okay. Three to six months. Let's --

13 A. You normally would borrow money to
14 cover your expenses for a period of time.

15 Q. All right. Let's talk about Priscilla
16 Green. She did the front desk. What were
17 Priscilla Green's duties?

18 A. She answered the phones. She did the
19 scheduling. And one of those persons who did kind
20 of whatever was needed to be done. But she was the
21 receptionist when a patient would come in and check
22 in. And I think that she -- she collected, you
23 know, checks and -- and money as they were paid to
24 the -- to the practice.

25 Q. That would be the co-payments and

1 deductibles?

2 A. The co-payments and the deductibles
3 and -- in cases. Pay for, you know, fee for
4 service patients would pay.

5 Q. Uh-huh. Was she busy?

6 A. She was.

7 Q. Did she do a good job?

8 A. I thought she did.

9 Q. When did she leave you?

10 A. In March, I believe, of 2008.

11 Q. Why did she leave you?

12 A. Because she felt that -- she -- well,
13 she did not want to continue at Tenet. She felt
14 that -- that she -- or preferred going back to her
15 old employee -- employer.

16 Q. Who was that?

17 A. That was Dr. Gwozdz. Gwozdz. She's an
18 ENT in Hilton Head.

19 Q. Dr. Gwozdz?

20 A. Gwozdz. G-O-W-D-Z or something like
21 that. I don't know how to spell her name, but it's
22 close.

23 Q. Okay. So was it that she didn't want
24 to be with Tenet or that she preferred Dr. Gwozdz?

25 A. I think it's a little bit more of

1 the -- that she didn't want to be with Tenet. She
2 thought it was not --

3 Q. That was the main reason?

4 A. She thought that -- that -- I don't
5 want to speak for her, but I -- this is my belief
6 and her belief was that they didn't have any
7 interest in having a otolaryngologist and were
8 doing their best on trying to make us leave, I
9 guess.

10 Q. But weren't you the only
11 otolaryngologist around?

12 A. In Jasper County --

13 Q. Yeah.

14 A. -- yes.

15 Q. Yeah. So why would Tenet have wanted
16 you out if they needed you so desperately and
17 recruited you?

18 A. Tenet did not recruit me, LifePoint
19 recruited me.

20 Q. Okay. But --

21 A. Why did they recruit me?

22 Q. Well, I'm trying to figure out why
23 Tenet would have wanted you out if there was such a
24 demographic need for an otolaryngologist there.

25 A. I think that they did not want to

1 support a startup practice. They did -- and they
2 had no interest in, you know, maintaining or -- or
3 running physician's surgical practices. I -- I
4 don't know, you'd have to ask them specifically.

5 Q. Did anybody ever tell you that?

6 A. I don't know for sure. I don't know
7 for sure if anyone specifically said that to me.

8 Q. Who was it that you got this impression
9 from? Teresa Urquhart?

10 A. Teresa and -- and -- and the CEO of --
11 of Hilton Head, Lamkin.

12 Q. Liz Lamkin?

13 A. Yeah.

14 Q. Did -- what did they say to you about
15 it?

16 A. It just -- it was a -- a -- a -- a lack
17 of support and -- or an incompetence. Why would
18 they not send in any billing? Why would they fire
19 my -- my billing company without my knowledge of
20 it? I -- I don't know. You'd have to ask them. I
21 don't know.

22 Q. Okay. All right. Did you tell
23 Priscilla Green before she departed that you were
24 thinking of leaving too?

25 A. I believe I -- I may have said I -- I

1 was -- was thinking of leaving.

2 Q. What effect did --

3 A. Excuse me.

4 Q. -- what effect did you expect that
5 comment to have?

6 A. I think that I -- I was -- I was pretty
7 open with both Patty and Priscilla that I thought
8 they did good work. And that I didn't know what
9 the future held with -- with me and Tenet, but that
10 I wanted them to stay with me where I went,
11 wherever I went.

12 Q. Uh-huh.

13 A. It would -- you know, we could move or
14 go wherever, I -- I would have wanted her to stay
15 with me.

16 Q. Where did Priscilla live and where did
17 Brady live?

18 A. Brady lived in Savannah. And Priscilla
19 lives in Hardeeville in Levy, not far from where I
20 lived.

21 Q. Uh-huh. Okay.

22 A. I would add that I think that
23 Priscilla, and I'm speaking for her, she -- she
24 would not have wanted to commute to Savannah.

25 Q. Uh-huh.

1 A. I think that could have been an issue,
2 I don't know, if I went back to Savannah. I don't
3 think it was etched in stone that that's what I was
4 doing.

5 Q. So what would have happened to
6 Priscilla then if you had quit but she was still
7 there?

8 A. Maybe they would have given her another
9 position. I don't know. Don't know. She -- my
10 intent was I -- I thought Priscilla did a good job
11 and my intent was wherever I went I'd probably try
12 to take -- make a position for her and keep her
13 employed.

14 Q. But she wouldn't want to commute?

15 A. I -- I'm guessing that that was an
16 issue for her.

17 Q. Okay.

18 A. You'd have to ask her.

19 Q. Did she give you any notice?

20 A. She did.

21 Q. Sounds like y'all got along fine?

22 A. We did.

23 Q. And she went to Dr. Gwozdz?

24 A. Yes.

25 Q. Have you spoken with her since she left

1 CCMC?

2 A. You know, maybe a few times because --
3 just because we are -- we're neighbors. And I
4 think -- you know, she has a little boy who plays
5 football on the -- the local team, so we've --
6 we've talked a few times and, you know, I see her
7 every once in a while.

8 Q. Uh-huh. Did you live at Swan Hill?

9 A. I don't now. I live in Vidalia.

10 Q. But you did then?

11 A. No, I lived in -- in Hardeeville in --
12 in -- my home is -- is in the Levy --

13 Q. Separate?

14 A. -- section. Yeah, it's a -- it's a --
15 it's a horse farm, you know.

16 Q. All right. There is some -- going to
17 Exhibit 5. Take a look at Exhibit 5 for me. If
18 you just want to stack those right here we'll keep
19 them in order and you can refer to them as you
20 like.

21 (DFT. EXH. 5, Letter dated September
22 18, 2008 from L. Patricia Brady, LPN, to William
23 Harvey, was marked for identification.)

24 THE WITNESS: Okay.

25 MR. HARVEY: Do you have a copy for

1 him?

2 MR. MYRICK: Well, I've got one for you
3 and one for him but I've got an extra right there
4 if you want to keep that.

5 BY MR. MYRICK:

6 Q. This is a -- a letter to your attorney,
7 Bill Harvey, dated September 18th, 2008 from
8 Patricia Brady.

9 Do you see that?

10 A. Yes.

11 Q. Okay. There's some testimony I guess
12 we'd call it, some statement that Yingling dropped
13 off the billing information to Green, who was the
14 lady we were just talking about. And then the
15 evidence is that Ms. Green just never did anything
16 with those documents or told anyone. Is that
17 correct?

18 A. You know, I don't know.

19 Q. Did you ever ask Priscilla Green did
20 the Yingling lady drop off all the bills here and
21 what did you do with them, Priscilla?

22 A. I -- I -- I asked actually Priscilla
23 when I learned of it and I can't remember exactly
24 when that was, but it was -- it was after this
25 whole event occurred. And I said, did you know

1 the -- the bills get dropped off. And she said,
2 yes, and she said I didn't touch them because I was
3 under the -- I think she said I am under the
4 impression that -- that -- that Phyllis had -- was
5 doing it at the instructions of the hospital.

6 Q. Uh-huh.

7 A. And I -- I knew that they were bills.
8 I didn't know what -- what specifically they were.

9 Q. When the bills arrived, did Priscilla
10 Green discuss it with you?

11 A. No. I don't believe she was told to.

12 Q. So what Priscilla Green was -- she took
13 this box -- was it a box? Did you see where they
14 were?

15 A. They were boxes.

16 Q. They were boxes. How many boxes were
17 they?

18 A. Well, I don't know. And I don't know
19 that they were all -- that -- that they were all --
20 by the time I -- I was aware of what was going on,
21 I -- I think that there could have been other boxes
22 because I don't believe that from the time Tenet
23 took over that they had sent a bill in until after
24 I left.

25 Q. What was the time period between when

1 the boxes were dropped off with Priscilla Green and
2 the time you learned about it?

3 A. I'm going to guess a month.

4 Q. About a month?

5 A. Yes, and -- but there were several
6 boxes.

7 Q. And where had Priscilla put the boxes?

8 A. I think Priscilla didn't touch them. I
9 think Patty Brady moved them to a -- a room that --
10 in the office, an -- an empty room, you know, a
11 storage room.

12 Q. And when she did that, she did not tell
13 you that she was doing it?

14 A. When I asked about them, I mean, the --

15 Q. When you asked who?

16 A. When I asked the office staff, you
17 know, at that time it was before Priscilla had
18 left, and I asked them about it, they, you know,
19 showed me where the boxes were.

20 Q. And Priscilla said they came into me,
21 Brady has taken them from where they were at my
22 desk and put them in that back room over there?

23 A. I think that's the -- the chain of
24 events. And I don't think they understood that
25 they were just papers from Apple A Day. They --

1 they were not informed or assigned or told to do
2 anything with them.

3 The termination letter came from Teresa
4 Urquhart. I didn't know about it. Apple A Day
5 never contacted me. Teresa or the administration
6 of LifePoint never informed me that they had
7 terminated my billing service.

8 Q. Uh-huh.

9 A. And there -- my office personnel, my
10 immediate office personnel, Patty and Priscilla, to
11 my knowledge, received no instruction or
12 information to exactly what they were except
13 perhaps when -- when Phyllis dropped them off, that
14 these are copies of bills and...

15 MR. HARVEY: Teresa -- Teresa or
16 LifePoint you mean --

17 THE WITNESS: I mean, at Tenet, yeah.

18 MR. HARVEY: Teresa at Tenet.

19 THE WITNESS: Teresa at Tenet.

20 BY MR. MYRICK:

21 Q. Okay.

22 A. But, yeah, Teresa terminated it and she
23 did this all without my knowledge or discussion
24 with me.

25 Q. And let's talk about Brady a little

1 more. What were her duties --

2 A. She'd handle --

3 Q. -- at the start?

4 A. At the start, well, she handled all
5 the -- the clinical aspects of the practice and
6 took all the clinical calls from patients. She,
7 you know, stocked the rooms. She ordered the
8 various, you know, nasal sprays that I might need.
9 And she would -- you know, would come in with me
10 with my patients and, you know, assist me when I do
11 an exam. I -- I usually like a chaperone in the
12 room --

13 Q. Okay.

14 A. -- when I examine a patient. And she
15 did all these things. And -- and she may also
16 worked -- have worked in part with Priscilla in
17 scheduling surgery.

18 Q. Uh-huh.

19 A. But I think Priscilla did most of
20 the -- the scheduling.

21 Q. Did she come with you from Savannah?

22 A. She did.

23 Q. Did she commute or did she move?

24 A. Oh, she commuted.

25 Q. Where is she employed now?

1 A. Memorial.

2 Q. With you?

3 A. No.

4 Q. How -- what -- when she left, where did
5 she go?

6 A. She went with me.

7 Q. She went with you?

8 A. Yeah, initially.

9 Q. But she no longer works for you?

10 A. She no longer does.

11 Q. Where does she work now?

12 A. At Memorial.

13 Q. Memorial. Do you know who...

14 A. She works for the clinical practices.

15 She may, I believe, still be with the ACI, Anderson
16 Cancer Institute.

17 Q. How would you characterize your working
18 relationship with her?

19 A. It was good. It was good.

20 Q. What did she say when you told her you
21 were thinking of leaving?

22 A. I -- I don't think -- I think she
23 probably had mixed feelings about it.

24 Q. More so than Green?

25 A. I'm not sure that -- you know, I'm not

1 sure what you're getting at more so meaning she had
2 a more --

3 Q. Well, it sounded like --

4 A. -- negative or more positive?

5 Q. Yeah. Was she more ambivalent about it
6 than Green was?

7 MR. HARVEY: Objection to the form.

8 THE WITNESS: Tough to -- yeah, it --

9 BY MR. MYRICK:

10 Q. About staying with --

11 A. -- and I -- I'd say that would -- that
12 would -- they'd be tough to characterize. I -- I
13 think that -- I think that Priscilla would have
14 stayed with me if -- if I had been in a -- truly in
15 my own practice, but I think she was reluctant to
16 get involved with another --

17 Q. Uh-huh.

18 A. -- corporate big hospital kind of
19 practice.

20 Q. Uh-huh.

21 A. And I think there was some reluctance
22 on Patty's part on that. Neither one of them I
23 believe had a problem working with me. I think
24 they both enjoyed it.

25 Q. Yeah. What would have happened to

1 Brady if you'd have quit but she had stayed behind?

2 A. I don't know.

3 Q. Okay. Did she give you notice or y'all
4 just -- she went with you so that was the plan?

5 A. Yeah, that was the plan when I finally,
6 you know, felt I couldn't stay there she went --

7 Q. Okay.

8 A. -- she went with me. And -- and -- and
9 actually I think that she would -- well, I --
10 there -- yeah, I think that more or less
11 characterizes it, yes.

12 Q. Was she loyal to you, in other words?

13 A. I think to a point.

14 Q. What do you mean?

15 A. Well, I think that -- I think she --
16 she needed and wanted a good and secure job, and I
17 think if -- I don't know, if -- if -- if Coastal
18 had come in and offered her a good job, she's a
19 good employee, she may have considered it. I think
20 she would have.

21 Q. Okay. Yingling, Apple A Day, the
22 billing was always outsourced from your office?

23 A. Yes.

24 Q. Uh-huh. And who hired Yingling --

25 A. I --

1 Q. -- or Apple A Day?

2 A. -- I think it was Dan Gemmell.

3 Q. But -- but was it LifePoint or was it
4 Dan Gemmell or --

5 A. Dan Gemmell and LifePoint.

6 Q. Okay. Was he -- was he a LifePoint
7 employee?

8 A. Yes.

9 Q. Okay. Did -- was your billing always
10 outsourced?

11 A. At Coastal, yes.

12 Q. Uh-huh.

13 A. Well, I think it was outsourced and
14 then it was -- didn't exist.

15 Q. Uh-huh.

16 A. Wasn't done.

17 Q. When the Apple A Day contract was
18 terminated by CCMC, I think it ended in December of
19 2007, was your office required to take over the
20 billing duties?

21 A. No.

22 Q. So this staff issue did not affect
23 the -- the day-to-day workload in your office, the
24 billing?

25 A. No, but it certainly affected my

1 practice hugely. I --

2 Q. I -- I get that.

3 A. Yeah.

4 Q. Now, let's talk about Gemmell. He was
5 an office manager not -- or was he a marketing man?
6 I'm a little -- you've described him as a -- as an
7 office manager.

8 A. Yeah, he -- he was the overall manager
9 I guess of the -- of -- of two practices. And I
10 think he -- he was -- I believe kind of -- I
11 believe he was hired by Eric Deaton and I think he
12 did what was necessary, whatever it might be.

13 Q. All right.

14 A. Yeah.

15 Q. What did he do in your office?

16 A. He initially ordered much of the
17 equipment. I think he found Priscilla. I believe
18 it was him. He -- if I'm not mistaken, he actually
19 helped me move in, you know, stuff --

20 Q. Okay.

21 A. -- into -- and he did a lot of the --
22 of the tons of paperwork that's required for
23 example when you come in and you need to -- new
24 provider numbers and, you know, you have a new
25 address and you have license requirements and --

1 and whatnot, he did all that.

2 Q. Everything you've described so far to
3 me sounds like that's weighted toward the front
4 end. Getting your EIN, establishing the office,
5 ordering the equipment, hiring personnel --

6 A. Yeah, I --

7 Q. -- what were -- what were his ongoing
8 duties?

9 A. Yeah, I -- I think that he was to, you
10 know, oversee, you know, the monthly, you know,
11 reports. He would, you know, monitor contracts,
12 you know the --

13 Q. What con --

14 A. Like maybe a -- like with a -- perhaps
15 a Blue Cross or a United Healthcare, and to the
16 extent that a new contract would -- would come in,
17 you know, he'd be the person to go over it. The
18 plan was that we -- you know, we'd have meetings
19 once a month and -- and go over the figures like
20 that.

21 Q. But in an office -- you know, at CCMC
22 at -- at a company or, you know, a hospital of that
23 size, couldn't a lot of his roles been duplicative
24 of other people in the organization doing the same
25 work?

1 MR. HARVEY: Objection to the form.

2 THE WITNESS: Huh-uh. No.

3 BY MR. MYRICK:

4 Q. Who was all --

5 A. No.

6 Q. It wouldn't have been?

7 A. Who would have -- who would have done
8 that? Who would have -- who would have compiled
9 and looked at your -- your monthly statements and,
10 you know, what your -- you know, what you're
11 posting, what's your caseload, all -- all of those
12 kinds of things. So it's generally a -- a
13 managerial type of position of a key person in a --
14 in a...

15 Q. Who did those things after he left?

16 A. They didn't happen.

17 Q. They didn't happen. Nobody undertook
18 that?

19 A. No, I never had a meeting of just a --
20 a regular kind of meeting to look at, you know,
21 performance and what was, you know -- no, never.

22 Q. Okay.

23 A. I didn't -- they didn't -- I asked for
24 them. They never -- they never happened.

25 Q. What was his salary?

1 A. I don't know.

2 Q. You did not hire him, but he worked for
3 the hospital?

4 A. That's right.

5 Q. He also worked for Dr. Warner and there
6 may have been a third?

7 A. Yeah, but I think it was just Warner
8 and me. He did the same --

9 Q. Okay.

10 A. -- had the same role for Warner and
11 myself.

12 Q. Did you negotiate a contract for him
13 when you came that you wanted an office manager?
14 Did you negotiate such a contract as part of
15 your --

16 A. No. I think it --

17 Q. -- coming --

18 A. -- goes back to the point we already
19 discussed. I mean, it --

20 Q. It was inferred?

21 A. Sure. I mean, who doesn't have an
22 office manager? I mean, every -- even the smallest
23 practice usually has an office manager,
24 particularly when you're contracted and in a bigger
25 organization, sure.

1 Q. Okay. Let me ask you about that. You
2 said who would need an office manager like that.

3 The billing was outsourced, correct?

4 A. (Nodding head up and down.)

5 Q. You have to answer audibly.

6 A. Yes.

7 Q. The marketing was being done by the
8 hospital, correct?

9 A. Yes.

10 Q. The scheduling was being done by the
11 front office --

12 A. Right.

13 Q. -- correct?

14 And the facilities were being managed
15 by the hospital who was in charge of cleaning, and
16 leases, and things like that?

17 A. Right, and I think that actually came
18 under Dan though.

19 Q. Okay.

20 A. The -- those kind of things.

21 Q. That came under Dan?

22 A. Yes.

23 Q. All right. And --

24 A. Who -- I believe.

25 Q. -- and the other thing that you've

1 described to me is sort of a -- a summary, here's
2 where we were in terms of your collections and what
3 your individual practice is doing.

4 A. Yeah, that would --

5 Q. And that's --

6 A. -- that's correct.

7 Q. -- the part that was missing when Dan
8 left?

9 A. That -- that was the part that was
10 missing and the coordination of -- of -- he was
11 my -- my -- the person who kept me informed at
12 least initially on -- on, you know, say contracts
13 and just -- just the pertinent things that an
14 office, you know, needs -- you know, a physician
15 needs to know in running an office.

16 You know, we would meet and talk. And
17 actually even before he left, those things stopped
18 for whatever reason. It just -- there was -- there
19 was confusion and I -- I think that maybe his role
20 wasn't clear with -- with the new owners.

21 Q. Uh-huh.

22 A. I don't know.

23 Q. Do you know the circumstances of his
24 leaving?

25 A. No. He was given other employment I

1 think for a short period of time in the system as a
2 respiratory therapist and then that was I think
3 terminated.

4 Q. Did he have -- did he have a
5 specialized background as an office manager?

6 A. I -- I don't -- I don't know his -- I
7 know his original training was as a respiratory
8 therapist. And I think he was just a -- a capable
9 person who just could -- could make things happen.

10 Q. Okay. There's a statement in the last
11 sentence of Paragraph 5 -- I mean of Exhibit 5.

12 And Patricia Brady makes a statement and it says:
13 We were forced to cut patient volume and
14 unfortunately close our doors.

15 Do you know what she means when she
16 says we were forced to cut patient volume?

17 A. Well, when Priscilla left, I mean, she
18 was doing everything and -- and she just
19 couldn't -- we -- she had -- she scheduled fewer
20 patients because she couldn't handle it, a big
21 patient schedule.

22 Q. Uh-huh. So she was turning people
23 away?

24 A. Yeah, or postponing them or delaying
25 them to later dates.

1 Q. And, in her view, delaying them for an
2 unacceptable long periods of time, and that's what
3 she means by forced to cut patient volume?

4 A. Yes. Yes, I...

5 MR. MYRICK: Okay. All right. I'm
6 going to take a break for just a minute.

7 MR. HARVEY: Uh-huh.

8 (A recess transpired.)

9 (DFT. EXH. 6, Document Bates-stamped
10 CCMC 475, was marked for identification.)

11 BY MR. MYRICK:

12 Q. Okay. We're back now. We're with
13 Exhibit 6. All right. I want to ask you some
14 questions about the billing issues now.

15 A. Uh-huh.

16 Q. This is Exhibit 6. What -- what is
17 this issue that you talked about with the billing,
18 that your bills were not coming out of -- of CCMC?
19 Is that the issue?

20 A. Yes.

21 Q. Okay. And how long a period did this
22 cover?

23 A. I think as soon as they took over.
24 I -- I don't believe they sent a bill out until I
25 had left.

1 Q. So that would have been from
2 March '07 --

3 A. No, no, it would have been from
4 July '07.

5 Q. July '07 to?

6 A. August of -- what -- until I -- yeah,
7 until -- until the -- I notified them of a -- a
8 breach. I don't think they sent a bill out.

9 Q. August -- all right. Well, the
10 termination date that --

11 A. They might have started in the last few
12 months.

13 Q. Not certain. I'm just going to put not
14 certain on that --

15 A. Yeah.

16 Q. -- point and we'll come back to it. I
17 want to look at this document. And this is called
18 Dr. Flexon Physician Practice Cumulative EBITDA
19 Analysis March 15th, 2007 through February 28th,
20 2009, okay?

21 A. Right.

22 Q. And I'm -- I'm looking for one thing.

23 A. Uh-huh.

24 Q. These are broken down into looks like
25 quarters, from March 15th to June 30th, from July 1

1 to December 31 --

2 A. Uh-huh.

3 Q. -- and then it comes into Tenet in
4 2008. From January 1 to February 28th and then
5 from March 15th to February 28, 2009. Are you with
6 me?

7 MR. HARVEY: You haven't identified who
8 prepared this.

9 MR. MYRICK: Well, I -- I think it's a
10 CM -- a CCMC document.

11 THE WITNESS: Okay.

12 BY MR. MYRICK:

13 Q. Okay. So I -- I'll represent to you
14 this was a document that was presented -- that was
15 prepared at the hospital.

16 A. Okay.

17 Q. Okay. Have you seen this before?

18 A. I have not specifically -- you know,
19 specifically studied this or seen this.

20 Q. Okay. And I think -- and I think some
21 of the figures may have changed some, but I -- I
22 think overall I want to ask you just about what
23 appears --

24 A. Uh-huh.

25 Q. -- here, because this was the status at

1 one point.

2 A. Uh-huh.

3 Q. This first category called gross
4 patient revenue; do you see that line?

5 A. I do.

6 Q. Okay. Do those represent about the
7 amount of monies that you billed for these periods
8 that are covered here, those first three quarters?

9 A. I have no idea.

10 Q. You have no idea?

11 A. I have no idea. I don't --

12 Q. Of whether that's your gross --

13 A. -- I don't see how --

14 Q. -- patient revenue?

15 A. -- I don't see how Tenet could have
16 known what they were -- you know, with the way they
17 handled their -- the -- the practice billings. I
18 don't -- I don't see how they could have known.

19 Q. Okay. Well, let's assume that they've
20 gone back and done the numbers about what services
21 you provided and --

22 A. They have no --

23 Q. -- the billings that were done to --

24 A. -- they have no idea.

25 Q. -- collect them --

1 A. They have no idea. You can't assume
2 that. They had no idea. They have no idea. They
3 had -- they did not know what they were doing.
4 They had nobody doing the billing.

5 Q. Well, I'm not saying that this was
6 created at that time. I'm saying this could have
7 been created later.

8 A. Did they find all the boxes?

9 Q. Well, yeah.

10 A. I --

11 Q. I think effectively --

12 A. Okay. I --

13 Q. Yeah.

14 A. All right.

15 Q. So do --

16 A. So I -- I can't make that assumption.

17 Q. -- do you have a reason --

18 A. I can't -- I -- I have to say, and I'm
19 going to go on the record saying this --

20 Q. Uh-huh.

21 A. -- they had no idea -- they had no idea
22 what was going on with the finances of my practice
23 other than I got paid a check and they were paying
24 my employees. They had no idea. They terminated
25 the biller. I don't even know if they got -- I

1 mean eventually they must have got some sort of
2 provider ID numbers, but I don't even think they
3 got even provider identification numbers until
4 after I left. They -- they had no idea.

5 So I don't know whether these -- I
6 mean, this is -- I don't know how -- how we can
7 even assume any of this is accurate.

8 Q. Uh-huh.

9 A. The bills were in boxes. Just junked.
10 And I -- I was -- the only thing -- I had very
11 little communication with Phyllis Yingling other
12 than to say that from the moment they came on board
13 they told me to hold your bills.

14 Q. Uh-huh.

15 A. Not send anything out.

16 Q. Uh-huh.

17 A. Now based on -- I mean, they could
18 play -- try to play accrual games, what they might
19 have estimated, you know -- you know, we -- they
20 should have been owed. They -- I know they -- they
21 did collect up front, you know, deductions and
22 co-pays --

23 Q. Uh-huh.

24 A. -- but that's -- which was illegal
25 because they didn't send anything in. I -- I

1 just -- so we'll go on -- I'm going to state from
2 the get go, I don't believe their numbers.

3 Q. Okay.

4 A. But then -- now you may proceed.

5 Q. All right. No, that's fair enough.

6 A. Okay. All right. Okay.

7 Q. I think what you're saying is you
8 although -- you don't have a separate tally of
9 these numbers anywhere, do you?

10 A. I do not. No, I don't.

11 Q. And I -- and I think just for the
12 purposes of explaining, I think what they've done
13 is found it from the gross billings that came out
14 of your office --

15 A. Okay.

16 Q. -- for that time period. Do you have
17 any reason -- you've -- you've explained that you
18 don't think that they collected the bills, actual
19 paper bills, but the computer information that
20 backs up these gross patient revenue, when you
21 performed a service, it was keyed into the system
22 as a -- as a service you were providing, correct --

23 A. Yes. But I have --

24 Q. -- by your staff?

25 A. -- you have -- I -- I suspect -- I

1 mean, I think their whole system is suspect when
2 they're -- such a fundamental issue is not getting
3 cash paid. I mean, that -- I mean, that was their
4 money.

5 Q. Uh-huh.

6 A. I mean, that's such an egregious
7 incompetent act, how can you -- I don't -- I don't
8 believe any of their -- their -- their data. I
9 think it's -- you know, be -- be that as it may.

10 Q. Okay.

11 A. So I don't -- I don't think that -- I
12 think that they -- they found some bills and were
13 able to collect it, but I don't believe even the
14 tally -- I mean, that's -- you know, they're going
15 to try to say, well, we do accrual accounting so as
16 soon as he did a procedure we entered in a certain
17 amount that we would expect to be paid or -- or
18 amount that was to be billed and then they have a
19 certain amount of cases.

20 Now, I believe that from my caseload
21 that they'll know what happened on the hospital
22 side. They --

23 Q. Uh-huh.

24 A. -- I think that they -- just -- they --
25 the practice side, they have no idea. But -- so if

1 they say that Flexon did X number of cases at
2 Coastal Carolina this month, that's accurate.

3 Q. Uh-huh.

4 A. I'm sure it is.

5 Q. Uh-huh.

6 A. Because I think that they run
7 hospitals.

8 Q. Uh-huh.

9 A. And I think that they didn't maybe put
10 their greatest people running the hospital first,
11 but they do run hospitals. That's what they do.
12 They -- they -- they had no interest in running
13 practices and -- you know...

14 Q. Uh-huh.

15 A. I mean -- so, that's what --

16 Q. So let me -- let me cover this because
17 I --

18 A. Okay.

19 Q. -- I -- and I think this will catch it
20 and you tell me if it does. Assume that your
21 office had input on the procedures that were
22 performed, that those were entered into computer
23 system.

24 A. Okay.

25 Q. Okay. And assuming that CCMC harvested

1 that information for this report --

2 A. Uh-huh.

3 Q. -- that's the assumption we'll both go
4 on.

5 A. Okay.

6 Q. And I think that protects you if
7 that -- if that's not right, then you're protected.

8 Is that fair enough?

9 A. That's fair enough. ,

10 Q. Does that make sense to you?

11 A. I mean, the --

12 Q. Okay.

13 A. -- yeah, it's fair enough.

14 Q. Okay. So assuming they've collected
15 the information according to that data harvest that
16 I've just described for you, and they also did
17 these deductions from revenue, which would be the
18 deductions that insurers of any third party
19 payer --

20 A. Uh-huh.

21 Q. -- is going to take from patient
22 revenue totals, correct? That's what that line is,
23 deductions from revenue?

24 A. Okay.

25 Q. And then the next line would be net

1 patient revenue. That's the amount that would come
2 after the payer takes their deduction, correct?
3 That's what you can collect?

4 A. Wait. Where are you right now?

5 Q. I'm on the third line, right here.

6 A. Bad -- bad debt?

7 MR. HARVEY: Objection.

8 BY MR. MYRICK:

9 Q. No, I haven't --

10 A. Or net patient revenue.

11 Q. -- gotten to bad debt yet.

12 A. Okay. Net patient revenue.

13 Q. Yeah.

14 A. That's assuming that they -- that they
15 understood and entered the allowables correctly.

16 Q. Correct?

17 A. And I don't -- I don't -- I -- I find
18 it highly, highly dubious. I -- you know, it's a
19 case where those are hard to -- to know what you're
20 actually owed. And, you know, I think they do
21 it -- they have a hard enough time on the hospital
22 side.

23 But to understand that, you know, if I
24 do tubes on a child that it's 50 percent of the
25 allowable for the first -- I mean, 100 percent of

1 the allowable for the first, 50 percent for the
2 second. Half -- half of your providers will drop
3 that second one and you have to go around and catch
4 them. And it's not a -- it's not a denial, it's
5 a -- it's a -- it's a variable in the amount.

6 So I -- I -- I -- you know, and I --
7 that's why I wanted the meetings and input into --
8 into this. And, you know, they -- that didn't
9 happen. So I don't -- you know, I think that
10 that's highly dubious.

11 Q. So what you've just testified to is
12 that too includes an assumption that they've got it
13 right in terms of what net patient revenues would
14 boil down to after the insurers or third-party
15 payers take their cut, because you don't know whose
16 going to take what cut, you don't know --

17 A. Right.

18 Q. -- that its certain --

19 A. Right.

20 Q. There are different ways of looking at
21 it.

22 A. To -- and especially with multiple
23 procedures and whatnot. It's --

24 Q. There's bundling, there's unbundling?

25 A. Correct.

1 Q. Right?

2 A. Right.

3 Q. Okay. So, again, I understand that
4 assumption.

5 A. Okay.

6 Q. Then the bad debt entry, what -- what
7 is a bad debt entry on a -- an analysis like this?

8 A. Well, that would be something that --
9 let's say someone ended up owing a -- a co-pay and
10 just, you know, after a certain point in time you
11 just put it in the bad debt. And sometimes you
12 work it, sometimes you -- you don't, but that's
13 usually what bad debt means. And some -- you know,
14 and some people have different requirements for
15 their, quote, bad debt. Sometimes it can be a --
16 an accounting, you know -- you know, ploy to put
17 stuff in bad debt that's actually collectable. I
18 don't know.

19 Q. Okay. So again --

20 A. I don't know anything about these
21 figures.

22 Q. Right. And, again, you're saying there
23 could be some flaws in determining --

24 A. Yeah.

25 Q. -- that bad debt number?

1 A. Yeah.

2 Q. All right. So we've made assumptions
3 to get to this point which I understand and
4 respect.

5 A. Uh-huh.

6 Q. I understand what you've told me. And
7 then the -- the entry line after that is
8 collectible patient revenue. If done properly --

9 A. Uh-huh.

10 Q. -- what would that line reflect?

11 A. The collectable patient -- well, first
12 of all, that's a huge amount of bad debt out of
13 net -- net revenue. I mean, I couldn't accept
14 that. But they're going to say that they could --
15 that's what they could possibly collect and I don't
16 know how they can make -- make that assumption
17 with -- with -- what -- what they're saying that
18 their bad debt exceeds their collectable revenue.
19 That's a preposterous -- I mean, that's just -- I
20 mean that's preposterous. Preposterous.

21 Q. And are you talking about the third
22 entry of the 118,000?

23 A. They're -- they're saying their
24 collectible patient revenue is 132,000 and they're
25 writing 140,000 off to bad debt. That's after they

1 already reduced it for what they actually --
2 they're calling net patient revenue and that's when
3 they take out the -- oh, they're going down to the
4 allowables. So you have a gross posting there
5 of --

6 Q. You got to tell me which line you have
7 referenced.

8 A. Okay. Let's start at the first one.

9 Q. Okay.

10 A. Gross patient revenue \$787,000. Okay.
11 So let's just take an example. I charge --

12 Q. I don't see that. I don't see where
13 you're talking.

14 MR. HARVEY: Over on the right side.

15 THE WITNESS: Over on the right side,
16 right here. (Indicating.) 787, that's gross
17 they're talking about. I'm all the way --

18 BY MR. MYRICK:

19 Q. Okay. So --

20 A. -- out in the front.

21 Q. -- you've added them all up there?

22 A. Yeah.

23 Q. Okay.

24 A. So let's just take that. And I just
25 want -- I'm going to show you an example of what

1 happens here. All right. Let's say I do a
2 tonsillectomy --

3 Q. Uh-huh.

4 A. -- and I charge \$1,000 and that's what
5 gets put on the books. All right. It goes to Blue
6 Cross. They owe me \$1,000. Now, Blue Cross has
7 negotiated an allowable, no, huh-uh, we're going to
8 give you \$700, okay?

9 Q. Yeah.

10 A. They've knocked it down 30 percent.

11 Q. Uh-huh. Uh-huh.

12 A. Okay. So that's -- that's what you can
13 actually say that's what I could expect to collect,
14 okay?

15 Q. So the deduction in revenue would be
16 300 bucks?

17 A. Yeah.

18 Q. All right.

19 A. All right. And then -- then -- then
20 you actually go out and say -- and you try to get
21 that.

22 Q. Uh-huh.

23 A. All right. And, you know, really you
24 should be close to 90 percent of your allowables
25 that -- you know.

1 Now, bad debt's got a lot of different
2 ways to come up with that and I don't know
3 specifically how, but they're taking their
4 allowables, what they should actually be
5 collecting, and -- and taking half of it, over half
6 and saying, well, it's going to be in bad debt.
7 Now, of their allowables --

8 Q. Well, that's true only in that Tenet
9 first quarter. It's not true for -- for the
10 LifePoint and the Tenet first quarter.

11 A. Well --

12 Q. Those are much more reasonable?

13 A. Right. Yeah. LifePoint is actually
14 pretty -- pretty reasonable in -- in terms of --
15 of --

16 Q. And then the Tenet first quarter, do
17 you see that \$12,429?

18 A. Yeah.

19 Q. It's that -- it's that --

20 A. That's -- yeah.

21 Q. -- third quarter that drives it --

22 A. But, I mean, the --

23 Q. -- correct?

24 A. Yeah, but it's just way over. And --
25 and so -- I mean -- so of the 700 you'd have

1 probably a 20 percent co-pay, right, so -- so you
2 got 140 bucks that the patient owes you and you've
3 got the insurance company owing you the balance of
4 that.

5 And, you know, when you get bad debt
6 sometimes your patients don't pay that co-pay and,
7 you know, you end up sending it to collection or
8 you're right -- but there's a lot of ways you can
9 get bad debt. A lot of people, for example, come
10 in and do -- you know, they'll do -- I'm -- I'm
11 going to pay out of pocket, I'm -- I'm a fee --

12 Q. Uh-huh.

13 A. -- you know, I'm -- no insurance, but
14 they actually have resources. Okay. So they're
15 paying and they accept a payment program and
16 they're like right dead on. They're -- like
17 they're paying every day. But a lot of medical
18 accounting programs will put all that into bad
19 debt.

20 It's just, you know, we're not going
21 collect that. But you're -- you're making it -- so.
22 I don't know what's going on here. I have no idea.
23 And all I can say is I don't think they had -- this
24 is just -- all right. But so the -- the -- the
25 idea that you weren't -- shouldn't be collecting,

1 that your -- what your allowables are close to
2 90 percent is -- is pretty -- pretty bad.

3 Q. Okay. I got all that.

4 A. All right. All right. So that's --
5 that's -- all right.

6 Q. Got all that.

7 A. All right, so I got all that.

8 Q. Let's focus now on the first column
9 which is LifePoint.

10 A. Okay.

11 Q. This is before there were any billing
12 problems, right?

13 A. Well, right, but that's the three
14 months I'm there so --

15 Q. I know.

16 A. Yeah.

17 Q. I know.

18 A. Okay. Again I -- you know, again, I
19 don't know what they did, but they -- what they did
20 they seemed to be -- they sent the bills in, I
21 mean.

22 Q. So they -- we aren't aware of any
23 billing problems that LifePoint had, right?

24 A. I don't think so.

25 Q. Okay.

1 A. I don't know. Yeah.

2 Q. Okay.

3 A. They got sent in.

4 Q. Okay.

5 A. They were worked.

6 Q. And it looked like the gross patient
7 revenue for that period where LifePoint controlled
8 it was \$146,971 for the first quarter there from
9 March 15th through June 30th, 2007, right?

10 A. 140 -- yeah, that's what was posted,
11 yeah.

12 Q. Gross patient revenues, that's all the
13 billings --

14 A. Uh-huh.

15 Q. -- that you did?

16 A. Right.

17 Q. All right. And then there's a much
18 more modest \$14,196 of bad debt?

19 A. Right.

20 Q. Not nearly what it looked to be later,
21 right?

22 A. Right.

23 Q. Leaving collectible patient revenue of
24 62,819, right?

25 A. I guess, yes.

1 Q. Okay.

2 A. Yeah.

3 Q. Now, the -- what falls below there are
4 operating experiences or what we'll call overhead;
5 is that fair enough?

6 A. Sure.

7 Q. Okay. And that total is \$192,570 for
8 that period, right?

9 A. Apparently, yes.

10 Q. Okay.

11 A. You know.

12 Q. Leaving a negative EBITDA earnings
13 before interest, taxes, deductions of a negative
14 \$129,751?

15 A. Okay.

16 Q. And that's before there were any
17 billing issues, right?

18 A. I suppose, but I don't -- I don't know
19 anything about the -- where the -- you know, the
20 rent, you know. I mean, what we're talking here --

21 Q. Well, rent is in there.

22 A. I see it and it's a little high. You
23 know, they have me renting half of their unused,
24 you know, thing that they're in a bad contract with
25 some REIT in Arizona. I mean, you know, I mean, so

1 whatever.

2 Q. Okay.

3 A. And so these -- these numbers -- so
4 there's a negative, what's -- what is the point?

5 Q. Let's assume -- let's assume for a
6 moment that we applied the collections factor that
7 we talked about in general earlier giving you the
8 benefit of the doubt and putting it at the highest
9 range at 55 percent. If you had collected
10 55 percent of your gross patient revenue, and you
11 can use this calculator if you want, what would
12 have been the amount you brought in?

13 A. What -- what -- what number do you want
14 me to...

15 Q. The 146,000. I want you to take -- I
16 want you to assume that all of those numbers that
17 are posted are -- are going to come in at that
18 55 percent ratio, which is the top of the average
19 for billings. What do you actually bring in the
20 door if you bill \$146,971?

21 A. Oh, it'd be \$80,083 -- \$80,834.

22 Q. So under a best case scenario, that
23 would have left a \$45,000 shortfall, correct?

24 A. If you say that the -- if those
25 operating expenses are -- are true, sure.

1 Q. All right. Would you do the same thing
2 for the first Tenet quarter from July 1 to
3 December 31, 2007?

4 MR. HARVEY: It's not a quarter.

5 MR. MYRICK: Well, the first --

6 MR. HARVEY: It's a half year.

7 MR. MYRICK: -- period -- half year.

8 Thank you.

9 THE WITNESS: Okay, but -- but what's
10 the point? I'm -- I mean, I --

11 BY MR. MYRICK:

12 Q. I'd just like to have the answer if I
13 could.

14 A. Well, sure. I mean, it's -- it's --
15 but these have no bearing in reality.

16 Q. I'm just going gross profit -- I'm not
17 talking about deductions from revenue or net
18 patient revenue or bad debt. I'm just asking if
19 we've got everything based on the average of 55
20 percent from gross patient revenues. And if the
21 gross patient revenues for that six-month period
22 are \$337,640, if, in fact, they are and you collect
23 55 percent of that, what's the number?

24 A. Okay. That would be 185,760 but then
25 they're having me have over a quarter of a million

1 in operating expenses and that's crazy.

2 Q. Well -- so what would the negative
3 EBITDA period be? And then I'm going to come back
4 and ask you specifically about those operating
5 expenses that you challenge.

6 A. I don't know, but --

7 Q. Would it be positive did you say was
8 the number?

9 A. Well, it would -- it would be negative,
10 but you're dealing with specious figures. Why are
11 we doing this?

12 Q. Because I'm asking the questions.

13 A. All right.

14 Q. And I'm going to come back and ask you
15 questions about overhead.

16 A. Okay. All right.

17 Q. Please just answer that question.

18 A. All right. So it would be negative.

19 Q. What's the negative number?

20 A. 271 minus 185, here, I'll -- 271,
21 912 -- it'll be -- well, I don't know, I didn't get
22 the -- but roughly it'd be about \$91,000, in
23 that -- that ballpark.

24 Q. In the --

25 A. -- figure.

1 Q. -- negative?

2 A. Yeah.

3 Q. Okay. For July 1 to December 31, 2007?

4 A. Uh-huh. Uh-huh.

5 Q. Okay. Now, let's talk specifically
6 about the operating expenses. You do challenge the
7 operating expenses that are laid out here?

8 A. I do.

9 Q. Okay. And salaries and wages
10 attributed to you of 144,000 for the first period
11 and 211,000 for the second period, you were making
12 \$300,000 a year as a base salary, weren't you?

13 A. Yeah, but July 1st, that -- that's --
14 that makes -- that's 150 to my salary and the other
15 thing is that it puts --

16 Q. Right. Leaving only how much for
17 everybody else's?

18 A. It leaves about 61,000 for six months,
19 yeah.

20 Q. And how many employees did you have in
21 your office?

22 A. Well, I had at the time just two. They
23 already fired the, you know, the manager, so I had
24 two employees, I had Priscilla and I had Patty.

25 Q. And what did they make a year?

1 A. I think Patty was -- would -- would
2 have been in the high 20s and Priscilla would have
3 been around 20.

4 Q. Wouldn't that be about that number?

5 A. It's a little high. And as is -- you
6 know, what's the 15,000, fees and services? And
7 then the rent, you know, they have me renting like
8 probably 2,000 square feet that I can't use that
9 they're just storing their own stuff in. I mean,
10 you know, and furthermore did -- are they capturing
11 what I did?

12 Honestly, I would -- starting up within
13 six months if -- if they -- if I had gotten
14 properly (sic) where I generally sort of live, I
15 would have been between 70 to \$120,000 a year in
16 gross charges -- I mean a month in gross charges.
17 That's where I send -- I have all the Memorial
18 data, it's where I am now.

19 And, you know, usually for the -- a
20 year in full capacity, I would be probably doing
21 anywhere from -- yeah, I would probably -- should
22 have been doing anywhere from a million to one and
23 a half million in gross charges. And that should
24 have, you know, probably left me, you know,
25 somewhere in -- with a salary, etcetera, covered

1 and -- and -- and fees easily, easily.

2 They should have -- they should have
3 had -- you know, been collecting in cash about
4 600,000. But they never got there. I mean, I
5 fully acknowledge that. But they can't, you know,
6 submit figures to me, you know, from Tenet
7 realistically -- now, I believe the -- I believe
8 LifePoint's figures. I think that they -- but for
9 a startup, you know, first three months I wouldn't
10 expect to be close to that, but...

11 MR. HARVEY: First two months, wasn't
12 it?

13 THE WITNESS: Two months, yeah,
14 wouldn't be -- and, you know, so I would expect
15 a -- a negative EBITDA. But -- but I wouldn't
16 have -- but I -- from that point on, I just -- I --
17 you know, how can -- I don't know. I --

18 BY MR. MYRICK:

19 Q. Were the figures that you described
20 about what the -- the numbers the practice would
21 have driven had it been successful?

22 A. Correct. And this was submitted in my
23 pro formas as I came. And it's -- it's actually
24 what I'm doing now.

25 Q. Are those the numbers that you did at

1 Savannah Memorial when you left?

2 A. Yeah, they're -- they -- I think they
3 are, yeah.

4 Q. They are?

5 A. And I think you have those.

6 Q. When -- when you left Tenet to go to
7 Savannah Memorial --

8 A. Oh, oh --

9 Q. -- those are the numbers that you
10 achieved --

11 A. No.

12 Q. -- when you returned to Savannah?

13 A. No, I never got that back. Never got
14 it back.

15 Q. Why not?

16 A. I think my practice was destroyed by
17 you guys.

18 Q. And what kind of numbers were you doing
19 in Savannah when you returned to Savannah?

20 A. I think I may have had one or two
21 months where I got up to the -- of just billing,
22 you know, 100,000 a month, but I -- you know, I --
23 I didn't -- couldn't consistently keep it up like I
24 easily could before I came to --

25 Q. And that's been a long period now,

1 hasn't it?

2 A. Well, I mean, I -- I'm doing it now. I
3 mean, I don't think -- I don't think it's germane,
4 but -- but -- what -- what -- what I'm doing now,
5 but -- but I --

6 Q. How long were you --

7 A. -- feel -- I feel -- I mean, I feel
8 that my practice, I had a -- I had a great
9 practice. I was the Number 1 ENT, you know, in
10 terms of cases at Memorial, the third biggest
11 hospital in the state. I -- I was six overall of
12 all the surgeons they had. I -- you know, that's
13 what I brought to Coastal and they destroyed my
14 practice.

15 Q. And so how many years did you work at
16 Savannah Memorial when you returned to Savannah?

17 A. Oh, maybe two.

18 Q. And then you went where?

19 A. To Vidalia.

20 Q. Uh-huh.

21 A. Yeah. I mean, so -- so --

22 Q. So let me just ask one quick question
23 about that: How is it that if you returned to
24 Savannah, it was Tenet that destroyed your
25 practice?

1 A. Well, LifePoint. I don't know that --
2 I mean --

3 Q. Or -- or LifePoint or the two of them?

4 A. I -- I -- I think that once you have
5 something like that happen where you have just
6 total lack of support and, you know, you -- you
7 have a hard time -- that -- that -- that was like
8 17, 18 years of building up a great goodwill in
9 Coastal South Carolina and Savannah and those
10 patients should have stayed and I -- we should have
11 built that at a viable, thriving hospital in
12 Hardeeville. And, you know, LifePoint signed by
13 contract, bye, sold me. You know, that's what
14 happened. And I think it's clear --

15 Q. But why haven't you been able to
16 recreate that in Savannah is what I'm trying to
17 understand. Why haven't you --

18 A. I think the patients went elsewhere and
19 you know, once -- you know, that was 18 years of
20 work and I -- I could not bring it back. I think
21 I'm building it now.

22 Q. Uh-huh.

23 A. But I could not bring it back.

24 Q. Uh-huh.

25 A. I mean, that was a -- that was a

1 career's worth. That was a wonderful practice.

2 Q. During this time period, you were
3 guaranteed a salary of \$25,000 a month, correct?

4 A. Yeah, that's a 300,000 -- yeah, for two
5 years, uh-huh.

6 Q. So how did this lack of billing harm
7 you personally?

8 A. The -- first off, I could not with --
9 with the -- you know, trying to go into the -- the
10 third year, okay, they -- they have not sent any
11 bill -- billing in. You know, there's no way I
12 could get an accounting -- I mean, they had a
13 \$25,000 buffer, but there's no way. What would I
14 have made? \$26,000?

15 They -- they totally mismanaged the
16 finances of it. I would have lost my home. I --
17 you know, I couldn't survive on that because of the
18 formula with -- with -- you know, and -- and
19 complete -- a complete just, you know, neglect, if
20 you will, of -- or almost of -- of my practice.
21 And I -- I -- I had to -- you know, I would have
22 had to have -- I had to -- to leave. I could not
23 sustain it -- it could not be sustained.

24 And, you know, that -- it just -- you
25 know, failure of equipment in the -- in the -- in

1 the OR. Just -- and, you know, most of the
2 specialists that were there when I came on board,
3 they -- most of them left as well. And --

4 Q. Like who?

5 A. Well, I can just tell you the
6 orthopedic surgeon who was there left. I can't
7 remember his name. The OB/GYN who was there left.
8 The family practice couple that was in -- you know,
9 that was associated with the hospital left.
10 They're one of the groups also when they did
11 leave -- they're actually now in Beaufort and I
12 can't remember their names. They're one of the
13 groups that, you know, would not send patients
14 after they left. They're a big referral source.
15 But those were the kind of things that happened.

16 Q. Okay. I'm just writing down something
17 you said earlier. So in year one and year two,
18 although your salary was guaranteed, your concern,
19 was that in years three through five the numbers
20 would have gone down such that you wouldn't have
21 been able to sustain yourself?

22 A. Certainly -- certainly would have --
23 could not have made the -- the -- the transition
24 year three, four -- or the year three at least,
25 could not have made the transition. And, again, it

1 was a combination of the -- the -- the finances
2 that they -- and -- and the combination of the
3 reputation that -- that Tenet had, a combination of
4 the loss of patients from, you know, the way
5 that -- that was handled, all of those things I
6 felt I could not practice there --

7 Q. Uh-huh.

8 A. -- and make a living. I would have
9 lost my house.

10 Q. And you left within a year of having
11 started?

12 A. No, it was a year and a half I think.

13 Q. It was March --

14 A. Oh, it was -- it was -- let's see, oh,
15 a year and a few months. Yeah.

16 Q. Yeah.

17 A. Year and a few months.

18 Q. Year and a few months. Do you have any
19 names of patients, aside from the one we talked
20 about who had the trouble with the deduction who --
21 who wouldn't come to you due to dissatisfaction
22 with Tenet? Do you have any names you can give me?

23 A. No, and I -- and I wouldn't. I mean, I
24 really -- I don't think you should have my
25 patients' names.

1 Q. But could you? Do you have them?

2 A. No, I -- I couldn't -- I don't think I
3 could give you specific names now.

4 Q. Okay.

5 A. And the -- and the one -- and as far as
6 the -- the -- the deductible goes, that -- that
7 issue, one patient clear remember (sic) like a --
8 like night -- like it was yesterday. And the other
9 two were -- were -- just sent letters that I
10 referred on. I couldn't pull their names. I had
11 three maybe four people who actually brought that
12 issue up and actually saw it.

13 Q. Uh-huh.

14 A. And had a -- you know, in the same
15 calendar fiscal year had a -- another medical
16 problem and found that their payment was not
17 applied to their deductible and they were forced to
18 pay it again.

19 Q. Were they reimbursed?

20 A. I don't know.

21 Q. Okay. So about four on the deductible
22 issue and others who you --

23 A. Chose to --

24 Q. -- can't give me names but --

25 A. -- chose to go elsewhere.

1 Q. -- wouldn't come to you because you
2 were at Tenet?

3 A. Uh-huh. Well, they didn't want to have
4 surgery done at -- at -- at -- at that hospital.

5 Q. Okay. Do you have any documents or
6 letters to that affect?

7 A. No.

8 Q. Okay. I'm going to ask you some
9 questions about your work day. What -- what were
10 your office hours at --

11 A. I don't recall.

12 Q. How many hours a day did you work when
13 you were in Hardeeville?

14 A. Oh, I don't know if I could put an
15 exact number on that. Remember I was -- and also
16 at Eric Deaton's, you know, suggestion and
17 insistence, I was at -- on the hospital staff at
18 Memorial. So I often had to make rounds at two
19 hospitals, take call at two hospitals.

20 Q. All right. But no estimate as to your
21 office hours in Hardeeville?

22 A. No. I think that, you know, basically
23 we would -- we probably started at 9:00 and -- and
24 then would finish when we finished, you know.

25 But...

1 Q. Was -- was it a 40-hour week or half of
2 a 40-hour week or a 60-hour week?

3 A. Oh, as far as in the office or just --

4 Q. Uh-huh.

5 A. Well, I -- I don't know how much time
6 was in the office. It was much more than a 40-hour
7 week. Of course, I want to spend time in the
8 operating room.

9 Q. Uh-huh.

10 A. I'm a surgical specialist.

11 Q. Uh-huh.

12 A. The more I'm in the -- in the operating
13 room, the better --

14 Q. Uh-huh.

15 A. -- for everybody.

16 Q. Right. Right.

17 A. So that's where -- so I can't break
18 that down. But usually I -- I would have two days
19 of surgery and three days in the office or two and
20 a half days surgery, three days in the office.

21 And --

22 Q. Do you remember which two days were
23 devoted to surgery or --

24 A. I don't.

25 Q. -- usually?

1 A. I don't. I don't.

2 Q. And what would you do if you did not
3 have scheduled surgeries for two days?

4 A. Oh, if I didn't have -- for two days?

5 Q. Yeah. You said you would usually have
6 two days surgery and three days in the office.

7 A. Yeah, but I would have like -- like say
8 Tuesdays and Thursdays is surgery and Monday,
9 Wednesday, but I'd probably try to, you know, put
10 patients on or -- or -- or something like that.
11 So, you know, try to, you know, do something.

12 Q. And how many days a week would you be
13 absent from your office?

14 A. I don't know. You know, the surgery
15 days I would be, you know, but -- would be absent
16 and...

17 Q. So two days a week?

18 A. Maybe three --

19 Q. Maybe three.

20 A. -- because I was with Memorial and
21 having -- and, again, having to do rounds both
22 places.

23 Q. Okay. Did you report these absences --
24 or absences to your employer --

25 A. What?

1 Q. -- when you're away?

2 Did you have absences that you reported
3 to your employer that were not business related?

4 A. Well -- now, I'm not -- what does that
5 mean? I mean, are you saying like when I'm in
6 surgery, did I report that?

7 Q. Well, I'm saying if you weren't in
8 surgery and you weren't at the office, did you
9 report that to your employer?

10 A. If I had like a vacation?

11 Q. Well, yeah.

12 A. Yeah. Uh-huh.

13 Q. An impromptu vacation day, you reported
14 those?

15 A. Impromptu?

16 Q. Yeah, where it's not scheduled to take
17 a week off, you decided not to come into the
18 office.

19 A. You don't do unscheduled -- you know, I
20 mean, you can't -- you can't do that.

21 Q. You wouldn't do that?

22 A. No.

23 Q. So all of your time is either in
24 surgery or in the office or scheduled vacation?

25 A. Or scheduled -- you know, I think I had

1 surgery at one -- at one point. So something,
2 yeah, but -- but -- but, you know, generally, you
3 know, the -- whatever occurred, you know, that
4 would be -- yeah, that would be my -- how -- how
5 you'd schedule things.

6 Q. Okay.

7 A. You don't disappear as a doctor. I
8 mean, you know, what are you trying -- well, I
9 can't ask you questions.

10 Q. And so how many hours a week did you
11 work total?

12 A. I would -- I would guess around 60 to
13 70 hours a week usually. We -- particularly going
14 in on call and...

15 Q. Going in on call, not just being on
16 call, but actually going into the hospital?

17 A. Well, going to the hospital, yes.

18 Q. Okay.

19 A. And, again, being that -- having to
20 take call at both hospitals.

21 Q. All right. Were there any other income
22 sources besides the on-call duties?

23 A. I didn't get paid for being on call.

24 Q. Oh, you didn't?

25 A. No.

1 Q. Okay.

2 A. Just got paid -- you know, my only
3 income source was Coastal and then I think there
4 were -- there -- you know, I had, you know,
5 other -- other sources that were private.
6 Medically related if I were an expert witness in
7 a -- in a malpractice and whatnot, it's in the
8 contract, I was allowed to keep that, that kind of
9 thing.

10 Q. Well, what percentage of your income
11 would come from non-Coastal Carolina earned income?

12 A. You mean like overall?

13 Q. Uh-huh.

14 A. I don't know. Most of my income came
15 from Coastal Carolina, but there was -- you know, I
16 had other sources of income, you know, from -- I
17 guess from, you know, bank accounts and that kind
18 of thing.

19 Q. Bank accounts and investments?

20 A. Yeah, investments, some investments.

21 MR. HARVEY: Lunch is here.

22 MR. MYRICK: Okay.

23 THE WITNESS: Good.

24 MR. MYRICK: Let me see, I've got three
25 questions here.

1 MR. HARVEY: Okay. Go ahead.

2 BY MR. MYRICK:

3 Q. And you told me that it was Deaton who
4 gave you explicit instruction, not just permission
5 but explicit instruction, to take surgeries at
6 Memorial Hospital; did I understand that?

7 A. Well, it was his recommendation that
8 I -- he said I want you to keep your privileges
9 at -- at Memorial -- no, I think he said keep
10 courtesy privileges, there'll be -- there'll be
11 certain cases which you probably will want to take
12 to Memorial.

13 Now, there are no such thing as
14 courtesy privileges. To be able to take surgical
15 cases, you have to have, you know, privileges. And
16 so -- so, yeah, that was done with him knowing
17 about it and suggesting it and, yeah, he was well
18 aware of it.

19 Q. Okay. And my understanding is that
20 what would happen is you were on call at Memorial,
21 what would happen is they wouldn't pay you for that
22 but if you came in and did the service that you
23 could bill through your practice for anything you
24 did there?

25 A. Yes.

1 Q. Is -- do I understand that properly?

2 A. Yeah.

3 Q. Okay.

4 A. Like if I went to the -- if I saw
5 someone in the emergency room at Memorial, my
6 practice at Coastal could -- could bill for that.

7 Q. Okay.

8 A. Yeah.

9 Q. And so that's how it added to the
10 practice?

11 A. Yes. Yes.

12 MR. MYRICK: Okay. All right. The
13 next is a new topic, so let's go ahead and eat.

14 THE WITNESS: Okay.

15 MR. MYRICK: That sounds great.

16 (A luncheon recess transpired.)

17 (DFT. EXH. 7, Document Bates-stamped
18 Flexon v. PHS-Jasper Plaintiff Document Production
19 45 through 48, were marked for identification.)

20 BY MR. MYRICK:

21 Q. All right. I want to ask you some
22 questions about this document, which is Exhibit 7.

23 A. Okay.

24 Q. And as you see at the bottom there,
25 this is the part of the plaintiff -- show it to him

1 first, if you will.

2 MR. HARVEY: You've got another copy?

3 MR. MYRICK: Let me make sure I've got
4 another copy. Yeah, I do.

5 BY MR. MYRICK:

6 Q. And this was a part of the plaintiff's
7 production. It's Document Number 45. It's
8 Exhibit 7 to the deposition. And it's called
9 Proposal, Department of Surgical Oncology, Anderson
10 Cancer Institute, Memorial Health University
11 Medical Center. It's dated November 7th, 2007.

12 Can you tell me what this document is?

13 A. I specifically don't remember the
14 document, but it -- it -- it -- it looks like a --
15 the proposal to send -- or to put together a --
16 a -- you know, a specialty for cancer surgery.

17 Q. And what was your role in this?

18 A. This? None.

19 Q. If any --

20 A. Oh, none at that -- at that present
21 time. None.

22 Q. I noticed -- please continue.

23 A. My guess is that came from Steve Brower
24 who was a physician at -- at -- at ACI, a surgeon.

25 Q. And why would it have come to you?

1 A. He -- he was constantly scheming things
2 up to, you know -- you know, make -- you know,
3 organize things like this.

4 Q. To make money?

5 A. Or to make a -- a -- a -- some sort of
6 organization, a practice, a -- that was -- that's
7 probably the -- where that came from.

8 Q. Okay. And I'm just trying to figure
9 out why -- why you would have been given a copy of
10 this?

11 A. I -- I -- there were individuals who
12 wanted me to practice, you know, with them. I
13 think doctors could always get things like this.

14 Q. Okay. And did you take any follow-up
15 action with regards to this?

16 A. On this?

17 Q. Yeah.

18 A. I don't believe so. Not that I recall.

19 Q. So you think he would have sent it to
20 you as sort of look, wouldn't --

21 A. What do you think.

22 Q. --- this be interesting if we did this?

23 A. Yes.

24 Q. Okay. It is -- that's a draft, isn't
25 it?

1 A. Yes.

2 (DFT. EXH. 8, Document Bates-stamped
3 Flexon v. PHS-Jasper Plaintiff Document Production
4 49 and 50, was marked for identification.)

5 BY MR. MYRICK:

6 Q. This is -- the next exhibit is similar.
7 8. It's called Draft Proposal for Department of
8 Surgical Oncology. And this is dated -- dated
9 August 2007. What is this document? It has Bates
10 Stamp 49 and 50.

11 A. I think it's more of the same. I think
12 it's more discussion of the same trying to get
13 together a surgical oncology group. More of the
14 same.

15 I specifically don't remember this
16 other than there always was something going on, you
17 know, people are soliciting you, what do you think
18 of this, do you want to come practice with us,
19 that -- you know, and I think that's what this is.

20 Q. Whose handwriting is this in the
21 margins?

22 A. You know, I don't know. I -- you know,
23 it -- the -- the -- I don't recall. Although
24 the -- you know, I -- I don't know. It could be
25 mine, but I don't -- I don't know why it would be

1 at this point or what -- what context I would have
2 written something on it.

3 Q. Is this the way you write? Does it
4 appear to be your handwriting?

5 A. You know, I -- I'm not -- no, I mean,
6 the only thing that the -- looking at the T's,
7 not -- no -- well, I don't know.

8 I don't know. I -- you know, at some
9 point I remember going back into Memorial and got
10 some stuff about a law firm that I think was --
11 initially was representing either LifePoint or
12 Tenet.

13 MR. HARVEY: Let's -- let's go off the
14 record.

15 THE WITNESS: Okay.

16 MR. MYRICK: Yeah.

17 (Off-the-record conference.)

18 BY MR. MYRICK:

19 Q. We -- it has been pointed out, and I --
20 by Bill Harvey that the note in the margin, that
21 Nelson Mullins Law Firm represented group was
22 written much later than this document was drafted
23 and had to do with disclosure or revelation of a
24 conflict of interest that Nelson Mullins had
25 representing Tenet in this matter.

1 So the question that I have is: What
2 is the document and what does it represent I guess
3 without the -- the favor of that comment on the
4 side about Nelson Mullins? And I don't know -- you
5 might want to tell me all of these comments were
6 written when you reviewed it the second time?

7 A. You know, I don't recall, so I can't --
8 I can't be specific. And I can't -- I can't even
9 tell you exactly when this was put under my nose.
10 The cost -- or the -- the formula ultimately that's
11 in this resembles when I went -- started there
12 in -- in -- in -- what was it, '08, in -- at
13 Memorial. It -- that's close to the -- the
14 formula. So -- and there were -- there were a
15 number of physicians getting that or -- that type
16 of a -- of a compensation formula.

17 Q. Okay. And is this where you eventually
18 went to work after you left Tenet?

19 A. Yes.

20 Q. At the Anderson Cancer Institute?

21 A. That's correct.

22 Q. Department of Surgical Oncology?

23 A. Yes.

24 Q. Okay. All right. That just goes in
25 the stack. Is there -- was there a separate

1 physicians group that was started up as part of
2 this recommended new employment contract?

3 A. They made up a -- ACI Surgical
4 Associates, that was -- that was started at -- at
5 the Anderson Cancer Institute and that was up and
6 going in -- when I left, that's what I joined.

7 Q. Okay.

8 A. And there were, you know, six or seven
9 doctors, surgeons in that.

10 Q. And you don't remember who provided it
11 to you or when --

12 A. No.

13 Q. -- for the first time?

14 A. No.

15 Q. It's just something that existed in
16 your file?

17 A. Yes.

18 Q. And you eventually joined that group?

19 A. I did.

20 Q. I want to ask you now about something
21 different. The stock purchase by Tenet of the
22 LifePoint stock and CCMC, when did you first hear
23 about that stock purchase?

24 A. I don't recall.

25 Q. Did you speak to anyone -- when did you

1 first learn that what used to be a LifePoint owned
2 facility was going to be a Tenet owned facility?
3 When did you first learn that?

4 A. Well, right about when it happened,
5 which would be shortly before they publicly
6 announced it. It would be maybe just days before
7 the -- the announcement in the paper which would
8 have been in -- maybe June --

9 Q. June '07?

10 A. -- of -- of -- of '07.

11 Q. Yeah. Okay. So you learned about it
12 sometime in June of '07?

13 A. Uh-huh.

14 Q. That -- that's the date I have of
15 the -- the sale -- the announcement of the sale was
16 on June 30th?

17 A. Yeah, it might have been a day or two
18 before.

19 Q. Day or two before. And how did you
20 learn?

21 A. I think it was from somebody -- an
22 employee in the hospital in the operating room said
23 something about it.

24 Q. What did they say?

25 A. The hospital is being sold.

1 Q. Okay. And what did you do once you
2 heard that?

3 A. I made arrangements to see Eric Deaton.

4 Q. Okay. And what happened then?

5 A. Well, I asked him what was going to
6 happen to me and I was actually concerned that I
7 might be transferred or moved to another location,
8 to another LifePoint Hospital.

9 Q. Uh-huh. What did he say?

10 A. He said talk to your lawyer.

11 Q. Did you?

12 A. I did.

13 Q. Okay. And what happened next?

14 A. Well, after he said talk to my lawyer,
15 he shook my hand and said good luck, and that's all
16 he said to me. And I never saw him or spoke to him
17 again. He left.

18 Q. Did you continue to work there?

19 A. Uh-huh. I -- I continued to work at --
20 at Coastal Carolina.

21 Q. And how long did you work there before
22 you left? From June, July --

23 A. I -- I left I -- what, 14 months
24 approximately, roughly, give or take a month or
25 two. 14 months.

1 Q. When did you decide that you wanted to
2 leave CCMC?

3 A. The -- the decision that I -- I
4 couldn't work there, that I -- I had to leave, I
5 made I would say in -- in the summer of 2008. I --
6 shortly around -- I had a breakfast meeting with
7 Teresa, the CEO of -- of Coastal, and I don't know
8 exactly when that was and it was around that period
9 of time.

10 Q. What makes you remember it was summer?

11 A. I -- I -- well, I -- I -- it could have
12 been -- it could have been late spring, but it was
13 warm. We met at Squat & Gobble. I can't remember
14 the exact date. It was around that meeting.

15 Q. What did you tell her?

16 A. I -- I -- I -- I, again, you know --
17 you know -- you know, talked with her about my
18 dissatisfaction with the way my practice had been
19 handled. I talked to her about the billing. She
20 already was aware of the fact that that -- I think
21 that the bills were not submitted, were in boxes.
22 And I told her at that time about the collection of
23 the deductibles and the co-payments and I said that
24 they had to be reimbursed to my patients.

25 Q. Was that the first time you told her?

1 A. I believe that was the first time I
2 told her about that.

3 Q. And you said it had to be reimbursed to
4 your patients?

5 A. I -- I did.

6 Q. Why had you not told her earlier?

7 A. Took me a little while to figure -- to
8 figure out there was a problem. And I think it
9 was -- it was something I think that took me a
10 minute to see.

11 And when some patients complained of
12 it, it was apparent to me that was -- that was
13 clearly a -- a fraudulent practice and had to be
14 remedied.

15 Q. And did you complain to her when the
16 patient complained to you?

17 A. Well, the patient complained to -- to
18 them vociferously I happen to know, so they -- they
19 were made aware of it at that time big time. And I
20 did -- after that, I believe I did before the
21 meeting, I'm certain I did at the breakfast
22 meeting. It was like it was -- it was like you are
23 in -- you know, you are committing -- committing
24 Medicare fraud. I mean, I said that to her. And I
25 don't believe that was the first time, but I was

1 specific and told her and explained it to her.

2 Q. What was her reaction?

3 A. We'll look into it or -- I'm
4 paraphrasing, that was more or less. And that was
5 my -- that was one of my problems, I just couldn't
6 be a part of that.

7 Q. Okay. Where did you -- when you
8 decided this spring, early summer of 2008, late
9 spring, early summer of 2008, where did you look to
10 move to?

11 A. Memorial.

12 Q. Why there?

13 A. Well, I already had a relationship and
14 there was -- there was always sort of buzz activity
15 of, you know -- that they would -- if I ever wanted
16 to come back, you know, they would consider it,
17 etcetera.

18 Q. Uh-huh.

19 A. And -- and I thought about going, you
20 know, completely on my own. I -- so those were the
21 things I -- I considered.

22 Q. Did you -- did you speak with any other
23 group besides Memorial?

24 A. I talked with my old gang at Georgia
25 Ear Institute.

1 Q. Did you sign a letter of intent with
2 Memorial?

3 A. At some point, I -- I must. I don't
4 know if I signed a letter of intent or just signed
5 the contract, but, I mean, at some point I -- I --
6 I did. And, I mean, it sort of coincided with me
7 terminating the contract. And to -- you know,
8 say -- telling the -- LifePoint they were in breach
9 and -- and I then signed the contract or signed a
10 letter of intent at that time.

11 Q. Who approached whom regarding
12 employment with Memorial? Did you approach them or
13 did they approach you?

14 A. At the final analysis, I mean, when I
15 finally, you know, seriously -- it was -- I
16 approached them.

17 Q. Who did you work with on it?

18 A. Yeah, I think another Dr. Mark
19 Senkowski.

20 Q. Can you spell his last name for me?

21 A. Senkowski, I think it's S-E-N -- let me
22 just -- yeah, it's S-E-N -- kowski -- I think it's
23 S-E-N-K-O-W-S-K-I. That's close. That's phonetic.
24 Mark is his first name. He's a general surgeon at
25 ACI or he was.

1 Q. All right.

2 A. He was -- he was the -- he's the guy
3 who's -- I guess put this together with -- and --
4 and also Steve Brower, those are the two people.

5 (DFT. EXH. 9, Answers to
6 Interrogatories of Defendant Coastal Carolina
7 Medical Center, Inc., was marked for
8 identification.)

9 BY MR. MYRICK:

10 Q. I'm going to show you now -- this will
11 be Exhibit 9. These are answers to
12 interrogatories. And if -- these are supplied to
13 me by your attorney.

14 A. Uh-huh.

15 Q. And I'm going to ask you some questions
16 about this right here? (Indicating.)

17 MR. HARVEY: What page?

18 MR. MYRICK: Five of seven.

19 BY MR. MYRICK:

20 Q. And at the top it ends a sentence and
21 then it starts a new sentence. It says:
22 July 24th, 2007 was when plaintiff's patients first
23 had to cross a picket line and this was a turning
24 point. Do you remember that?

25 A. Well, yeah, I -- I think I gave you a

1 copy of that newspaper article.

2 Q. Uh-huh.

3 A. You know, that -- that was my general,
4 how do you say, realization that -- that I -- I had
5 been basically sold by LifePoint to -- or that
6 LifePoint had -- or Tenet had some impression that
7 they had bought me against my will and that my
8 practice was -- was in trouble. I mean, that --
9 this is why I talk about my practice being
10 destroyed. You know, my patients had to cross a
11 picket line.

12 Q. And is your memory of patients having
13 to cross a picket line tied to the newspaper
14 article or actual patients of yours had to cross a
15 picket line to come to your office?

16 A. Yeah, they were in front of my -- that
17 picture is right in front of my office.

18 Q. It is?

19 A. Yeah. They're -- they're in front of
20 the hospital in front of my office building.
21 They're coming across -- I had to walk across them
22 to go to work.

23 Q. Uh-huh.

24 A. That's --

25 Q. How long were the picket lines there?

1 A. I don't remember. A couple -- maybe
2 ten days and then they gave it up. You know, and
3 the first few days there was -- there were maybe
4 half a dozen, maybe eight at the most, and then
5 within a week maybe there were two. And then maybe
6 one guy hung out for a little longer and then they
7 were gone.

8 Q. Uh-huh. Do you know who it was that
9 was protesting there?

10 A. I think it was a nursing union. It's
11 in the article. But it was a -- a group of -- of
12 people who claimed that they were -- you know,
13 provided poor healthcare, unsafe healthcare.

14 Q. Well, wasn't it --

15 A. I think it was a union.

16 Q. Here it is, Exhibit 10. Wasn't it just
17 a union --

18 A. A union --

19 Q. -- people healthcare?

20 (DFT. EXH. 10, Newspaper article
21 entitled Protesters try to spread word against
22 Tenet's purchase of Coastal Carolina Medical
23 Center, was marked for identification:)

24 THE WITNESS: Yeah, nurses union or
25 something.

1 BY MR. MYRICK:

2 Q. Union people?

3 A. Uh-huh.

4 Q. Not -- not patients, but these people
5 were from --

6 A. Nursing home --

7 Q. -- the healthcare workers --

8 A. -- and healthcare workers. Yeah,
9 uh-huh. Right.

10 Q. And they were talking about how the
11 hospital was unfair to employees, not about patient
12 care?

13 A. No, that's not what the sign said.
14 Huh-uh.

15 Q. Okay.

16 A. Yeah. No. Poor -- you know, poor
17 patient care.

18 Q. Okay.

19 A. No, that was -- that was directly, you
20 know, a slur on quality of medicine being practiced
21 at Tenet facilities.

22 Q. All right. And Exhibit 10 is a copy of
23 the article that you --

24 A. Yeah. Okay.

25 Q. -- clipped from the time period?

1 A. Yeah.

2 Q. Why did you print the article?

3 A. Why?

4 Q. Uh-huh. Why did you save that?

5 A. Well, I saved it for you.

6 Q. Uh-huh. So you printed it lately or
7 you printed in contemporaneously within the period?

8 A. I think I printed it -- I think I
9 printed it several times. I think the first time I
10 printed it was to give it to Teresa, the CEO of the
11 hospital, and talk to her, what, you know, are guys
12 going to do something about this? Shouldn't we
13 address this some way, I don't know.

14 Q. Uh-huh. And why have you kept them in
15 your file, your employment file?

16 A. I thought it was important to show the
17 frame of mind I was in, why I -- I -- I -- I felt
18 that -- or why I felt that -- that this being
19 acquired by Tenet was so detrimental to me and my
20 practice. And I -- I think, you know, I needed to
21 reflect what was going on at the time.

22 You know, Tenet had this baggage. And
23 I never would have signed a contract had I -- with
24 Tenet. And I would never -- you know -- you know,
25 and here I had found myself with, you know, with

1 this -- this situation. So I thought it was
2 important to me to keep that and record that.

3 Q. Just one moment please. Next
4 document -- I'm going to skip 11. Can I just do
5 that and keep them in --

6 A. Sure.

7 Q. -- the package?

8 A. Do you want these back? (Gesturing.)

9 Q. You can put them in the stack if they
10 have blue markers on them. Those belong to the
11 court reporter.

12 A. Okay. What -- you said you're going to
13 skip which one?

14 Q. 11?

15 A. Which is...

16 Q. Another newspaper article. I just
17 think I can save time on it.

18 A. Okay. Yeah.

19 Q. All right. Then I'm going to ask you
20 to take a look at Exhibit 12 and tell me what that
21 is. No, I'm sorry, I'm sorry, I miss -- this is
22 where our numbering went off.

23 A. Okay.

24 Q. That last newspaper article --- there
25 were two newspaper articles --

1 A. Yeah.

2 Q. -- so if we go from 10 drop out the one
3 that was not numbered --

4 A. Okay.

5 Q. -- this is Exhibit 11. Exhibit 11 is
6 the one I'm on now and that's called Memorial
7 Health Finance Committee, April 28th, 2011, Open
8 Session.

9 (DFT. EXH. 11, Document entitled
10 Memorial Health Finance Committee, April 28, 2011,
11 Open Session, was marked for identification.)

12 MR. MYRICK: Are you with me?

13 THE COURT REPORTER: Yes.

14 BY MR. MYRICK:

15 Q. Okay.

16 A. So they have a -- a contract -- yeah.
17 Okay, it -- they -- they voted on a contract for
18 me.

19 Q. But this is dated April 28th, 2008.

20 A. Right.

21 Q. So if you weren't leaving, you hadn't
22 decided to leave until late spring or summer,
23 why -- why are they approving your contract in
24 April of 2008?

25 A. Well, maybe -- and whether this --

1 whether they approved the contract to stick under
2 my nose before I, you know, started in negotiation,
3 I don't know, so I can't answer that. But this
4 would be late spring and probably coincided with
5 somewhere around the meeting, breakfast meeting
6 with Teresa Urquhart. So that -- that would
7 have -- so the date may have -- may have been --
8 maybe this is -- I mean, obviously it's accurate,
9 so I think that coincides with what I said.

10 Q. So by April 28th, 2008 you had decided
11 to leave --

12 A. No --

13 Q. -- CCMC?

14 A. I don't know about that, that I just --
15 no, I don't think I would characterize what I --
16 the -- a final decision to leave. But it was
17 shortly in that -- in that timeframe, late spring,
18 summer after -- or after -- around the meeting,
19 breakfast meeting with -- with Teresa.

20 Q. Were you negotiating with -- with
21 Memorial Health in March two thousand -- no, I'm
22 sorry, April 2008 for a contract?

23 A. Not -- not -- not -- not in -- you
24 know, intensely but it comes -- early summer I was
25 negotiating with a contract. Yeah. Now, whether

1 they -- and they may have given me a contract, you
2 know, we -- we negotiated over it, but -- so, yeah,
3 that was -- it -- it's close, but I think that's
4 early. So I think -- now, I did -- I am the one
5 who finally said, yeah, I want to do this. I will
6 admit to that. But I think -- I'm not sure exactly
7 when this occurred and whether that was something
8 that they initiated and -- and put under my nose
9 and then we negotiated from that or what. I just
10 don't know. I wasn't there.

11 Q. Well --

12 A. I don't know.

13 Q. -- by its terms it lists action items
14 and it says physician contracts for vote only.

15 A. Yeah.

16 Q. Your name is listed there, right?

17 A. It is. It is.

18 Q. And then the last thing it says upon
19 motion dually seconded and carried by the
20 affirmative vote, with one dissenting vote, the
21 above physician contracts were approved for
22 recommendation to the board.

23 A. Okay.

24 Q. What does that mean?

25 A. What it says it means.

1 Q. I -- I --

2 A. It means --

3 Q. Does it mean you're hired? Does it
4 mean --

5 A. I -- well, I wasn't hired. So then I
6 was working at -- at Coastal. I'd have no idea. I
7 wasn't there. I wasn't -- I don't know the process
8 that -- that, you know, went forth with that. But
9 I think, as I say, around that breakfast meeting or
10 thereabouts, I did say I wanted -- you know, I
11 wanted to, you know, make -- I wanted to start
12 negotiating for an offer. And I don't recall when
13 the contract -- there should be a contract with a
14 date when I signed it.

15 MR. HARVEY: Here.

16 THE WITNESS: What's the date?

17 MR. HARVEY: It's September.

18 THE WITNESS: Yeah, so it would have
19 been -- you know, the negotiations and earnest
20 occurred in -- in the two months up to the -- in
21 front of this.

22 BY MR. MYRICK:

23 Q. But that's dated September?

24 A. Well, that's what it --

25 Q. September of 2008.

1 A. Yeah. When it -- yeah.

2 Q. And so you were negotiating in April of
3 2008?

4 A. Not in earnest, it really -- we were
5 negotiating in -- in June and July of 2008. And I
6 put -- maybe put feelers out to -- you know, in
7 that time period. But we started the active
8 negotiating just before this -- this occurred, this
9 was -- you know, before we signed this. And I --

10 MR. HARVEY: And for the record, he's
11 referring to the Memorial Health Contract which is
12 dated September 28th.

13 THE WITNESS: Yeah. And when did I
14 sign it though? It might have --

15 MR. HARVEY: The date of the first --

16 THE WITNESS: It's made and entered in
17 as the 18th of September.

18 MR. HARVEY: 18th of September, 2008.

19 THE WITNESS: So the -- the earnest
20 negotiations occurred in the few months before
21 that.

22 MR. HARVEY: And we can enter this in.

23 MR. MYRICK: We're going to.

24 BY MR. MYRICK:

25 Q. When you were negotiating the contract

1 with Memorial, did you have a plan to go to
2 Memorial?

3 A. If they could reach some sort of
4 contract that I thought I could live with.

5 Q. Okay. When did you first get an offer
6 of employment?

7 A. I don't recall. And, again, there was
8 a lot of this kind of just casual going back and
9 forth from doctors before that that -- that -- you
10 know, like, you know, hey, this is what we're
11 doing. That -- and it's like, yeah, well, you
12 know, that's good, you know, but nothing as far --
13 in terms of formal we're talking. Obviously
14 something happened in this executive committee,
15 so -- but as far as the final negotiation and the
16 signing, things were being changed up 'til the last
17 minute, little things.

18 Q. Uh-huh.

19 A. I wasn't in a great negotiating
20 position. They knew I was in a bad situation at
21 Coastal and so I think they took advantage of that
22 to some extent, but...

23 Q. I'm just trying to get a -- an
24 understanding about the timing of it. And it looks
25 like it must -- they're not going to present a

1 contract to their board on April 28th out of thin
2 air, right? I mean --

3 MR. HARVEY: Objection to the form.

4 BY MR. MYRICK:

5 Q. -- you would have been talking with
6 them in April?

7 A. I -- you know, I don't recall
8 specifically. I may have been.

9 Q. Yeah.

10 A. But I -- but not -- no earnest
11 negotiations happened until shortly before this was
12 signed. I mean, that just --

13 Q. Okay.

14 A. -- I think that's a logical, you know,
15 assumption.

16 (DFT. EXH. 12, Document Entitled
17 Senior-Physician Employment Agreement, was marked
18 for identification.)

19 BY MR. MYRICK:

20 Q. Okay. I want to show you this. It's
21 Exhibit 12. And that should be the dang contract.

22 MR. HARVEY: Which is the contract?

23 THE WITNESS: Oh.

24 MR. MYRICK: But it's marked 13 on
25 here. I don't know why that is.

1 THE COURT REPORTER: Because we took 11
2 out and changed that one to --

3 MR. MYRICK: That should be --

4 THE COURT REPORTER: -- 11 so then that
5 one's going to be 12.

6 MR. MYRICK: -- 11.

7 THE WITNESS: This is 12.

8 (Indicating.) This should be 11?

9 THE COURT REPORTER: It will be 11.

10 MR. MYRICK: Yeah. I'm going to change
11 these numbers. And I'm going to change the rest of
12 the numbers. Now there's a total of 19 exhibits
13 instead of 20.

14 BY MR. MYRICK:

15 Q. Okay. Let's go back to 12. Do you see
16 that?

17 A. Okay. All right.

18 MR. BELTON: Exhibit 12?

19 MR. MYRICK: 12.

20 THE WITNESS: Okay.

21 BY MR. MYRICK:

22 Q. Is that a copy of the contract that you
23 signed?

24 A. Yes.

25 Q. With Savannah Memorial Hospital?

1 A. Yeah.

2 Q. Okay.

3 A. Yeah, specifically it's Provident
4 Health Surgical Associates doing business as ACI
5 Surgical Associates.

6 Q. Do you remember when your last day at
7 CCMC was?

8 A. I don't.

9 Q. Was it September 15th, 2008?

10 A. It may have been, yeah.

11 Q. All right.

12 A. It may have been.

13 Q. When did you start at Mercer?

14 A. At Mercer?

15 Q. Uh-huh.

16 A. You mean at Memorial?

17 Q. Yeah, Memorial.

18 A. I -- I would -- I would imagine
19 sometime on or around this -- this time.

20 Q. On or around September 18th.. So was it
21 like that, about three days after later leaving
22 CCMC?

23 A. I think that would be accurate. I
24 think that I -- you know, I moved stuff. There
25 was -- you can look at -- at Coastal's records. I

1 think they -- they -- there's a thing about buying
2 equipment and whatnot, so that all went on and
3 there was a -- you know, I paid to have that moved
4 and...

5 Q. Okay.

6 A. And so that was what went on. And so
7 there was a -- I'm sure a few days lag as that was
8 set up --

9 Q. Okay.

10 A. -- and things went on that way.

11 Q. And did you start at Anderson at the
12 same time?

13 A. That's when I did. I mean, there was
14 no --

15 Q. Are those interchangeable terms?

16 A. Yeah. Yeah.

17 Q. Okay.

18 A. ACI is Anderson Cancer Institute. And
19 they're a Memorial entity.

20 Q. And you signed that on September 18th?

21 A. Yes.

22 Q. Okay.

23 A. But when I actually started in the
24 office, I don't recall.

25 (DFT. EXH. 13, Document Bates-stamped

1 Flexon v. PHS-Jasper Plaintiff Document Production
2 42 and 43, was marked for identification.)

3 BY MR. MYRICK:

4 Q. All right. Next document, Exhibit 13,
5 can you identify that for me please?

6 A. That's a letter from Lawrence Merlin to
7 LifePoint.

8 Q. What's -- what's it dated?

9 A. It is dated August 15th, 2008.

10 Q. Do you remember this letter?

11 A. I do.

12 Q. Okay. And what is it about?

13 A. It's about terminating the contract for
14 breach.

15 Q. In the last paragraph it says: The
16 contract allows the employer 30 days within which
17 to cure these material breaches. That's what he
18 writes, Lawrence Merlin writes?

19 A. Uh-huh.

20 Q. Is that -- you have to say yes or no
21 for the record.

22 A. Yes.

23 Q. Is that consistent with your
24 understanding of the contract?

25 A. I -- I assume it is correct with --

1 and -- and consistent with the contract.

2 Q. Okay. Why did you send this letter?

3 Or why did you have Lawrence Merlin send this
4 letter?

5 A. Because they -- the hospital or Coastal
6 Carolina and LifePoint were in breach.

7 Q. Okay. Was this your first written
8 notification to CCMC?

9 A. I believe that it may have been. I
10 think there was certainly lots -- many other issues
11 that were brought up. But, I mean, there were many
12 other times when these issues were brought up to
13 the --

14 Q. When you talked with them?

15 A. Yeah.

16 Q. Uh-huh.

17 A. Uh-huh.

18 Q. Do you ever remember personally saying
19 that you considered them in breach of the contract?

20 A. Many times.

21 Q. Okay.

22 A. Many times.

23 Q. Do you have any documentary backup of
24 that?

25 A. Oh, I -- only that -- if we can find

1 the date again of the breakfast meeting.

2 Q. The breakfast meeting.

3 A. Yeah, I certainly told her she was in
4 the breach of the contract unequivocally. And I
5 told them many times they were in breach of the
6 contract.

7 Q. Uh-huh. But this is the first written
8 example that you know of?

9 A. Yes, I -- I assume this is, yes.

10 Q. And this gives CCMC 30 days to correct
11 it according to its terms?

12 A. Yeah, it does.

13 Q. Okay. But you signed the contract with
14 Memorial on September 18th?

15 A. I did.

16 Q. That'd be 32 days later.

17 A. Uh-huh.

18 Q. Okay. At the time that you sent this
19 letter, August 15th, 2008, had you already verbally
20 committed to go to work at Mercer?

21 A. At Memorial you mean?

22 Q. At Memorial.

23 A. I can't recall when I verbally
24 committed.

25 Q. But had you done it before this letter

1 was issued?

2 A. I don't recall whether I --

3 Q. You don't know?

4 A. I don't recall. I do not know.

5 Q. Did you have any intent when this

6 letter went out on August 15th of giving Tenet

7 30 days to cure the complaints in this contract --

8 A. Tenet?

9 Q. -- of this letter on August 15th --

10 A. LifePoint I could have made an attempt

11 to cure it, but Tenet I don't feel I had a contact

12 with.

13 Q. I mean CCMC, that's who you have --

14 A. LifePoint.

15 Q. -- a contract with.

16 A. I had a -- a contract with LifePoint.

17 CCMC doesn't exist, but it's...

18 Q. Well, that's the named party in the

19 contract, isn't it, CCMC?

20 A. But who --

21 Q. I don't know, you're saying it doesn't

22 exist, I'm -- I'm just --

23 A. It was doing business as LifePoint.

24 Q. He didn't write it LifePoint, did he?

25 A. I think everything was sent to

1 LifePoint and --

2 Q. It was sent to Coastal Community.

3 A. It was sent to Brentwood, Tennessee

4 and --

5 Q. Give me the names of the people that
6 it's sent to please, sir.

7 A. I cannot give them to you, but I -- I
8 bet I could find out.

9 Q. They're right there at the top.
10 (Indicating.)

11 A. Well, they were given to Coastal
12 Carolina, 103 Powell Court, Suite 200, Brentwood,
13 Tennessee. Attention vice president, physician
14 services. And that's who -- the vice president who
15 signed my contract who is a LifePoint employee.
16 Coastal Carolina, 103 Powell Court, Suite 200 --

17 Q. This is -- the second addressee is
18 Coastal Carolina Medical Center; is that correct?

19 A. Attention general counsel.

20 Q. Uh-huh.

21 A. And then one was sent directly to
22 Coastal Carolina in Hardeeville, South Carolina,
23 attention CEO.

24 Q. Okay. Who is the CEO of Coastal
25 Carolina Medical Center?

1 A. At this --

2 Q. At that time.

3 A. -- time it was Teresa Urquhart.

4 Q. Okay. Did you have a present intent to
5 allow CCMC to cure?

6 A. I don't think that it was possible for
7 them to cure the breach. It was a -- I don't see
8 how it was possible. But if they had made a -- a
9 bona fided attempt to do so, that would have been
10 fine. I would have, you know, entertained it, but
11 they made no attempt to do so.

12 Q. And, to the best of your knowledge as
13 I'm hearing you today, you personally did not send
14 any written correspondence nor did any
15 representative of yours send any written
16 correspondence to CCMC alleging a breach of the
17 contract?

18 A. I -- I -- I don't recall doing that.
19 Sending -- you know, there may have been some
20 written correspondences which mentioned, you know,
21 breach, but I don't -- I can't recall specifically
22 doing that.

23 Q. Uh-huh.

24 A. Certainly multiple times it was done
25 verbally. And they -- certainly no attempt was

1 made to correct the breach.

2 Q. Would you look at Exhibit 4 and see if
3 we can look at it together and find Section 6.2.1.
4 What is that section entitled?

5 A. Upon written notice to employer, if
6 employer is in material breach, default or
7 violation of any provisions of this agreement and
8 fails to cure such a material breach, default or
9 violation within 30 days after the notice in
10 writing by the physician to do so within the said
11 30 days to -- to commence such cure and thereafter
12 diligently to prosecute such cure to completion or
13 immediately upon the written notice of the
14 physician to the employer for any of the following
15 reasons: Bankruptcy, or receivership --

16 Q. You can stop there.

17 A. Okay.

18 Q. Doesn't that section require a written
19 notice of breach?

20 A. It does.

21 Q. Okay.

22 A. And it occurred.

23 Q. It occurred what date?

24 A. August 15th.

25 Q. Thank you.

1 A. Was any correction done between
2 August 15th and September 15th? No.

3 Q. That's what I needed to know. You sent
4 it August 15th.

5 A. Well, that's what it was -- this
6 document is dated.

7 Q. Okay.

8 A. And there was no attempt to cure the
9 breach.

10 Q. Now, one of the things that is written
11 about in the letter is the billing malfeasance.
12 And I'm referring to the August 15th letter.

13 A. Yes.

14 Q. That's the first paragraph. And I want
15 you to look at the contract at the same time.
16 The -- the problem -- the billing malfeasance, is
17 that according to the letter that the employer,
18 which was CCMC, and its representatives have
19 failing and refused to submit charges for Dr.
20 Flexon's services to Medicare, Medicaid --
21 Medicaid, and private insurance carriers, correct?

22 A. That's what it stays.

23 Q. And it's continued in spite of Dr.
24 Flexon continuing to see patients in the office,
25 right?

1 A. Right.

2 Q. To cover the employer's emergency room
3 and perform surgeries, correct?

4 A. Yes.

5 Q. All right. And then they say that
6 it -- this failure and basic office medical
7 management makes it impossible for Dr. Flexon to
8 receive his bonus compensation as set forth in the
9 contract, correct?

10 A. Correct.

11 Q. All right. If we again look at the
12 contract and turn to Section 10.1, please.

13 A. Uh-huh.

14 Q. And would you read that -- the title of
15 that 10.1 section of the contract between you and
16 CCMC and -- the first sentence.

17 A. Now, show me specifically where you
18 mean.

19 Q. Right here. (Indicating.)

20 A. You're on page...

21 Q. 8.

22 A. 8. Right here? (Indicating.)

23 Q. The fees for services.

24 A. Yeah.

25 Q. The letter that was written by your

1 attorney doesn't reference a specific section of
2 the contract, does it? I didn't see it in there.

3 A. No, I don't think so.

4 Q. Okay. Do you now understand my
5 request?

6 A. Do you want me to read it or --

7 Q. If you would.

8 A. Okay. It says: Fees for services.
9 Except as otherwise may be provided by Section 3.7,
10 all fees, compensation monies, and other things of
11 value received or realized as a result of the
12 rendering of medical services by the physician
13 pursuant to this agreement shall belong to and be
14 paid and delivered to the employer. Remuneration
15 received by the physician --

16 Q. That's -- the first sentence --

17 A. Uh-huh.

18 Q. -- is complete.

19 A. Okay.

20 Q. Doesn't that say that all of those
21 monies belong to the employer?

22 A. They do.

23 Q. Okay. And then 10.4, if you would look
24 at that, read the title and the first sentence of
25 that, please.

1 A. Billing and collection. The physician
2 agrees that during the agreement term, the
3 physician shall not bill or collect from any
4 patient or third-party payer for amount of services
5 rendered hereunder. Physician hereby irrevocably
6 assigns and grants to the employer the right to
7 bill collect from patients or third-party payers --

8 Q. Bill and collect.

9 A. Uh-huh.

10 Q. She's got to type all that.

11 A. Okay. Bill and -- right.

12 Q. And collect.

13 A. From patients or third-party payers all
14 services rendered by physician hereunder regardless
15 of the location or any services may be -- any such
16 services may be rendered by the physician.

17 Q. So all the rights to bill belong to the
18 employer too under the contract that you signed?

19 A. That's correct.

20 Q. Okay.

21 A. It's their money.

22 Q. Does the contract require them to bill
23 within a certain period of time?

24 A. It does. And that's another case
25 where -- and that's --

1 Q. Can you point to it for me?

2 A. Okay. If you look at the bonus
3 computation, all of the computations are based on
4 cash, you know, cash receipts. And most insurance
5 contracts where you post a -- or --¹ or medical
6 services rendered have a time clause. If you don't
7 submit a proper and clean bill within 90 days, you
8 don't get paid.

9 So if I do work and they don't bill it
10 in a timely fashion, I can't get credit for
11 legitimate work done and get what this contract
12 would -- would entitle me to in terms of a bonus
13 because they didn't send the bills in. You can't
14 run a medical office without sending the bills in
15 in a timely fashion. It was their money, they had
16 the right to do it, but that information and those
17 cash receivables directly impacted my contract and
18 by them not doing that, by -- by being incompetent
19 and -- they breached the contract. It's just
20 blatant.

21 Q. So you were going to point to me, in
22 response to my question does the contract require
23 them to bill within a certain period of time.
24 Where is the period of time laid out?

25 A. The contract it -- it -- that's

1 implicated in it because any, you know --

2 Q. So implicit -- I'm sorry --

3 A. Yeah, explicit -- I'll say explicit.

4 You, with exception of maybe Medicare where you can
5 go back and -- and -- and often, you know, bill a
6 year out or six months out, most providers, you
7 know, insurance providers have a time clause.
8 And -- and if you don't get them in, you don't get
9 paid, and that's what happened to them. They
10 didn't get paid. And when they didn't get paid,
11 there's no way I had even a possibility of getting
12 a cash bonus of any type when they're got being
13 paid for work I legitimately did.

14 Q. Two questions. First --

15 A. I mean, that's such a blatant breach.

16 Q. -- is there not --

17 A. Do you not see it?

18 Q. -- is there not those billing what
19 prevented you from getting a bonus?

20 A. Among other things. Because we don't
21 really know what -- what happened or what my
22 activity was. And you -- you know --

23 Q. So you could have been eligible for a
24 bonus but for their failure to bill that?

25 A. Yeah, I didn't --

1 Q. Okay.

2 A. -- even stay the whole, you know, term
3 of the contract, yes.

4 Q. Okay. And the second question is: You
5 were going to show me where there was a certain
6 period of time laid out in the contract.

7 A. That's not the -- the question. What I
8 was going to show you in the contract was that the
9 bonus based on -- was based on cash accounting and
10 you -- you -- therefore if you don't submit a bill
11 and get paid, it didn't go into the bonus.

12 Q. I understand that you're telling me
13 it's implicit in the contract. I get all of that
14 and you've explained it a few times.

15 A. Oh, it's so -- it's --

16 Q. But my question --

17 A. -- obvious. It's --

18 Q. -- to you is --

19 A. -- it's explicit. I'll have to --

20 I'll -- I'll --

21 Q. Well, if it's explicit --

22 A. -- I'll -- yeah.

23 Q. -- it means it's written, so show me
24 the period of time in the contract.

25 A. It would be -- it would be -- it is

1 obvious to anybody if you're a physician and you do
2 work and your bonus is based on cash collections
3 and your employee -- or employer who is responsible
4 for doing that is so incompetent that they don't --
5 they don't even know where the bills are, that
6 they -- they -- they can't collect, so they are not
7 able to collect any of the activity, legitimate
8 activity that a physician does because of their
9 negligence, okay. That breaches the contract
10 because you don't show his honest cash receipts
11 that he would be receiving because you haven't
12 tallied them in. You haven't sent the bills in.

13 Q. Can you --

14 A. That is --

15 Q. I'm going to let you finish --

16 A. All right.

17 Q. -- but we'll go as long as you want
18 because I'm getting --

19 A. Okay.

20 Q. -- an answer to the question.

21 A. Okay. Go ahead. Ask it.

22 Q. Can you show me where in the contract
23 it speaks about a certain period of time within
24 which the bill must be issued?

25 MR. HARVEY: Objection. It's been --

1 MR. MYRICK: No, he hasn't answered my
2 question yet.

3 THE WITNESS: There is not --

4 BY MR. MYRICK:

5 Q. It's a yes or a no and then you can
6 explain.

7 A. There is not -- no, there's not in the
8 contract an explicit timeframe where they have to
9 bill, but anybody would -- would say that if you --
10 if you bill or if -- if an activity is done and you
11 don't bill it properly, that that is a breach of
12 this contract.

13 Q. Do you know how much of those bills
14 have now been collected?

15 A. I don't.

16 Q. The bills that were delayed?

17 A. I don't.

18 Q. But that would -- if they were, in
19 fact, collected, would you agree that flaws in the
20 face of your theory that after a certain period of
21 time insurers won't pay them?

22 A. I absolutely would not agree to that
23 because I happen to know that certain insurers have
24 a timely clause. I -- you know, I can't tell you
25 which ones, but I could find out.

1 They could not collect those bills in
2 100 percent of the way should. Could not do it,
3 not at the late date they -- they did.

4 Q. But you don't know what collection
5 rate --

6 A. I don't.

7 Q. -- they actually did on those bills?

8 A. I don't, but it would have been
9 horrible.. Horrible. And I -- I -- that's just
10 a -- I mean, a lot of -- of institutions go
11 ballistic if they don't have everything posted
12 within 90 days. And Medicaid, although they're not
13 a great payer, Medicaid, if you don't have a --
14 your bill in 90 days, it's gone.

15 And a lot of other providers, you know,
16 have -- have similar type of -- of clauses in it.
17 There's no way they -- they got much money out of
18 that.

19 Q. Didn't it hurt the hospital to not
20 collect on those funds for so long?

21 A. It did.

22 Q. Okay. But you, during this period,
23 were still getting \$25,000 a month, correct?

24 A. I was.

25 Q. Regardless because you were an

1 employee?

2 A. That's right.

3 Q. Okay. And --

4 A. But that was a short term. That was a
5 time thing due to expire.

6 Q. Uh-huh. So let's now --

7 A. And at the same time they were
8 committing, you know, fraud by collecting their --
9 their co-pays and their -- and their deductibles
10 upfront in the -- in my office and then not
11 submitting the bills in the fiscal insurance year,
12 yeah.

13 Q. So when I go back and look up when this
14 vociferous client made complaints to CCMC about
15 what you're calling fraud --

16 A. Uh-huh.

17 Q. -- it should be within a day or so of
18 your meeting with Teresa Urquhart because you told
19 Teresa immediately upon learning about it, right?

20 A. I told her -- I talked to her
21 immediately -- immediately after this occurred.
22 The patient did. And then the breakfast meeting
23 was sometime thereafter where I told her again
24 about the -- the problem.

25 Q. But as soon as it came to your

1 attention you told Teresa Urquhart, right?

2 A. Or shortly thereafter, yeah.

3 Q. And how much is shortly thereafter?

4 A. I don't know.

5 Q. A week? A month?

6 A. I would --

7 Q. Six months?

8 A. I don't know. It was less than a

9 month. It was maybe -- could have been a week,

10 could have been a few days.

11 Q. Okay. Great.

12 A. It wasn't within an hour.

13 Q. Great. No, that -- that's fine.

14 A. But it was pretty close.

15 Q. That's fine. That's fine.

16 A. She knew about it.

17 Q. Okay. Now, let's talk about staffing.

18 A. Uh-huh.

19 Q. That's the second part of the letter of

20 August 15th?

21 A. Uh-huh.

22 Q. Just, if you would, save us some time

23 and summarize that paragraph as I did before for

24 the first one.

25 A. Not providing Dr. Flexon -- they

1 , materially breached the contract by not providing
 2 Dr. Flexon reasonable personnel staffing and
 3 support such as billing, marketing, as required by
 4 Section 3.2 of the contract. November 2007 the
 5 employer fired Dan Gemmell, Dr. Flexon's practice
 6 manager, without his knowledge or consent and they
 7 failed to reinstate him. Then they terminated the
 8 billing people and then they did it -- they didn't
 9 replace Priscilla Green. That's -- that's
 10 essentially what it says.

11 Q. Okay. And now let's look at the
 12 contract --

13 A. Okay.

14 Q. -- and go to paragraph -- it's Section
 15 3.2, please.

16 A. Yeah.

17 Q. And that's on Page 1 --

18 A. Uh-huh.

19 Q. -- of the contract. Do you see that?

20 A. Yes.

21 Q. Could you read that paragraph into the
 22 record, please.

23 A. Okay. The employer will provide the
 24 physician --

25 Q. You have to -- you got to slow down

1 with this.

2 A. Okay.

3 Q. You read very fast and she's got to
4 type it all down --

5 THE WITNESS: You ready?

6 BY MR. MYRICK:

7 Q. -- it has to be just right. You can't
8 skip any words or anything --

9 A. All right. The --

10 Q. -- when you read into the record.

11 A. -- the employer will --

12 Q. Well, let's start with the first words
13 there, non-physician personnel.

14 A. Non-physician personnel. Employer will
15 provide physician with a reasonable amount of
16 non-physician personnel including but not limited
17 to nurses, technicians, secretarial staff and other
18 medical and nonmedical personnel to assist the
19 physician in the performance of his or her duties.
20 The physician shall report to, consult with, and
21 use the input of the employer regarding the hiring
22 and firing of medical staff who work within the
23 practice and the overall operations of the
24 practice. All final decisions regarding hiring and
25 firing of the practice personnel shall rest with

1. the employer.

2 Q. So according to the contract, who has
3 the final say in hiring and firing?

4 A. The employer.

5 Q. And what number of employees was CCMC
6 required to keep?

7 A. A reasonable number of employees.

8 Q. In your complaint, you complain that
9 there was a breach in failing to hire an
10 audiologist. Is that correct?

11 A. I -- you know, I -- I wanted an
12 audiologist. I -- you know, I was told that they
13 would hire one. I'm not sure I could specifically
14 say this contract was breached because they didn't
15 hire an audiologist, but certainly firing the
16 office manager and not telling me or just missing
17 the billing service and not telling me, it's right
18 here, it says that the physician -- that -- that
19 they'll use the input of the employer -- I mean,
20 that, you know, I had -- they would -- they would
21 assist me and they would provide these people for
22 me in a reasonable number. But -- and not limited
23 to just nurses, technicians, secretarial staff.
24 But, I mean, the very basic, you know, an office
25 manager, billing that was done and done without my

1 knowledge.

2 Q. Okay. Let's go now to subsequent
3 employment. How were you doing in Savannah at what
4 I'll call the second time around generally after
5 you left the employment of CCMC?

6 A. I -- I felt that I didn't -- I
7 wasn't -- it was a poor job environment and it
8 didn't -- didn't -- could not recapture my -- my
9 former practice.

10 Q. Let's look back at Exhibit 12, if we --
11 if we could. This is the Senior-Physician
12 Employment Agreement between Provident Health
13 Surgical Associates, Inc., D/B/A ACI Surgical
14 Associates and Phillip Flexon, MD, correct?

15 A. Right.

16 Q. September 18, 2008.

17 A. Right.

18 Q. Did you negotiate this contract?

19 A. I did.

20 Q. And in this contract, the employer is
21 called the practice and the employee is called
22 physician, correct?

23 A. Right.

24 Q. Now, is it true, according to Section 4
25 on Page 22, that's the Bates-stamp number, that's

1 the number at the bottom right.

2 MR. HARVEY: MH 22?

3 MR. MYRICK: Uh-huh, MH 22.

4 MR. HARVEY: It's Page 4.

5 THE WITNESS: Yeah. Okay.

6 BY MR. MYRICK:

7 Q. That Section 4.01 fees says, and I
8 quote: All charges and income derived from
9 professional medical activities accepted or
10 undertaken by physician on behalf of the practice
11 during the term shall be for the benefit of the
12 practice and physician hereby assigns such charges
13 and income to the practice. Charges, fee
14 schedules, and coding for professional services
15 rendered to patients by physician shall be
16 established by Memorial or its designee.

17 Do you see that language --

18 A. I do.

19 Q. -- that appears with the contract?

20 So even with all the issues with CCMC,
21 in this next contract that you negotiated, you saw
22 no problem assigning income and rights to bill to
23 the hospital?

24 A. Oh, I didn't and don't have -- didn't
25 have that issue with Coastal. My issue with

1 Coastal is they failed to do it.

2 Q. Got it.

3 A. That's huge.

4 Q. Got it. And then Section 7.03 on Page
5 25 that's entitled equipment and supplies.

6 A. Uh-huh.

7 Q. It says: During the term, the practice
8 shall provide expendable and non-expendable medical
9 equipment, drugs, supplies, furniture, and fixtures
10 which the practice determines in its sole
11 discretion to be necessary for the proper operation
12 and conduct of the practice. Correct?

13 A. Yes.

14 Q. So you have no problem allowing
15 equipment and supplies to be at the hospital's sole
16 discretion again, correct?

17 A. I did not. And -- and actually they
18 supplied all the equipment I could possibly use.

19 Q. Okay. And then Section 7.04 you had no
20 problem with nonmedical support level being at the
21 sole discretion of the employer, correct?

22 A. Well, in retrospect I did, but that --
23 you know, that was --

24 Q. But this --

25 A. -- I could not negotiate that out.

1 Q. Okay.

2 A. And that -- that was a problem.

3 Q. Okay.

4 A. A huge problem.

5 Q. So it's common for the practice or the
6 employer to have sole discretion on these issues
7 that we've just discussed?

8 A. Right. And that was -- that was --
9 that was correct. And although I had -- in my
10 opinion, the -- the allowance or the language in
11 the Coastal contract is actually better for the
12 doctor than this one in the Memorial contract,
13 Section 7.05 Page MH 26. That's --

14 Q. In what way?

15 A. I think it -- it allows -- it -- it
16 allows -- or it -- it -- it requires a consultation
17 between the physician and the employer regarding
18 the staffing. And I think that's a better --
19 better wording than the Memorial contract.

20 Q. Uh-huh.

21 A. And...

22 Q. And as an Exhibit C to this document
23 labeled MH 39 --

24 A. Okay.

25 Q. -- at the bottom, I think your answer

1 would be the same so I'm not going to read the
2 entire thing in. But correct me if I'm wrong, but
3 the purpose of this Exhibit C is to say the
4 physician agrees that all fees and charges arising
5 out of your services on behalf of the practice
6 shall be and remain the property of the practice?

7 A. Yeah. I have no problem with that. I
8 agree with that sentence.

9 Q. And, again, you irrevocably assigned
10 and transferred to the practice all right, title,
11 and interest to the physician for any fees or
12 charges?

13 A. Sure. Yes, that's correct.

14 Q. And was that similar to the CCMC,
15 correct?

16 A. It -- it is. It is. And I don't have
17 a problem with that in the -- the Coastal Carolina
18 contract.

19 Q. Okay.

20 A. That they -- they had the -- those
21 things assigned to them.

22 Q. Now, in Exhibit D to this contract it
23 talks about compensation. And it's -- it's very
24 involved. What was your understanding of how you
25 could achieve bonuses?

1 A. Well, their -- their compensation
2 formula is based on strictly on RVUs, relative
3 value of units. And they allowed for RVU -- you
4 could use one of two, I guess, certain standard
5 RVU -- work RVUs and your -- your form -- or your
6 salary was based on -- on the actual RVUs you
7 worked.

8 Q. Okay. Did you ever make a bonus while
9 you were there?

10 A. Well, it was all kind of like based on
11 RVUs so that you -- but -- but I -- I -- the RVU
12 formula is -- was -- was difficult to apply. And
13 I -- I didn't -- I felt I didn't do very well
14 there --

15 Q. So did you have --

16 A. -- in that formula.

17 Q. -- did you make bonuses there or not so
18 many?

19 A. I made a few small bonuses. Now --
20 but, see, that's a relative term because you would
21 get your next year's salary based on a -- a certain
22 RVU formula then you'd make over that, but it
23 wasn't really a bonus. In some cases you're making
24 a really low salary and then the bonus was getting
25 you to, you know, maybe a -- still a poor salary,

1 so I always made a bonus but it wasn't a bonus.

2 Q. Okay.

3 A. I know that -- that's double talk and
4 I -- but I'm trying to be accurate.

5 Q. I understand --

6 A. Yeah. Okay.

7 Q. -- and I respect that.

8 A. Yeah.

9 Q. I think I -- I think I follow that.

10 This last page on here, this MH 45, is
11 this a list of equipment that you took from Coastal
12 Carolina?

13 A. Yeah, there -- there was a -- I -- I
14 submitted some equipment requests and -- and trying
15 to get Memorial to buy equipment from Coastal
16 Carolina and -- and -- and that got complicated and
17 I'm not actually at the end of the day sure what
18 actually got bought and what got bought through a
19 company called McKesson. And McKesson got in the
20 middle of that, so I don't know what -- yeah, but
21 that was an attempt at trying to get me -- the
22 ability to purchase some of my equipment. And some
23 of it did get purchased.

24 Q. But it would not have been purchased by
25 you, it would have been purchased by the

1 practice --

2 A. By the hospital.

3 Q. -- you were walking into?

4 A. Yeah. Yes.

5 Q. Uh-huh.

6 A. Yeah.

7 Q. Okay. So somewhere there's a record of
8 how much was paid and how much --

9 A. Yeah. Yes.

10 Q. -- taken? Okay.

11 A. And Coastal should have that or Tenet
12 or somebody.

13 Q. What was your starting salary -- what's
14 the shorthand you call it, Memorial --

15 A. Yeah.

16 Q. -- is that what you want to call it?

17 A. Yeah. It's right here, it's on Page
18 40, it's 265.

19 Q. Okay.

20 A. And then you get a -- a -- you get kind
21 of bonused up based on RVUS like, I don't know,
22 every six months.

23 Q. And that was a 265 contract but you
24 also got another sign-on bonus of 25,000, right?

25 A. No.

1 Q. Oh, there was none?

2 A. No, I didn't get a sign-on bonus. I
3 don't believe so. Is it in here? I don't remember
4 that.

5 Q. I thought you did.

6 A. No, I don't think so, but...

7 Q. During the time -- oh, I see what it
8 is. I was confusing terms. During the term,
9 physician's annual education stipend shall equal
10 25,000?

11 A. Yeah.

12 Q. But that's different?

13 A. That's Mercer pay.

14 Q. Okay. So that -- you did get that
15 money but you got that from Mercer, not from the
16 hospital?

17 A. Yeah, Mercer paid a salary to me.

18 Q. All right. And that's for your
19 teaching role?

20 A. Yes.

21 Q. Okay. So the total compensation is
22 290,000?

23 A. That -- that's right -- well, and,
24 there again, I think I told you, every -- every six
25 months they tally up and they adjust it. So you're

1 paid based on just -- basically what you work and
2 I -- I -- I -- yeah, it was -- it was in that
3 ballpark. I think I made a very minimal bonus.
4 I -- I think it ratcheted down the next year, but I
5 made more of a quote/unquote bonus. But that's the
6 way it worked.

7 Q. Yeah. And it looks like the amount of
8 money that you were earning over the years got
9 lowered a few times according to these documents;
10 is that --

11 A. Right, it gets lowered and then you get
12 bonused up. And I -- I -- I think except for I
13 think -- I think one year I did -- did okay and the
14 other two years I did crummy and -- and it was --
15 you know, I couldn't make that system work for me.

16 (DFT. EXH. 14, Document Bates-stamped
17 MH 16, was marked for identification.)

18 BY MR. MYRICK:

19 Q. I'm going show you Exhibit 14. And
20 that looks like the start was 290 annually, which
21 is the number I gave earlier which is --

22 A. Right.

23 Q. -- the 265 base plus the 25,000
24 teaching stipend?

25 A. Right.

1 Q. Okay. And that accurately reflects an
2 effective pay period beginning 9/18/08; is that
3 right?

4 A. Uh-huh.

5 Q. Okay. Now, what you've said to me is
6 that every year they do an analysis of the RVUs.
7 What is that short for again, if you don't mind my
8 asking?

9 A.. Relative value units.

10 Q. Relative value units. And that --
11 are -- am I to continue from that that the relative
12 value units that you'd been earning under the
13 system had declined -- declined from
14 September 18th, 2008 until your last day here at
15 this hospital?

16 A. At -- I'm -- I'm...

17 Q. At Memorial.

18 A. I -- it was -- it wasn't a straight
19 line decline. And what would happen, okay, I think
20 there was -- the way it worked was you got a grace
21 period where they did a -- some form of a base I
22 think for a -- and I can't remember how -- how long
23 it went. Then you -- even if you say earned as
24 many or more RVUs than your salary would have.
25 earned for you, it ratcheted back and then you

1 got -- you got added I think on a -- on a six-month
2 basis you got it added back for the RVUs that you
3 worked over that lower base. It's kind of
4 complicated.

5 Q. It does -- it is getting complicated.

6 A. It was complicated. It was a
7 complicated formula.

8 Q. But what's not so complicated is that
9 the income seems to be declining; is that accurate?

10 A. The income goes down in -- in -- in --
11 in the second year, my -- and I think the very last
12 year it -- it went -- or the last six months it
13 actually -- when the final bonuses all came in, I
14 actually -- that was paid over -- a lot of what was
15 owed to me was paid over almost eight months. I
16 think in retrospect I think I actually did a little
17 better, but I -- I did not do well on the RVU
18 system.

19 Q. And the reason was that you couldn't
20 get the practice ramped up there?

21 A. Couldn't get the practice ramped up and
22 there were a lot of reasons. I -- I -- I actually
23 also had, I think, personnel, you know, problems
24 there.

25 Q. Personnel problems?

1 A. Yeah, where I couldn't get enough help.

2 Q. You -- they were not supplying you
3 enough staff to do what you needed to do?

4 A. In my opinion, yeah.

5 Q. And did that also result in delayed
6 appointments or patients walking away?

7 A. Not so much patients walking away, but
8 delayed appointments, not seeing as many patients
9 as I could, not getting -- just a lot of -- of sort
10 of administrative things.

11 Q. And that was a common thing that people
12 were being delayed?

13 A. Uh-huh.

14 Q. You have to say yes or no for the
15 record.

16 A. Yes. I'm sorry, yes.

17 (DFT. EXH. 15, Document Bates-stamped
18 MH 14, was marked for identification.)

19 BY MR. MYRICK:

20 Q. Okay. The next document is Document 15
21 in this stack. Do you have that one? And this
22 reflects I think what you were referring to a
23 little bit earlier where you went from -- there's a
24 middle step here that I don't have documentation
25 for --

1 A. Right.

2 Q. -- but these are the documents that
3 came from Memorial Hospital. And this reflects a
4 effective pay period of 2/5/10, which would have
5 been February 2010 and your salary goes from
6 260,000 to 257,378.

7 A. Yeah, it's a \$3,000 drop and it doesn't
8 count here the -- the medical school student -- or
9 medical school stipend, but --

10 Q. So why is this happening?

11 A. This is based on -- again, the -- they
12 look at the total amount of RVUs and they have
13 certain categories, percentile categories. And
14 then for a base, they'll knock your base down to
15 the category below you so that -- that they're not
16 paying you more than you might make, they're always
17 going to pay you less than you might make, and then
18 they bonus you up.

19 Q. Okay. And what does --

20 A. Yeah.

21 Q. -- this mean down here
22 comments/justifications regarding changes
23 identified above Cost Center Number 921800? What
24 does that mean?

25 A. Where -- where are you reading from?

1 Q. Right here. (Indicating.)

2 A. Oh, right. Right.

3 Comments/justification -- I don't know. I don't
4 know what it means.

5 Q. Okay.

6 A. In fact, I never seen this.

7 Q. All right.

8 A. Neither one of these, but -- but --

9 MR. BELTON: What exhibit is that? 13?

10 THE WITNESS: What?

11 MR. BELTON: What exhibit is that?

12 MR. MYRICK: I'm sorry, that was

13 Exhibit 15.

14 THE WITNESS: 15.

15 MR. BELTON: 15, good.

16 THE WITNESS: So that was -- yeah,

17 because that was a group of -- from 265 to 257, so

18 that was a drop of \$8,000. And it -- so -- but it

19 was a drop.

20 BY MR. MYRICK:

21 Q. Right. What was the lowest that your
22 salary got to while you were at Memorial Hospital
23 this second go around?

24 A. For the -- I'm not sure, but it was --

25 I'm going to say with all things -- you know, it

1 was maybe around 280 or 275, 280, you know, maybe
2 280, but I'm not -- I'm not sure.

3 (DFT. EXH. 16, Document Bates-stamped
4 MH 10, was marked for identification.)

5 BY MR. MYRICK:

6 Q. Okay. Well, let me ask you this: That
7 suggests a figure of 171 as a base salary. It's
8 Exhibit 16.

9 A. Yeah.

10 Q. Can you tell me about that?

11 A. Yeah, and I think that's what -- I --
12 it went down but then it got bonused up a lot that
13 year, but -- but I think it was in the high 200s.

14 Q. So why would you -- why would you --
15 why would this have dropped so dramatically to
16 \$171,000?

17 A. Again -- I think -- I think there was a
18 two -- you know, the formula allows a two-year
19 grace and then it -- again, it ratchets you down
20 and then I -- I'd have to go back and read it. Let
21 me see if I can find. Here is the compensation --
22 am I in the right one? Yeah.

23 Q. Well, you were fired from this job,
24 weren't you?

25 A. Not really. I had already -- then I

1 was already leaving, that was -- the -- the
2 noncompliance I think was some people trying to
3 save their -- they -- they were --

4 Q. Okay.

5 A. -- they -- they I think had an
6 explanation as to why everyone was leaving ACI
7 Surgical. I had not signed a contract, but it was
8 common knowledge I was leaving and fed up with
9 Memorial. Memorial was going bankrupt. And I
10 think -- so they used -- and then Memorial was also
11 under a -- a probation for Medicare issues with the
12 Georgia Eye Institute.

13 So, you know, being late on my records
14 and they -- they used that. And the -- so that
15 was -- yeah, they -- they wanted me to not be part
16 of ACI, but everyone was leaving ACI already and --
17 but wanted me to form a practice on my own and stay
18 there, but...

19 Q. When did the problems with the eye --
20 what did you say?

21 A. Georgia Eye Institute.

22 Q. Yeah, when did that first surface?

23 A. I -- that surfaced a while back.

24 Q. A year? Two years?

25 A. Maybe three years --

1 Q. Three years.

2 A. -- before --

3 Q. Before you left?

4 A. Yeah, it was --

5 Q. Three years before you left?

6 A. Yeah. I -- I think -- I think it
7 was -- the problems with the Eye Institute actually
8 happened maybe when I was working for Coastal.

9 And, you know, they got raided and -- and I think
10 that after a long, long process that I think they
11 found one thing that Memorial was fined and put on
12 probation. That's --

13 Q. And how long have they been in
14 bankruptcy or headed to bankruptcy?

15 A. Well, I say headed to bankruptcy, I
16 think they were -- they were -- they were in -- in
17 horribly in the red the year before even I came
18 back.

19 Q. But you didn't know that then?

20 A. I didn't know how bad they were in the
21 red. And then we had a hiring freeze and stuff
22 like that probably the year after I -- I arrived
23 and lots of changes and...

24 Q. Okay.

25 A. And if you look at the ACI, you know --

1 did -- Steve Brower left, I left, Jim Garber left,
2 and the only people who remained were, you know,
3 Senkowski, and Robert Jones. Don -- anyways, one
4 of -- one of our partners died. Yeah, that's all.

5 Q. Okay.

6 A. Yeah, ACI died. I guess they --
7 they -- they hired someone to take my place about
8 three months ago, four months ago, so...

9 MR. HARVEY: What's your question?

10 MR. MYRICK: The issue that he's
11 addressing now is how the salary --

12 THE WITNESS: Okay. So --

13 MR. MYRICK: -- basically went to 171..

14 THE WITNESS: Okay. So --

15 BY MR. MYRICK:

16 Q. I'm listening.

17 A. Okay. So the physicians annual salary
18 shall be established by comparing an average of the
19 physician's actual work RVUs for the previous two
20 years or in the case of the second year of the term
21 the physician's actual RVUs in the previous one
22 year with the average and/or agreed blend of the
23 compensation RVU survey data published by the MGMA
24 Physician Compensation and Productivity Survey.

25 So the -- the first two years, there

1 was an agreed on formula and then the drop
2 happened. So if you fall below a certain -- if
3 your RVUs for the -- when you finally have two
4 years of data, wherever they fall, your -- your
5 R -- it's divided into four, you -- you will fall
6 to the lower quarter. So let's say if you were at
7 50 percent or 49 percent and I think that's kind of
8 where -- you know, I fall somewhere around there,
9 38 -- or 40 percent, 45 percent, you follow in the
10 25th percent. But the first two years we agreed on
11 an -- on an amount so then you fall to the
12 25 percentile of what physicians would make based
13 on, you know, that.

14 And then you overproduce -- or you
15 overproduce -- as you produce along that year,
16 they -- they up you every six months what you
17 actually work.

18 Q. Into the next quarter, into the next 25
19 percent?

20 A. Well, they base it on the -- on the --
21 the last quarter you -- or last six months you
22 worked --

23 Q. Okay.

24 A. -- was -- it was done semiannually. So
25 let's say you really -- so you -- you got ratcheted

1 down, let's say you ended up with a -- falling in
2 the 46 percentile, you'd be ratcheted down to 25
3 percent. That's your base.

4 And that's what happened with the 171.
5 And then say you really worked at the 42nd
6 percentile, then in six months you would get that,
7 you know, bumped up and -- but you could get out of
8 the 25th base unless you got to the 51st
9 percentile, then you could get to the 50th
10 percentile and so on. But they were -- they were
11 based in four -- in quarters. It was kind of a
12 funny formula.

13 Q. And the reasons that I've heard that --
14 for this -- the RVUs reflect how much?

15 A. Work.

16 Q. Work --

17 A. Yeah. It --

18 Q. -- you do?

19 A. -- doesn't have to do -- anything to do
20 with what -- you know, what your insurer is or
21 whether someone's indigent or -- or whatnot, just
22 actual work. But of course also -- it also
23 reflects how it's applied. So, you know, I know
24 more about --

25 Q. So give me the --

1 A. -- RVUs now than I did.

2 Q. -- the five reasons why the work number
3 has declined?

4 A. Okay. So, all right, the first two
5 years you agree on a certain -- a certain base and
6 that's -- that's -- you know, and -- and then the
7 third year you're there, okay, it's based on the
8 actual average of the two RVUs. So if you had a
9 slow startup, which you always do, that would
10 average you down for the -- for -- if you had a
11 pretty good second year.

12 Q. Uh-huh.

13 A. All right. It's divided into fours.
14 You have 0 to 25 percent, 25 to 50 percent, 50 to
15 75, 75 to 100. So now wherever you fell on --
16 based on the MGM guidelines, you -- let's say you
17 ended up at 49 percent --

18 Q. You go to the lower --

19 A. You go --

20 Q. -- quadrant?

21 A. -- you go -- yeah, so you're going to
22 be at the 25 percent base line. Okay.

23 Q. And if you'd hit 55, you'd go back --

24 A. To 50.

25 Q. -- to 50.

1 A. And if you hit 76, you'd go back to 75.

2 Q. 74 to 50?

3 A. Right.

4 Q. Uh-huh.

5 A. So the -- you know, so we had an
6 agreement upon two-year start because I didn't have
7 any information then. I think, you know, I fell
8 somewhere like in the 40th percentile for the first
9 two years so it knocked me back to 25 percent.
10 Then you get, quote, bonuses, but that's what I'm
11 saying, it's not really a bonus.

12 Q. Bonus just catches you up to what --

13 A. Catches you up to your --

14 Q. -- your percentage --

15 A. -- real RVUs, yeah. Yeah.

16 Q. Okay. What was causing you not to be
17 as productive as you wanted to be?

18 A. At -- at Memorial?

19 Q. Personnel?

20 A. Personnel and -- and, you know, for me
21 that was the -- the main -- the main issue there.
22 And -- but that was -- that was probably it.

23 Q. Who was the person you were working
24 with that was not coming through on the scheduling?

25 A. I -- you know, it wasn't really an

1 office, it was a -- it was a -- it was a -- it was
2 a hospital corporate wide issue and I -- you know,
3 I think Steve Brower was supposed to make us an
4 independent department and -- and that didn't
5 happen. So, yeah, we, you know, got caught under
6 a -- sort of a, you know, bureaucratic cutbacks
7 with Memorial having, you know, huge losses.

8 Q. Oh, I see.

9 A. Yeah.

10 Q. So it's a lack of personnel caused by
11 cutbacks --

12 A. Yeah, exactly and --

13 Q. -- because you weren't protected as an
14 individual department?

15 A. -- they were -- they were having a lot
16 of financial problems and --

17 Q. Okay.

18 A. -- and it -- well, you know, the -- I
19 thought, you know -- well, yeah, that was primarily
20 it.

21 Q. Were there other reasons?

22 A. Well, that was for the most part it.

23 Yeah, and just the -- a lot of things that were
24 planned with forming that -- that group --

25 Q. ACI?

1 A. Yeah, the ACI Surgical Associates never
2 came to fruition.

3 Q. And who was the head of ACI Surgical --

4 A. Steve Brower.

5 Q. Is he still practicing over there?

6 A. No.

7 Q. He's gone to where?

8 A. He left.

9 Q. Where is he now?

10 A., New York State.

11 (DFT. EXH. 17, Letter dated January 28,

12 2011 from Sharon Mimbs Bromley, FACHE, to Phillip

13 B. Flexon, MD, FACS, was marked for

14 identification.)

15 BY MR. MYRICK:

16 Q. Uh-huh. This letter -- has this -- the
17 next is Exhibit 17 and that's -- their -- their
18 take on that is different from -- from the letter
19 as I read it, January 28th, 2011. And I think what
20 you've told me -- well, let me just let you explain
21 it to me because they talk about in this letter
22 we've met with you on numerous occasions to discuss
23 continued noncompliance with terms of your
24 employment agreement.

25 What are they talking about?

1 A. This is only about chart -- finishing
2 my charts on time and they did -- we did meet and
3 I -- we met, I complained, they met, they
4 complained, and they -- they wanted all their
5 charts done in -- in -- in, you know, 24 hours and
6 I -- I said, well, get somebody to carry them out
7 of the clinic up to my -- up to my office for me
8 and I can dictate them. I don't -- you know,
9 things like that. That's what -- it's about
10 charts.

11 Q. Is that the sole complaint about the
12 timeliness of your charts?

13 A. That's it.

14 Q. Okay.

15 A. That is it.

16 Q. Okay.

17 A. That's it. It's right there.

18 Q. And --

19 A. That's all it is.

20 Q. -- and they sent you a series of
21 letters they talk about here, May 13th and
22 September 10th and December 29th?

23 A. Yeah.

24 Q. Do you have those letters?

25 A. I don't think so, no, I don't have

1 them.

2 Q. What would you have done with them?

3 A. Pitched them. Do you realize how many
4 letters doctors get about being late on charts, I
5 mean, you know, dictations and whatnot. It happens
6 all the time.

7 Q. No, I don't. I don't.

8 A. Okay. Well, it really does. It really
9 does. I -- I mean, and it's not my forte getting
10 charts on time or paperwork or whatnot and they --
11 you know, I think that lots of physicians are
12 guilty sometimes of not completing their charts.
13 Everybody has outstanding, you know, charts. I
14 mean, I have charts to finish when -- when I leave
15 here and go back to Vidalia. It's an ongoing
16 issue.

17 Q. Does the delay of your entering charts
18 effect their ability to timely collect on their
19 bills?

20 A. If it's really outrageous, yes, it can.
21 Uh-huh. Sure can. But it's not there. They were
22 like 24 hours.

23 Q. All right. If it's only 24 hours --

24 A. Or maybe it's 48, 48 hours.

25 Q. Well, even 48, seemingly according to

1 what you've said, inconsequential, why are -- why
2 are they writing you this letter and saying you're
3 fired?

4 A. I think because I was leaving and they
5 also were under a -- a -- their -- the probation,
6 they had actually had an outside company over there
7 in that -- over there. And I think also, this is
8 my opinion, they had to answer to the -- to the
9 board why I was leaving. So it was easier to say,
10 well, he was terminated for noncompliance for not
11 doing his medical records.

12 Q. Were you an employee at Provident
13 Health Surgical Associates here --

14 A. ACI.

15 Q. -- D/B/A --

16 A. Yeah.

17 Q. -- ACI Surgical Associates?

18 A. Yeah.

19 Q. And was this a letter from your
20 employer?

21 A. Well, it was from the hospital.

22 Q. Okay.

23 A. It was from their -- their compliance
24 medical record people.

25 Q. Do you remember getting this letter?

1 A. Oh, yeah. Oh, yeah.

2 Q. Okay.

3 A. But -- and also it was common knowledge
4 I was leaving.

5 Q. Sure.

6 A. I mean, I wasn't -- you know, part
7 of -- part of my problem was a continuation of what
8 I -- happened at Coastal. I mean, I -- just losing
9 the practice that I had when I went there. And --

10 Q. And that had to do with your filling
11 out charts?

12 A. Oh, the -- the filling out the charts
13 did not have to do with -- I'm talking about why
14 I'm leaving.

15 Q. Okay.

16 A. I'm already leaving before this even
17 happened. Okay. And I -- you know, I -- I'm
18 fairly certain if you'd look back you'd see that
19 the year -- the 12 months prior to me leaving I
20 probably did over a million dollars of contribution
21 on the hospital side to -- to what they call fixed
22 overhead, so...

23 Q. So you were succeeding?

24 A. I was making money for the hospital on
25 one level. Okay. I -- I believe. I don't know

1 that for a fact. I -- I saw that before I left for
2 Coastal. I think it was about 1.2, 1.3 million,
3 but I don't know whether it was when -- during
4 this -- this -- this phase.

5 I think with me leaving, there were
6 people -- the CEO was being terminated, the CEO of
7 Memorial was in the process of being terminated or
8 already was maybe or was -- you know, some -- I
9 think he was and there was a search committee for a
10 new CEO. And I think this is about -- about some
11 people at Memorial trying to keep their jobs and,
12 you know, well, why are these people leaving ACI
13 Surgical.

14 Q. When did you, in fact, leave? When was
15 your last day here?

16 A. I don't recall when I actually left.
17 But I had already -- you know, had planned and
18 already had a -- a contract in hand but not signed
19 it by the time this occurred --

20 Q. Uh-huh.

21 A. -- and so...

22 Q. Had you ever done that before, had a
23 contract in hand but not signed it before leaving?

24 A. Probably, yeah.

25 Q. Okay. And at January 28th, 2011 when

1 this letter issued, had you informed them that you
2 would no longer be with ACI or they --

3 A. They --

4 Q. -- did they know --

5 A. -- knew I was actively, you know,
6 looking for a spot to leave.

7 Q. They knew you were looking but had you
8 informed them that you were quitting?

9 A. No, I had not formally informed them
10 that I was quitting.

11 Q. So they sent this not knowing that you
12 had signed a contract with somebody else, but --

13 A. I hadn't signed one at that -- at this
14 point, but was about to. They knew that I was
15 about to. I wasn't violating any -- any
16 restrictive confidence --

17 Q. Yeah.

18 A. -- I was leaving the area and so I
19 think that they -- that was, you know, known.
20 And -- and actually there -- you know, there was --
21 my old -- again, my old group, Georgia Ear, was
22 very actively -- they actually talked to the
23 administration about letting me come over. Look,
24 it's not working at ACI, why don't you just let him
25 come over and I almost did that.

1 Q. Yeah. And so when they say in
2 Reference A to the contract it lists professional
3 performance standards and it says that you breached
4 those, the only thing that was breached was having
5 to do with those charts?

6 A. That's right.

7 Q. Okay.

8 A. That's it.

9 Q. And that's fine.

10 A. That's all --

11 Q. Then I have no other questions about
12 that.

13 A. -- it was. Yeah, and...

14 Q. I just want to make sure that I have a
15 good grasp on this because it's so important. The
16 contract that you signed while you were in
17 Hardeeville with CCMC had a five-year term on it --

18 A. Uh-huh.

19 Q. -- and my understanding from sitting
20 here with you today though is that the damages that
21 you're claiming are from the lawsuit are not
22 contained in five years but continue throughout
23 your entire retirement?

24 A. Uh-huh.

25 Q. Do I understand that properly?

1 A. That's right.

2 Q. Okay.

3 A. Yeah, I mean, I think it's easy to look
4 at the pro forma that I submitted. It's not my
5 numbers, those are not my numbers, those are
6 Memorial's numbers. Don't even include my activity
7 at Chandler which existed at the time. And that's
8 the practice I was engaged in. That's what -- I
9 mean, I didn't go anywhere. I had the practice.
10 It was -- you know, I switched hospitals. There
11 was nothing -- it was right there.

12 Q. Uh-huh.

13 A. And they -- you know, they -- they -- I
14 feel they destroyed it.

15 Q. Uh-huh. Were there any other problems
16 not caused by Tenet that would result from trying
17 to transport a practice from Georgia to South
18 Carolina?

19 A. You know, I -- you know, the practice
20 wasn't transported. The practice always existed in
21 both states before and after. It really did. I
22 mean, it was -- you know, it -- by -- by accident
23 there's a river and a state line, but the practice
24 always involved both states. So there was nothing
25 that moving from the -- the -- the practice from

1 Georgia to -- to South Carolina had -- it had any
2 bearing on it whatever.

3 Q. So the answer to my question is no --

4 A. No.

5 Q. -- it was all caused by CCMC?

6 A. No, there's nothing -- nothing -- yeah,
7 and it was also, again, I -- it was -- it was
8 LifePoint. Again, I don't see necessarily Tenet
9 as -- you know, I'm surprised you're here.

10 Q. Why do you say that?

11 A. I don't think you have a contract with
12 me. Tenet -- you're representing Tenet.

13 Q. Uh-huh.

14 A. I've said that several times.

15 Q. Uh-huh.

16 A. I...

17 Q. In Paragraph 8 of your complaint -- and
18 I can give you reference to it if you would like.

19 A. Sure.

20 (DFT. EXH. 18, Complaint, was marked
21 for identification.)

22 BY MR. MYRICK:

23 Q. Here it is, Exhibit 18. You can just
24 put those hopefully in order so --

25 A. Oh, I'm sorry, they're not in order.

1 Q. That's all right. You're doing great.

2 MR. HARVEY: Don't worry about it.

3 BY MR. MYRICK:

4 Q. Paragraph 8 it says, second sentence:
5 Plaintiff was enticed to sign Exhibit 1, which is
6 the contract, by the representations of employees
7 and agents of LifePoint that they would enjoy a
8 long relationship with LifePoint and Coastal
9 Carolina Medical Center.

10 Who was it that enticed you in this
11 way?

12 A. Eric Deaton.

13 Q. Okay. Eric Deaton?

14 A. Yeah.

15 Q. Anybody else? Just him?

16 A. No, that's it.

17 Q. Now, let's go, if we could, to
18 Paragraph 11. Do you believe your contract was
19 assigned to Tenet?

20 A. I do not.

21 Q. Okay.

22 A. Huh-uh. I do not.

23 Q. Do you think -- well, let me -- let me
24 make sure we're clear and on the same page with
25 that because I want to make sure what your

1 allegations are. Are you saying it was wrongfully
2 assigned to Tenet or are you saying it wasn't
3 assigned at all to Tenet?

4 A. Well, the contract was nonassignable
5 and I never -- it was -- I never signed anything
6 that allowed it to be assigned to Tenet. It was
7 never assigned to Tenet.

8 Q. Uh-huh. Then what happened? How was
9 it that you came to work for --

10 A. I went to work.

11 Q. -- a hospital owned by Tenet?

12 A. I didn't know what to do. I -- you
13 know, I went to work and I got a paycheck from --
14 from Tenet, but...

15 Q. And the difference was that Tenet
16 acquired the whole company instead of assuming the
17 contract?

18 MR. HARVEY: Objection.

19 BY MR. MYRICK:

20 Q. Do I understand that properly?

21 A. Tenet bought Jasper-PHC.

22 Q. Yeah.

23 A. It didn't acquire my -- my contract.

24 Q. It didn't -- there was no assignment of
25 your contract?

1 A. No.

2 Q. Okay.

3 A. Well, why would they have asked me to
4 sign the assignment notification the first week
5 they -- after they bought the hospital?

6 Q. Okay.

7 A. I mean, there it is unsigned. They
8 knew they had a problem.

9 Q. So we agree there was no assignment?

10 A. You -- yeah, we agree, there's no
11 assignment.

12 Q. Okay. Now, Paragraph 13, duty to
13 disclose, midway through the paragraph: Knowing
14 that the plaintiff would have to close and
15 terminate an established practice in Savannah in
16 order to fulfill his obligations under Exhibit 1,
17 there arose a duty by employer to disclose to the
18 plaintiff the intent to negotiate and sell PHC and
19 Coastal Carolina Medical Center to Tenet or to
20 another entity.

21 Right? Is that what that says?

22 A. Yes.

23 Q. Okay. If Eric Deaton did not know that
24 Tenet would purchase the stock of CCMC, was there a
25 duty for him to disclose that some seller could?

1 A. At the point at which he knew the
2 hospital was going to be sold, that -- that he --

3 Q. To anyone or to Tenet?

4 A. To anyone.

5 Q. To anyone?

6 A. That -- that -- that I was signing the
7 contract, that with him and LifePoint, that he
8 wasn't going to be there at all to fulfill or see
9 about or work -- have a working relationship, he
10 was obligated to tell me. Also --

11 Q. Tell me the basis for that conclusion.
12 Do you just think that would have been the right
13 thing to do or is there something in the contract
14 that says that or...

15 A. Well, it's a nonassignable contract.
16 Who am I working with if they leave and sell the
17 hospital? Who -- what do they do? Don't they have
18 to either -- so how do they fulfill the contract?
19 I -- I don't see it other than they can buy me out
20 or they can offer me another job.

21 They had an obligation to -- to work
22 something out if they truly didn't know it was
23 going to be sold and then it was. Or if they knew
24 it was going to be sold they had to tell me it was,
25 because it -- it -- it totally affected the deal.

1 It was very important who I did my business with as
2 it would be with any person.

3 Q. What if Eric Deaton didn't know that
4 Tenet was going to --

5 A. But he did.

6 Q. Well -- well, I'm just asking you what
7 if Eric Deaton didn't know that Tenet was going to
8 be the one who acquired LifePoint Hospital?

9 A. If he didn't know it was going to be
10 LifePoint with that contract, with the discussions
11 we had, with the wording that's on that contract,
12 he had to tell me that they were selling the
13 hospital.

14 Q. To anybody?

15 A. To anybody. It wasn't going be him.
16 It wasn't going be LifePoint. He had to tell me.

17 Q. Uh-huh.

18 A. And with the restrictive covenant deal,
19 he was 99 percent sure it was going to go to Tenet.
20 Anybody would see that.

21 MR. HARVEY: Right of -- right of
22 refusal.

23 THE WITNESS: Right of refusal,
24 restrictive covenant.

25 BY MR. MYRICK:

1 Q. Didn't CCMC continue to be your
2 employer?

3 A. I think LifePoint continued to be my
4 employer. I was in -- I went to work at -- at
5 Coastal Carolina. I got a check from Tenet. I did
6 not have a contract with them.

7 Q. Uh-huh.

8 A. Now, you know -- so...

9 Q. I want to talk to you now a little bit
10 about damages. And I want to talk to you about
11 salary differential. You have stated in your
12 answers to discovery that you would have made
13 \$416,000 a year at CCMC if they had performed. How
14 did you arrive at that number?

15 A. I -- I used the pro forma that I
16 submitted to -- to LifePoint, real database based
17 on -- based on not my tabulations but Memorials and
18 extrapolating with what activity wasn't reflected
19 in that from -- from Chandler.

20 Q. And this would have been for the work
21 that you did in what years, Dr. Flexon?

22 A. It would be two thousand and -- we were
23 negotiating 2006. It was 2005.

24 Q. 2005.

25 A. Uh-huh.

1 Q. So the data came from 2005?

2 A. Yeah.

3 Q. Okay.

4 A. In very specific data it had my ranking
5 in the hospital where I performed relative to other
6 surgeons, where I performed relative to other ENT
7 surgeons, all of my cases, what equipment -- I
8 mean, what the cases breakdown -- case breakdown
9 was. Where it was obvious where -- what equipment
10 I would need to continue to do it.

11 It had, you know, specific -- you know,
12 month by month, you know, postings based on a -- on
13 a -- a fee schedule that hadn't been revised since
14 I think 2002.

15 Q. So you're saying it might have been
16 extraordinarily low for what --

17 A. Yeah.

18 Q. -- you could change later?

19 A. It was a great practice.

20 Q. So -- and what you did was -- how --
21 how did you reach the 416? I'm not looking -- I'm
22 digging the number system, just tell me about the
23 methodology.

24 A. Yeah, what I did was I basically, you
25 know, calculated an average posting, which is kind

1 of like RVUs, but once you post it's a universal,
2 everyone kind of uses the same -- same information
3 or -- or numbers for. And I took the GMAC what
4 they could have collected and what the expected
5 overhead would be and -- and I would have
6 generally -- again, using GMAC percentages and
7 that's where I came up with that.

8 Q. And whose overhead numbers did you use?

9 A. GMAC.

10 Q. GMAC's overhead --

11 A. Yeah.

12 Q. -- numbers, average overhead numbers.

13 A. Uh-huh.

14 Q. And you applied those to monies that
15 you would have acquired while at Memorial or
16 Chandler?

17 A. I --

18 Q. You applied the overhead --

19 A. -- applied that -- I applied the
20 overhead and I applied the collection ratios from
21 GMAC to the actual posted numbers, real numbers
22 that I -- I did while --

23 Q. Okay.

24 A. -- in 2005.

25 Q. Well, your salary was \$300,000 a year

1 so this would have been about \$116,000 in
2 additional pay and you base that on a pro forma,
3 correct?

4 A. Uh-huh. Uh-huh.

5 Q. And did you base it separately on the
6 contract or really on the pro forma?

7 A. I based it on the pro forma. And what
8 I --

9 Q. Okay.

10 A. -- what I realistically -- what -- and
11 I got up to -- to speed what I would -- should have
12 and could have I think done there.

13 Q. All right. Do we agree that after five
14 years, assuming nobody breached the contract, that
15 CCMC could have let you go or you could have quit
16 with no one having any claims against the other?

17 A. Yeah. But now, you know, that -- for
18 that to have occurred, everyone would have had to
19 have done and performed their respective duties
20 correctly and -- and therefore -- you know, so I
21 would have had a real viable practice. They would
22 have actually had the -- the benefit of having my
23 activity in their hospital. I can make a lot of
24 money for a hospital. It would have been a win-win
25 situation.

1 Q. This letter, the letter that we looked
2 at from January, purports to say that you were
3 terminated or fired --

4 A. Uh-huh.

5 Q. -- right?

6 A. Yeah.

7 Q. Now, if that's true, if you were fired
8 before you handed them notice of your resignation,
9 for cause, they say here it's for cause from
10 Savannah, do you still think that CCMC owes you for
11 a salary differential?

12 A. Uh-huh.

13 Q. You have to say yes or no --

14 A. Yes.

15 Q. -- for the record.

16 A. Yes.

17 Q. Even though you were fired from there?

18 A. What difference does that make?

19 Q. Well, if you had continued in your job
20 there and earned money, that certainly would have
21 been less even under your theory that somebody else
22 owes you, right, because you would have mitigated
23 your loss?

24 A. I'm not following you.

25 MR. HARVEY: Objection.

1 BY MR. MYRICK:

2 Q. I'm trying to figure out how you billed
3 a damages number until a retirement on a five-year
4 contract and I'm struggling with it so I'm trying
5 to get you to explain it to me.

6 A. This is an easy explanation. It is as
7 follows: I brought a practice which is very well
8 documented with real numbers that took me almost
9 17 years to build to Coastal Carolina and
10 LifePoint -- and they destroyed it and I never got
11 it back. I had to leave to finally get back to
12 where I -- you know, build a practice. I -- it
13 was, you know, lost opportunity. I could not do
14 it. Everything is, you know, is based on that.

15 I -- my wife and I built in Levy a
16 farm. It was our dream house. I had to leave it.
17 I had to live in Vidalia. It's not where I
18 intended to -- it's a wonderful community -- not
19 where I intended to -- to -- to work out my
20 practice and spend my last days. My wife has to
21 commute back and forth. I'm renting my house out
22 in Levy to my daughter and -- and, I mean --
23 because I can't sell it and so, I mean, it's --
24 this is -- I mean, my life was destroyed by this
25 event, quite frankly.

1 Q. So the claim really isn't based on
2 contract as much as it is on other theories?

3 A. It destroyed my practice.

4 Q. Okay.

5 A. It destroyed my practice and there's
6 real numbers. You can see the volume, the surgical
7 volume, it's right there.

8 Q. Uh-huh.

9 A. I bring a huge practice. And the
10 practice is -- it's right there. I mean, the
11 patients are right there. They're in -- they're
12 all in the area of the hospital. We get up and
13 running and run well with a good hospital with a
14 good reputation and I have that -- that practice
15 and then some, I build it, but that's not what
16 happened.

17 Q. There's an allegation for moving
18 expenses in here, but you lived in Hardeeville
19 before the contract and you lived in Hardeeville
20 after the contract, so...

21 A. Uh-huh. It -- yeah, nothing to do with
22 my moving of my house. It was moving things into
23 the -- the practice. You know, they did not pay
24 for, you know, various things, practice things that
25 I -- you know, I was able to bring to -- with me.

1 Q. How many truckloads do you think?

2 A. I think it was probably one truckload.

3 Q. Okay. And I think we went over this,
4 but lost salary for moving the practice, I think
5 there were six weeks that were alleged. How much
6 time did you take off between your last day at CCMC
7 and started back in Savannah? It looked like it
8 was close, just a few days, three days.

9 A. Yeah, I think -- I didn't take off
10 time. I did not start seeing patients that quickly
11 I don't believe, but I -- I -- I'm not sure.

12 Q. And did you tell me -- forgive me, but
13 I'm getting close to the end so you should be happy
14 about that, but do you -- were you able to remember
15 how much time you took off between your last day at
16 Savannah and starting at CCMC?

17 A. No, I mean, I don't -- I don't -- I
18 don't recall. I don't recall.

19 Q. Okay. Under the EBITDA analysis and --
20 for whatever causes existed, and I understand you
21 said the causes belong to CCMC, but the numbers
22 show that CCMC lost a lot of money employing you.
23 Would you agree with that?

24 A. I think -- I think they probably did.
25 I don't know. Here's the problem, what does a

1 hospital like that get if I -- when I do one
2 endoscopic sinus case, one big sinus case on the
3 hospital side, I don't know, \$60,000. You know,
4 that's the -- that's the odd thing.

5 Q. Is that you can't count what didn't
6 come in the door --

7 A. Well, no --

8 Q. -- is that what you mean?

9 A. -- I mean -- I mean, look --

10 Q. I'm confused by that.

11 A. -- the -- the -- the hospital gets a
12 benefit by me bringing my surgery to that hospital.

13 Q. Okay.

14 A. In -- in two regards, one from the --
15 the surgeries themselves, what they can charge for
16 them, and, two, some -- in some cases you can
17 actually raise the acuity formulas that Medicare,
18 you know, uses to reimburse the hospital for all
19 their -- their fees. Which if they had done it
20 right they should have been able to use as well.
21 Because I know when I went from Savannah to Vidalia
22 for example, Vidalia would put two points on that
23 fee calculator and actually got across the board
24 increase in their Medicare, you know,
25 reimbursement.

1 But, anyways, on the hospital side, I
2 think a busy surgical ENT makes a lot of money for
3 a hospital. And certain types of cases do as well.
4 I would guess they didn't lose much money.

5 Q. Well, if we looked at the numbers that
6 we had so far about what the billings were and the
7 amount of money they brought in, it looks like they
8 lost about \$725,000?

9 MR. HARVEY: Objection to the form.
10 We've talked about that.

11 BY MR. MYRICK:

12 Q. Does that -- I want to ask you, does
13 that strike you as outrageous based on what your
14 performance was during that period versus what they
15 collected from it?

16 A. Well, certainly what they -- they
17 collected, I don't know -- I don't think they
18 collected very much money out of that practice for
19 the time I was there mainly because of what
20 happened with the billing.

21 Q. Uh-huh.

22 A. So on that basis, they lost a lot of
23 money. They lost a lot of money due to their -- I
24 don't know why -- incompetence I think.

25 Q. Uh-huh.

1 A. Having said that, I think on the
2 hospital side, probably broke even with them
3 because they never had otolaryngology there before.
4 I brought it in. And, again -- and -- and that's
5 what was sort of odd, like particularly the -- the
6 sinus navigation equipment, five cases would have
7 probably paid for it. That's all. And then they
8 would have started making a huge profit.

9 Q. Uh-huh.

10 A. As it is, some of those cases alone can
11 bring in \$60,000 to the hospital.

12 Q. Did Deaton tell you he was going to
13 give you those two machines?

14 A. He did.

15 Q. Did he tell you he was going to give
16 them to you in any certain time period or...

17 A. I -- I got the impression they were --
18 they were coming promptly. That -- I mean, the pro
19 formas were submitted, significant portion of
20 the -- those cases could only be done with the
21 navigation and the laser. And -- and of the two
22 for me that probably did -- was the most important
23 was the navigational system for the sinus surgery.
24 And I had the impression that they would be
25 purchased promptly or within weeks or a month of --

1 Q. But I want to ask you this question
2 very directly because you've got -- I understand
3 and you've been very specific with a lot of the
4 things that you've said, which I appreciate.

5 A. Uh-huh.

6 Q. But are you telling me that you think
7 that he made a commitment to give you those two
8 machines because it was implicit in those pro
9 formas in order to create those numbers and do that
10 work you'd have to have those machines --

11 A. Uh-huh.

12 Q. -- or did he say to you, Dr. Flexon,
13 you're going to have these two machines now?

14 A. I said I needed them and he said we'll
15 get them for you. That's --

16 Q. You remember that conversation?

17 A. Yes. Yes. And I think you can find in
18 some of the documents that the hospital gave us,
19 his own notes going back to LifePoint headquarters,
20 Flexon needs these two pieces of equipment.

21 Q. Okay.

22 A. Sure did. I mean, he -- it was
23 specifically talked about. And it wasn't anything
24 that was guessed or -- or -- well, if you look at
25 my pro forma you had to see that. No. No. We

1 talked about it.

2 Q. Okay.

3 A. I even had the -- you know, I wanted
4 the Instatrak navigator or I wanted the Stryker
5 navigator. I mean, it was even down to specifics.

6 Q. Okay. Now, why did you end up in
7 Vidalia after leaving Savannah?

8 A. New hospital.

9 Q. All right.

10 A. They just built a new hospital. It's a
11 beautiful, small new hospital. Pretty dynamic
12 small administration and a great salary.

13 Q. Okay. Are you happy there?

14 A. Yeah, I am happy there. It's great
15 people. I like the hospital. They like me most of
16 the time, as much as hospitals like doctors. So --
17 and they're quick to like look we have an issue,
18 they nip it in the bud, you know, and if I have an
19 issue they address it. I like that.

20 Q. And what is the -- what is the amount
21 of your new salary a year?

22 A. Is that -- well, it's -- it's got a
23 guaranteed base of 400,000.

24 Q. 400,000. And then you get bonuses on
25 top of that?

1 A. Yeah, if I can make them.

2 Q. Difficult to make --

3 A. Difficult to make --

4 Q. -- because the base is so good?

5 A. Yeah, the base is very good.

6 Q. Okay. And how long have you been
7 earning that?

8 A. Two years.

9 Q. Two years. So that would apply to 2012
10 and '13 or two thousand --

11 A. Yeah.

12 Q. -- eleven --

13 A. Well, part of two thousand -- end of
14 2011 and 2012, as part --

15 Q. And it continues. And when did you
16 start there?

17 A. Middle of 2011.

18 Q. Okay. If you're making that kind of
19 money there, is it still your idea that any of the
20 hospitals in South Carolina should still be paying
21 you that annually as a loss?

22 A. I'm in Vidalia, I'm not -- I'm not in
23 my home. I mean -- I mean, I was forced to leave
24 my -- my -- my dream home. I mean, it's just --

25 Q. So the answer to my question --

1 A. Yes --

2 Q. -- is yes?

3 A. I'm sorry, yes.

4 Q. Okay. Okay.

5 A. Yes.

6 Q. Is the cost of living less there?

7 A. It's may be a little bit less. It's
8 comparable though.

9 (DFT. EXH. 19, Affidavit of Phillip B.
10 Flexon, MD, was marked for identification.)

11 BY MR. MYRICK:

12 Q. Okay. Last exhibit I think.

13 A. Okay.

14 Q. Do you recognize that document? This
15 is what's called --

16 A. Oh, yes.

17 Q. -- it's Exhibit 19. It is the
18 affidavit of Phillip B. Flexon, MD, dated
19 September 16th, 2008; is that right?

20 A. Yes.

21 Q. Okay. Tell me what that is.

22 A. Oh, it's a -- a letter that's --
23 Memorial wanted to make sure that I was on record
24 as having approached them. And they didn't want to
25 be part of any -- any dispute that -- that Coastal

1 could have over, you know, our contract.

2 Q. Okay. Who drafted it?

3 A. They did.

4 Q. Did you have an attorney review it?

5 A. Nope.

6 Q. Do you state in Paragraph 1 that you
7 were employed by CCMC and its successors and
8 assignees from March 17th, 2007 until
9 September 15th, 2008?

10 MR. HARVEY: August 15th.

11 BY MR. MYRICK:

12 Q. I'm sorry, August 15th, 2008.

13 A. Yeah, I mean, that's what it says, yes.

14 Q. Okay. And this is your sworn
15 affidavit?

16 A. Well, it is, yes.

17 Q. Did you affirmatively state that you
18 were an employee of an assignee of CCMC?

19 A. Well, I -- what does -- what does
20 that -- what do you -- what do you mean by that?

21 Q. Well --

22 A. Are you trying to say that -- that by
23 signing this I assigned my contract to Tenet, no, I
24 don't say --

25 Q. I'm not trying to say anything. I'm

1 just asking --

2 A. Okay. I signed this, yeah.

3 Q. -- what you wrote. Okay.

4 A. That's all. I signed it.

5 Q. And everything in here is true?

6 A. I believe it to be. I signed it
7 without the benefit of a -- of an attorney
8 reviewing it for me, so I have to trust my poor
9 legalese in -- in understanding being as it was
10 a -- sign or else no deal, so I signed it. And
11 it's -- and it's true, for the most part, I believe
12 it's true.

13 Q. Okay. Now, let me see if I have any
14 wrap up questions --

15 A. Okay.

16 Q. -- and that might be it. Can you tell
17 me all hospitals, medical centers, institutes with
18 which you had communications either verbal or
19 written regarding potential employment while you
20 were employed by CCMC? It may be just the ones
21 you've mentioned but if you'd list them for me I'd
22 appreciate it, Dr. Flexon.

23 A. Well, I think Memorial, the ACI, and
24 Georgia Ear Institute. And I think that's -- I
25 think those are -- that's pretty much it. I --

1 there may have been -- I may have had a
2 conversation with an otolaryngologist in town,
3 David Oliver in Savannah about doing -- working
4 with him.

5 Q. And --

6 A. I don't recall though if that was the
7 first time or second time around.

8 Q. Have you turned over all your e-mail or
9 letters that relate to your discussions with those
10 people, that subset that you listed, regarding
11 seeking employment, to your attorney?

12 A. I -- I believe I have.

13 Q. Okay.

14 A. I don't know though that there could be
15 something out -- out there I guess. I just don't
16 know --

17 Q. Okay.

18 A. -- that he doesn't have or I don't
19 remember or something.

20 Q. Well, if you have anything that you
21 haven't presented, would you take that up with him
22 and just let him know that you have it --

23 A. All right.

24 Q. -- and then he'll filter through what
25 I'm entitled to get.

1 A. Okay.

2 Q. Does that make sense?

3 A. Yeah, I -- yeah, I'm not sure there's
4 anything out there that you --

5 Q. There might not be anything additional.

6 A. Yeah, if I stumble on something I will.

7 Q. Okay. Have you provided tax returns to
8 your attorney yet for 2008, 2009, 2010?

9 A. I have not.

10 Q. Okay. I'm asking that you do that.

11 A. Yes, I -- I just -- just learned of
12 that.

13 MR. MYRICK: Thank you very much for
14 your time.

15 THE WITNESS: Okay. Thank you.

16 MR. BELTON: Do you want to take a
17 break?

18 THE WITNESS: No, I'm fine. Go for it.
19 It's getting late.

20 MR. HARVEY: Let's take five.

21 (A recess transpired.)

22 EXAMINATION

23 BY MR. BELTON:

24 Q. All right. Doctor, my name is Joseph
25 Belton here for Moore & Van Allen representing

1 LifePoint. I was trying to do the best I can to
2 kind of go through this quickly. I know you've
3 been here all day and I appreciate your patience.

4 Unfortunately my questioning is going
5 to be -- I'm going to have some pauses in between
6 because I'm going to be looking through notes from
7 time to time to try to gather your earlier
8 testimony, some of the points I was making along
9 the way. So bear with me and I'll try not to be
10 redundant.

11 You said your practice at the time --
12 at starting at CCMC or kind of moving over from
13 Memorial for 40 to 50 percent in South Carolina?

14 A. That's an estimate, yeah, roughly,
15 perhaps, uh-huh.

16 Q. Okay. Do you know demographically what
17 that was made up of?

18 A. I don't. I -- I would say at the time
19 there were -- there were -- more of the pediatric
20 patients probably came from -- from Georgia and
21 immediately surrounding the Savannah area and adult
22 patients probably came more -- little heavier adult
23 patients coming from -- from Carolina. But beyond
24 that, I -- I can't tell you much more of a
25 breakdown.

1 Q. Okay. You said you talked with Eric
2 Deaton initially about this being a long-term
3 decision for you to come to --

4 A. It was.

5 Q. -- Coastal. Okay. And you mentioned
6 earlier in your testimony, you know, you mentioned
7 beyond the five-year term just conversationally
8 10 years mentioned earlier; is that correct?

9 A. Well, I -- I planned to -- to, you
10 know, practice the rest of my career there.

11 Q. Why did you not want to practice the
12 rest of your career --

13 A. No, I did want to. I wanted to -- I
14 wanted to start and -- and -- at Coastal in the
15 Hardeeville, Bluffton corridor a practice that
16 would -- I would practice until I retired.

17 Q. Why did you not want to retire with
18 your practice at Memorial?

19 A. Well, I lived in -- in -- in -- in --
20 in Hardeeville, in the Levy section of Hardeeville.
21 You know, that's -- my friends were there. I
22 thought it was a growing area. I had even planned
23 for a guy I was in residence at Harvard who was
24 practicing in Rochester, New York to come down when
25 we were in our -- our mid 60s to share a practice.

1 I mean, we -- I had a -- I had the whole thing
2 planned out that I would stay there until I retired
3 and that's what I wanted to do.

4 And Memorial, I had been there a while
5 and I, you know, had chosen to live in -- in, you
6 know, Hardeeville and Levy and friends there, it
7 was just -- and, again, I thought it's a growing
8 community, that's where I wanted to be.

9 Q. Uh-huh. But your practice at that time
10 was established at Memorial Hospital, correct?

11 A. Yeah, but the practice area is almost
12 identical. So to -- to actually -- there's some
13 differences, but, by and large, you know, I -- I --
14 you know, it changed the location of where I
15 practiced but I thought that I could keep much of
16 that practice and grow even a -- a bigger practice,
17 a more -- you know, a more lucrative practice in --
18 in that area, in Carolina.

19 Q. And the distance between where you were
20 living in Levy to Memorial was about how many
21 miles? Like how long did it take you to get to
22 work?

23 A. I had to allow about a half hour or so.
24 Maybe even a little longer.

25 Q. How long did it take you to get to work

1 at Coastal?

2 A. Oh, under 15 minutes. I think I was
3 10 -- 10 miles from the hospital, 11 maybe max.

4 Q. Okay. So like 25 miles to downtown
5 Savannah and maybe 10 miles or so to --

6 A. Yeah, it was -- it was -- and -- and I
7 had to go -- you know, I had to go -- go to
8 Memorial so it was further than downtown Savannah.
9 In fact, most of my commute was on the Georgia
10 side, so it might have been 17 miles by -- maybe --
11 17, 25 miles there in that range to get to --
12 finally get to the parking place at Memorial, I
13 don't know.

14 Q. Okay. So the reason why you decided
15 you didn't want to finish out your career at
16 Memorial was because of friends?

17 A. I lived in -- in -- in Levy. I was
18 excited about Hardeeville, the new hospital. You
19 know, and -- and just maintaining and building a
20 practice in my -- my own community. Yeah, I had
21 friends there and it was close to where I -- I
22 lived. I had a beautiful home that we had taken
23 years to build that I put all my savings into.

24 Q. Uh-huh.

25 A. And I wanted to practice in my

1 backyard.

2 Q. Okay. You mentioned earlier in your
3 testimony a doctor named Paul Long would refer you
4 patients?

5 A. Oh, Dr. Long, yeah.

6 Q. Where was he practicing at?

7 A. Bluffton, Hilton Head area.

8 Q. And he would refer you patients at
9 Memorial?

10 A. Uh-huh.

11 Q. And when you came over to CCMC, did he
12 refer you patients?

13 A. He did not. He stopped referring
14 patients.

15 Q. When you first came over?

16 A. Well, not when I first came over, but I
17 wasn't there but a -- but a short period of time
18 before the hospital was owned by Tenet, so...

19 Q. Okay. Did you call him before you came
20 over and said, hey, I'm going over to CCMC, wanted
21 to let you know?

22 A. You know, I didn't call him, but -- but
23 he actually called me and wanted me to see him for
24 a medical problem and I talked to him at that
25 point.

1 Q. At what point?

2 A. Right before I went over to -- to
3 Coastal. And said I was going over and he was --
4 you know, that's great. But, yeah, he just had a
5 bad relationship with -- with Tenet and did --
6 didn't -- did not want his patients going to a
7 Tenet-owned hospital.

8 Q. Okay. Before Tenet came into the
9 picture, did he send you patients?

10 A. He was fine -- oh, yeah, I mean, we
11 were just getting started. I wasn't there very
12 long. I was there, what, a month and a half, two
13 months and then it was -- you know, LifePoint was
14 gone.

15 Q. Uh-huh. So he knew you were going over
16 there though?

17 A. Yeah.

18 Q. And he didn't refer you anything from
19 the time period when you first started in --

20 A. He might have, it was his intent to do
21 so, but -- but he wasn't going to after Tenet was
22 the owner of the hospital.

23 Q. Okay. Let me see if I can finish my
24 question: So did he refer you any patients from
25 when you started at LifePoint in March of 2007

1 until the hospital was sold?

2 A. I imagine he did. I can't recall
3 specifically. He had a busy practice and will
4 refer patients to me a lot. He referred them when
5 I was in Savannah and I imagine he did send a few
6 over right when I came over, but I don't know that
7 for a fact. I couldn't show that.

8 Q. Sorry, this is kind of a -- you
9 mentioned earlier there was a patient, I believe
10 Mr. Myrick was trying to ask you a question about
11 that -- oh, the -- the vociferous patient that had
12 the -- that brought the bill attention -- issue to
13 you. Do you remember that line of questioning?

14 A. Oh, about the deductible, yes.

15 Q. About the deductible. And that person
16 caused you to look into the issue and thereafter
17 take your concerns to Teresa Urquhart --

18 A. Urquhart --

19 Q. -- is that correct?

20 A. That's correct.

21 Q. And you indicated you weren't able to
22 provide us with the name of the patient that
23 provided you the information about the billing; is
24 that right?

25 A. I -- that's correct. I -- that

1 patient, I know who it is. I -- I -- I don't think
2 I -- I don't know about privacy issues. I don't
3 know if I should reveal her name. I'd have to
4 really take that on -- I'm not going to answer her
5 name.

6 Q. Okay.

7 A. I have to protect her, yeah.

8 Q. So you're not able to provide us with
9 that information?

10 A. I'm not going to, yes.

11 Q. Why is that?

12 A. Because she's a patient and it's -- you
13 know, it's a confidentiality issue.

14 Q. So you have a duty of
15 confidentiality --

16 A. I believe --

17 Q. -- not to provide --

18 A. -- I believe I do. I believe.

19 Q. So you understand what it's like to
20 have to be subject to confidential restrictions on
21 providing other people's information?

22 A. Sure.

23 Q. Okay. You said you built your dream
24 home in about ten years?

25 A. I built it -- I started building it in

1 1987 and finished it in 2000 and moved in.

2 Q. Okay. So you were already there,
3 right?

4 A. I was there for many years.

5 Q. You were there prior --

6 A. Uh-huh.

7 Q. -- many years prior to --

8 A. Probably even broke ground at Coastal
9 Carolina.

10 Q. You said your contract ended with
11 Georgia Ear Institute in 2003 and 2004?

12 A. Yes, I -- Georgia Ear Institute is a
13 contractual entity with Memorial. Yeah. It ended
14 in 2004, I believe.

15 Q. But then you continued to act under
16 that contract until you left --

17 A. Right. I --

18 Q. -- Memorial?

19 A. -- I continued working there and -- and
20 it was a -- it may have been an extension agreement
21 on a year-by-year basis until I went to Coastal. I
22 think that's how it was. I don't remember exactly.

23 Q. Okay.

24 A. A lot of contracts.

25 Q. I apologize for my taking time through

1 this particular part. Roughly -- I mean, how many
2 patients did you have when you were at the Georgia
3 Ear Institute? And -- and let me make sure I'm
4 right, this is the -- this is the practice that you
5 had that you've indicated throughout the
6 deposition --

7 A. Right.

8 Q. -- that has been very successful?

9 A. It would have been a successful
10 practice. It was a practice, I guess, that
11 would -- I -- you know, it's hard to put into
12 numbers because you know you have to think, well,
13 how many patients -- office patients you have to
14 see to generate a case, a surgical case. But it
15 was a size that allowed me to be the -- the busiest
16 surgeon -- ENT surgeon at Memorial, which is a big
17 hospital, third biggest in the state of Georgia.
18 And the -- overall the sixth biggest surgeon in --
19 at Memorial. So, I mean, if that puts it into
20 perspective. And that's the best I can do. I
21 can't give it -- give it numbers. But that's a
22 very, you know, large viable surgical practice.

23 Q. I'm not familiar with how your -- the
24 patient relationship is with doctors, but are they
25 your patients? Would you consider them your

1 patients or are they the practice's patients or are
2 they the hospital's patients?

3 A. Right. The -- doctors will always
4 consider 'til -- 'til time -- until the end of time
5 that their patients are theirs. And I actually to
6 whom I guess the patients don't belong really to
7 anybody.

8 Now, when you're saying in a
9 relationship like I was with Georgia Ear or I was
10 with Coastal, the charts belonged to the practice
11 and whoever owns the practice. I don't know if
12 that makes any sense.

13 But the patients themselves, they're
14 free to choose whoever -- whoever -- whatever
15 doctor they choose to -- to see. And I guess as --
16 as you as a physician, you feel as your patient's
17 advocate that they're yours. They're like your
18 extended children, I guess, I -- I don't know. So
19 I don't know legally, I don't think any --

20 Q. I apologize about this --

21 A. It's all right. I don't know. Legally
22 I don't think the patients belong to anybody. The
23 charts belong to the practice.

24 Q. So --

25 A. Does that make sense?

1 Q. Yes --

2 A. Yeah.

3 Q. -- it does. So -- well, typically in
4 our profession if a lawyer changes a firm there's a
5 dialog of who gets to keep the clients even though,
6 you know, they're free to go anywhere they want
7 and, you know, all that kind of stuff.

8 A. Right.

9 Q. Letters go out, you know, all that kind
10 of stuff as far as, you know, so and so is
11 leaving --

12 A. Right.

13 Q. -- and that sort of thing. In your
14 particular case with all of your patients, did the
15 hospital, the group, or did you send out a letter
16 saying, hey, I am now moving on to Coastal Memorial
17 Hospital --

18 A. We --

19 Q. -- FYI?

20 A. -- I had a -- yeah, I -- I -- I -- I
21 sent something out and the hospital -- or the
22 practice may as well. That was a -- that was a --
23 that was not an unfriendly leaving. And I was
24 allowed to copy any records I needed and take them
25 with me.

1 Q. So did all of your patients get some
2 sort of notification that you were leaving?

3 A. Yeah, all that we could -- you know,
4 that -- that was practical to inform. Uh-huh. All
5 of them.

6 Q. With the unpractical people, would that
7 be a small percentage?

8 A. I don't know. I just -- you know, I
9 think that, you know, patient lists were pulled out
10 of -- out of the computer and visits that were I
11 think within a 12-month period I -- we contacted
12 them and sent them a letter that I was moving and
13 where I was moving to.

14 Q. And when you say we, does that mean
15 that you physically sent it or called them or is
16 that someone else called --

17 A. No, some -- I -- I generated -- I made
18 a letter and -- and I had people on my behalf mail
19 them and the patient list was provided by the -- at
20 that time the office manager of -- of Georgia Ear
21 Institute.

22 Q. Do you have a record of any of those
23 that you had sent?

24 A. I don't. It's a while back.

25 Q. Okay. So you were comfortable knowing

1 that all the patients that you had cared for up
2 until that point in time knew you were going to
3 CCM --

4 A. Most of them did.

5 Q. -- C?

6 A. Yeah. Most of -- a good number of
7 them. It's hard to know how many actually --

8 Q. Okay.

9 A. -- know about it.

10 Q. Were any of your patients, all of them,
11 some of them, receiving care from other
12 practitioners, physicians, care providers at
13 Memorial in some form or fashion?

14 A. I don't know. I don't know that
15 answer.

16 Q. So it's also they were also seeking --

17 A. It's possible.

18 Q. -- care --

19 A. Yeah. Uh-huh. Yes.

20 Q. -- from another component of the
21 hospital system?

22 A. Right. Uh-huh.

23 Q. And who were your partners at -- can
24 you name them at the Georgia Ear Institute?

25 A. Ear Institute, Chip Goldsmith, Michael

1 Poole, Richard Brownlee, and I think the year
2 before that Fred Kuhn and Malcolm Graham were
3 also -- they were part of our -- and as -- over
4 that two-year period, say from 2003, 4, 5, myself,
5 Michael Graham, and Fred Kuhn left.

6 Q. Where did those other doctors go?

7 A. Malcolm Graham went back to Michigan
8 for a period of time and then ended up in Atlanta.
9 And Fred Kuhn moved down the hall, moved -- just
10 moved into his own office.

11 Q. Okay. So he kind of hung out his own
12 shingle?

13 A. Yeah. Yeah.

14 Q. And that's something that you could
15 have done at any point in time; is that correct?

16 A. At that time, yeah, I could have done
17 that as well.

18 Q. Okay. I remember your testimony
19 earlier where you were talking about discussions
20 you had with Eric Deaton about Tenet --

21 A. Uh-huh.

22 Q. -- and there wasn't any -- if I
23 remember correctly, any specific affirmative
24 questions posed to Deaton about not working for
25 Tenet, correct?

1 A. I don't recall specifically say --
2 saying to him, please give me assurance I will
3 never be an employee of Tenet Hospital. Never did
4 that.

5 Q. That wasn't in one of your bullet
6 points to be included in the contract?

7 A. No. No.

8 Q. Okay.

9 A. No, we still -- I mean, we talked about
10 that -- wouldn't want to work for Tenet and -- and
11 that it was important -- like the reputation of
12 LifePoint, it was important who I was working with
13 he -- we had talked. And we talked a while. Went
14 to dinner -- went to dinner with our wives.

15 Q. Okay.

16 A. Yeah.

17 Q. And this was during --

18 A. All prior to the contract signing.

19 Q. Okay. And when you were talking
20 about -- well, I mean, being in this area, you
21 know, it's pretty small, were you -- did you have a
22 pretty good knowledge of all the different sorts of
23 health systems around the Beaufort and Hilton Head
24 and --

25 A. Well --

1 Q. -- Savannah --

2 A. Right.

3 Q. -- area? Did you kind of have an idea
4 of what was -- you know, what -- what other
5 possibilities where people were practicing,
6 particularly in your ENT field?

7 A. Well, I knew the other
8 otolaryngologists in -- in, you know, Hilton Head.
9 And I probably did not know all the -- the nuances
10 or subtleties regarding some of the providers in
11 South Carolina. There -- where we -- we took, you
12 know, South Carolina insurances when I was at -- in
13 Georgia Ear. There -- there were certain subtle
14 differences with some of them because I was taking
15 more South Carolina providers, if you will. That
16 was probably it.

17 And maybe certain relationships with --
18 with some of the -- like the surgery center that's
19 in -- is it Okatie that the -- that the doctors own
20 that's here? I didn't understand the dynamics of
21 that until I actually got there. So there was a --
22 they somehow got a CON and built a free-standing
23 surgery center that a number of surgeons have
24 ownership and work in.

25 Q. In this region, do you know what

1 hospitals are owned by Tenet?

2 A. The only two I'm aware of in this
3 region are Coastal Carolina and Hilton Head
4 Hospital.

5 Q. Okay. Do you know who owns the other
6 hospitals?

7 A. Well, is Memorial owned -- you know,
8 has its own board. And St. Joes and -- and
9 Chandler are owned -- you know, are again
10 independent board. Beaufort Memorial I think also
11 has its own independent, you know, board. So I
12 guess community based hospitals not owned by any
13 corporations that I'm aware of.

14 Q. You don't know for sure?

15 A. I don't -- well, I know Memorial is not
16 owned by anyone. I know St. Joseph's Chandler's
17 not owned by anyone. And I'm -- I'm pretty sure
18 Beaufort Memorial is not owned by anyone. So the
19 only corporate people in the neighborhood now is --
20 are Tenet.

21 Q. And I know you mentioned this earlier,
22 but can you indulge me again, what was the basis
23 for your comments to Deaton about Tenet?

24 A. Well, Tenet was a -- you know, Hilton
25 Head Hospital was a competitor and he seemed to be

1 building or putting together a -- a hospital and
2 acquiring -- bringing on physicians in -- in his --
3 under his -- his hospital to practice. And in some
4 ways we were competing with the -- the Hilton Head
5 Hospital. And actually he, I think, was growing at
6 their -- at their expense. I think they were
7 losing patients and they -- Deaton was gaining
8 patients and -- and doctors on this end.

9 Q. Okay. Well, healthy competition is one
10 thing, but you were making specific comments
11 about -- about Tenet.

12 A. Uh-huh, that's what I'm talking about.
13 That, yeah.

14 Q. So is it related to competition that
15 you're making those comments about not --

16 A. Well, and it's also in setting up
17 practice and who my competition would be. And what
18 direction, you know, he saw the hospital going in
19 the future and how we were -- he was going to grow
20 and that's how the comments came up about -- about
21 Tenet.

22 Q. Okay. Have you ever worked at a Tenet
23 facility?

24 A. Well, I did for, well, about a year and
25 two months.

1 Q. Other than -- other than --

2 A. No.

3 Q. -- previous to that?

4 A. No.

5 Q. Did you have any knowledge about how
6 well financially Tenet was doing at the time?

7 A. I -- well, they couldn't have been
8 doing too well, because I had knowledge of the fact
9 that they got hit with a \$900 million, you know,
10 fine with the government.

11 Q. What year was that?

12 A. Well, I think that the fine was in 2005
13 and -- and 6, I believe, but it was right in that
14 neighborhood. The book, which I -- I -- I
15 presented came out in 2007 about the events from
16 2001 up to 2006 based on a lot of what resulted in
17 the -- the fine. And there -- there -- in that
18 period they probably were the single worst hospital
19 corporation in the country.

20 Q. Uh-huh.

21 A. I -- they should have --

22 Q. How about 2007 --

23 A. -- a lot of people should have been put
24 in jail.

25 Q. Sounds like it.

1 A. It's bad.

2 Q. How about in 2007 in the Hilton Head
3 facility, do you know how they were doing
4 financially?

5 A. I don't know. I had heard that --
6 that -- that over the -- now, this is hearsay, I
7 don't -- I have never seen any facts. I had heard
8 over the years that it was their second most
9 profitable hospital, but that they had had some
10 decline in their operations due to Beaufort --
11 competition from Beaufort, from Coastal Carolina,
12 and from the Savannah hospitals. But I don't know
13 that, that's just what I heard.

14 Q. Okay. So, if I'm understanding you
15 correctly now, your -- your ill comments, your --
16 your comments earlier about not wanting to work
17 with those folks were due to more competitive
18 concerns rather than anything else?

19 A. No, their reputation.

20 Q. Oh, okay. I thought you were just
21 talking about competitive --

22 A. Yeah, their reputation -- in the
23 context of competition they were -- they -- they --
24 I was applying with Coastal Carolina and LifePoint.
25 And, you know, the -- you know, the business -- my

1 competition, there were two other otolaryngologists
2 in the community in, you know, south Beaufort
3 County. They worked at the surgery center and they
4 worked at -- at Hilton Head Hospital. And they
5 were kind of my competition and so we -- we talked
6 about Hilton Head Hospital and he -- I talked about
7 it seems like you guys are making -- on -- in their
8 patient base.

9 Not only was the area growing somewhat
10 de novo, but, you know, we -- we saw ourselves
11 going forward as taking away patients from Hilton
12 Head Hospital as well as maintaining and keeping
13 the patients I had already in that area who had
14 come to Memorial but now would come to me in the
15 new -- you know, the new office, new location.

16 So -- but -- and so what brought the
17 conversations up was just talking about, you know,
18 that kind of thing, you know, how -- how to
19 position yourself for the future, what our
20 long-term plans were. And then talking about, gee,
21 you know, I'm glad I'm not working for Tenet and
22 all the problems they had based on -- on things
23 like that. That was national -- every doctor --
24 oh, probably every other doctor, let's say, knew
25 about Tenet's, you know -- and that's just --

1 that's just not even the whole story.

2 Q. And where did that occur, the book that
3 you're referencing?

4 A. Well, the book -- the book -- the book
5 was written about an event that occurred in
6 California with several surgeries that were done by
7 a -- a surgeon who operated on healthy men and
8 were -- you know, were -- and was done with
9 knowledge of Tenet Hospitals making a ton of
10 money --

11 Q. Okay.

12 A. -- on doing open heart surgery on
13 healthy men..

14 Q. I understand.

15 A. And it pretty well documented it. I
16 mean, I -- you know, and it's -- they're other
17 examples as well, but -- so they -- they had
18 probably the worst reputation at that time and that
19 book came out in 2007.

20 We were negotiating my contract in
21 2006. I started in March 15th, 2007. That book
22 comes out about the events and that's what we're
23 talking about. It's like someone's worst
24 nightmare. Are you kidding? Are you working for
25 Tenet? No, I'm not working for Tenet. You know,

1 so was -- that's kind of what my mindset was.

2 Q. It's kind of like playing for the
3 Yankees, if you're a Red Sox --

4 A. Well, the Yankees are good. Yeah. No,
5 it'd be like -- it'd be like -- I don't even know
6 if -- it'd be like playing for the -- the worst
7 team in baseball that were also, you know, had a
8 horrible record treating their -- their -- their
9 players, but anyways...

10 Q. Gotcha. You mentioned you did some
11 research on LifePoint before you came over --

12 A. Uh-huh.

13 Q. -- you read the website?

14 A. Uh-huh.

15 Q. Anything else?

16 A. Oh, there's lots -- and not just on
17 that -- their own website, but there are other
18 things on the Internet. Most of it from the
19 Internet though about the -- about the history of
20 the company and -- and I liked what I read. I
21 liked, you know, some of their philosophies.

22 Q. Did you call -- did you locate any
23 other doctors that are working at Tenet -- excuse
24 me, a LifePoint facility?

25 A. I talked to the doctors that were

1 already there working at the hospital, I talked to
2 some of them and they seemed to be pretty happy.

3 Q. At the Hardeeville location?

4 A. Uh-huh.

5 Q. Who were they?

6 A. Oh, and that's what I was trying to
7 remember. I talked to -- the woman was a -- and I
8 don't know her name but easy to find out. She was
9 an OB/GYN and she was actually in the same building
10 I was. Talked with her.

11 And I talked with some people that
12 didn't have contracts, but I talked with some of
13 the surgeons that worked there in the ER, you know,
14 covering their ER on a -- on a regular basis.

15 Ricky Timms is a general surgeon I
16 talked to who worked for them for a good while.
17 And -- and I heard basically positive things. But
18 I -- I can't remember their OB/GYNs name, but,
19 again, she was the only -- and she didn't do
20 obstetrics, she just did gynecology. They didn't
21 have obstetrics at the time. I think they started
22 with one, but when I came on they -- they had
23 discontinued it or maybe it was talked about and
24 they never did an OB department, but she just did
25 gynecological surgery.

1 Q. Is that it as far as --

2 A. Yeah.

3 Q. -- talking to people?

4 A. Yeah, those two people, yes. And some
5 of the employees in the hospital.

6 Q. Do you remember who they were?

7 A. No. No. But, you know, you -- you
8 know, some people who worked there I got a chance
9 to talk to in the operating room. I can't remember
10 who they --

11 Q. How did you come upon talking to them?

12 A. In -- in -- in the community. In --
13 you know, in -- in just running into them. So and
14 so says, oh, so and so works at Coastal Carolina
15 and we sit down and talk with them for a few
16 minutes. Mostly nurses, you know, how did they
17 like it.

18 Q. So not -- you didn't talk to them at
19 the hospital?

20 A. No. No, this would be outside in -- in
21 the community.

22 Q. You just bumped into employees at --

23 A. Somebody who would know somebody
24 who's -- you know, so and so's -- this is so and so
25 and then their wife has been working the last year

1 at Coastal. And we'd sit down and, oh, how do you
2 like it, you know, kind of go off on the side and
3 talk about it. And I did that a couple times.

4 Q. And this was when?

5 A. '06. 2006.

6 Q. Okay. When in '06? The fall of 2006?

7 A. I don't remember, but -- no, it was
8 maybe summer, fall. It -- well, yes, fall or
9 summer, in that period of time. Once -- once I
10 started thinking about working over there.

11 Q. Okay. So like -- sorry, like at a
12 grocery store or like --

13 A. No, no, it'd be like a social event.

14 Q. Okay.

15 A. Oh, I don't know, I think one of them I
16 was over at a friend's house, the Davises, they a
17 lot of people --

18 Q. Okay.

19 A. -- you know 50 people and bumped into
20 somebody that -- you know, that I -- you know,
21 whose wife was working at Coastal.

22 Q. Okay.

23 A. And was introduced and just talked with
24 them.

25 Q. When LifePoint bought --

1 A. Casual.

2 Q. I'm sorry?

3 A. Casual. Casual conversation.

4 Q. When LifePoint acquired -- is it
5 Province or Provident?

6 A. I don't know.

7 MR. HARVEY: It's Province.

8 MR. MYRICK: Province.

9 BY MR. BELTON:

10 Q. You said you saw that in the newspaper?

11 A. Yeah.

12 Q. Did that surprise you at all?

13 A. Well, no. I mean, that wasn't -- that
14 was just something that occurred. I mean, the
15 hospital was being built. And, again, the way it
16 was -- it was -- it was presented to the community
17 was it was a merger. That there's a hospital, you
18 know, being built in Hardeeville and it was being
19 under -- being built by Province or Providence and
20 they're merging with LifePoint.

21 Q. So is Province a separate hospital
22 system or separate hospital?

23 A. Yeah, I think it was a separate company
24 and they actually -- actually got bought by -- by
25 LifePoint. But that's -- that's -- that's as much

1 as I know about that. But, again, the way the
2 article read, as I recall, like it was just they
3 merged and then from now on it'll be a LifePoint
4 hospital.

5 Q. Okay.

6 A. Always a -- always presented in the
7 newspaper as Coastal Carolina, a LifePoint
8 Hospital.

9 Q. Gotcha. Is that the first time that
10 you ever saw a hospital coming in and buying
11 another hospital?

12 A. No. No. I mean, it happens. Yeah; I
13 mean, I -- I was aware of it happening before,
14 but...

15 Q. I apologize for looking through here.
16 You mentioned in your testimony that you thought
17 Eric Deaton had a good reputation, you enjoyed him,
18 you enjoyed meeting with him --

19 A. Uh-huh.

20 Q. -- all that kind of stuff?

21 Very positive things to say about him
22 during the time of the --

23 A. I don't have positive things to say
24 about him now.

25 Q. No, but during the time of the

1 contract?

2 A. Yeah, he was -- he was upfront and
3 charming and, you know, seemed like a straight
4 shooter.

5 Q. Okay.

6 A. And, you know, coming into the fold and
7 you were going to do great things together.

8 Q. And now you say in hindsight he wasn't
9 upfront with you?

10 A. He was not.

11 Q. And what specifically was he not up
12 front with?

13 A. He was going to sell the hospital. I
14 mean, he was part of -- I mean, he worked for
15 LifePoint and they were -- they actively were --
16 you know, they had made the decision to sell the
17 hospital before I -- I mean, as he was recruiting
18 me and -- and -- and we're negotiating a contract
19 and he did not reveal that to me.

20 Q. Anything else?

21 A. Well, I mean -- I mean, obviously I
22 think, you know, he made certain verbal assertions
23 and -- to I think entice me, which I feel he had no
24 intention of keeping. I think I was -- I believe
25 that I was brought in so that the price tag to

1 Tenet was higher. Then they sold my -- they sold
2 my practice and I think that's the purpose of what
3 this is all about. And they had no intention of
4 being forthright or -- or working together with me
5 to build a -- a viable practice. This was all
6 about selling the hospital to Tenet.

7 Q. You said verbal assertions, so first
8 we've got the failure -- your -- your --

9 A. He failed to --

10 Q. -- your opinion that he should have
11 disclosed the sale?

12 A. Yeah, he failed to disclose the sale.
13 I mean, before my -- I mean, and -- and I can't
14 give you the date, but it's -- the final letter of
15 intent is signed I think the day before my start
16 date. I mean, you know, they could have still
17 said, oh, we're -- you know, I know you're not
18 starting -- you haven't started yet, here, well,
19 let -- do you want to think about this?

20 I mean -- I mean, it's -- it's -- it's
21 that egregious. And I think he -- he knew. I
22 think he knew my practice would require, for
23 example, sinus navigational equipment. That my
24 practice would require a good CO2 laser. He told
25 me they would be purchased. You know, he had no

1 intention of buying them. And, you know, we --
2 he -- verbally we -- we sat down and talked about
3 that.

4 I think it's obvious he knew about it
5 because in the records we were sent he has his
6 notes, which he's admitted to writing, where he
7 has, you know, Flexon will need a neuronavigation
8 equipment and Flexon will need a CO2 laser. He
9 even has the two brands I wanted, Stryker and a
10 Instatrak. And they're in there more than once.
11 So it appears he's communicating with LifePoint
12 headquarters that he wants these -- these pieces of
13 equipment. He needs these.

14 Q. So he did pass those on to --

15 A. I believe so. I don't know. They're
16 written there, he admits to writing that. The --
17 we had very specific conversations about I need
18 those to practice. That those cases will bring a
19 lot -- could -- me telling him the cases will bring
20 a lot of revenue to the hospital. Him telling me
21 that they would get the equipment for me. And I
22 think that the -- the notes in the -- in the
23 records substantiate my version of that that he
24 admits to writing.

25 Q. Is there any way that he could have

1 been confused that that was just something that you
2 wanted on your wish list?

3 A. No, he wasn't confused.

4 Q. That was a must have?

5 A. They were pretty well a must have.

6 Again, all -- the pro forma had cases with the -- a
7 significant portion of those cases requiring those
8 two pieces of equipment.

9 Q. And you told him that you needed them?

10 A. Needed them. Yeah.

11 Q. Okay. And they're in the -- they're
12 not in the contract?

13 A. They're not specifically in the
14 contract, no.

15 Q. You mentioned some core guidelines of
16 things that you must have to start your ENT
17 practice in your earlier testimony.

18 A. Well -- okay, go ahead and ask your
19 question. I did mention those, uh-huh.

20 Q. I just wanted to know, is there -- is
21 there anything like formally written? Because you
22 mentioned another guidebook that actually has some
23 percentages and things like that that you kind of
24 go by.

25 Was there any sort of, again, book

1 where you kind of drop down and show me, say,
2 listen, I really need these sort of things to make
3 it work?

4 A. Right.

5 Q. These are my must haves?

6 A. Well, no, there's not and -- and when
7 the -- the -- the contract obligates the -- in this
8 case, the employer to provide basics for the
9 practice, it -- those -- those -- what is basic or
10 needed by the practice then are determined in
11 advance and -- and I think it's -- when you look at
12 the discussions we had, when you look at his notes,
13 you know, he knew it was fundamental to my
14 practice, were those pieces of equipment. He
15 didn't buy them.

16 Q. Do you know how much they spent on
17 equipment in preparation for you coming over?

18 A. It's in -- it's in their -- their
19 figures, and so I -- I have looked at it. I don't
20 recall the number off the top of my head.

21 Q. Would you consider it to be a small
22 amount of money or --

23 A. Small amount.

24 Q. Really?

25 A. I really -- I really think -- yeah,

1 the -- like I think I said that the -- the.
2 navigational equipment for sinus surgery is over
3 \$100,000.

4 Q. Uh-huh.

5 A. I -- I had been told that six cases
6 paid for it.

7 Q. Uh-huh.

8 A. That's how -- that's how lucrative the
9 actual surgery is for the hospital.

10 Q. Uh-huh.

11 A. So the -- I think it was -- I think
12 that -- I don't know why they didn't purchase --

13 Q. Why didn't you front the money for it?

14 A. Because I'm not getting the hospital
15 side reimbursement. I can't make \$50,000 in a
16 endoscopic sinus surgery. The -- Coastal Carolina
17 could have gotten that from United Healthcare from
18 the -- you know, from -- from those kind of
19 contracts, not me.

20 Q. Okay. The other piece of equipment you
21 said was also roughly 100,000?

22 A. A CO2 laser, carbon dioxide laser.

23 Q. And how about all the other equipment
24 that you asked for?

25 A. Well, the office equipment, for

1 example, the, you know, scopes and the, you know,
2 the instruments and whatnot, most of those were
3 provided for. There was audiology equipment
4 purchased although not used. So those were --
5 those were purchased.

6 Q. Did you ever --

7 A. So --

8 Q. I'm sorry.

9 A. Oh, it's just OR equipment on the
10 hospital side that didn't happen.

11 Q. From when you started in March of 2007
12 until the sale, did you ever have a need for a
13 laser?

14 A. I did.

15 Q. Did you ever use a CO2 laser?

16 A. Yeah, they -- they were able to bring
17 somebody in on a rental basis.

18 Q. Did it work?

19 A. That worked pretty well, the CO2 laser.
20 And then they started having people come in with
21 the navigational equipment and telling, you know,
22 me that, you know, we're going to look at it and
23 buy you what you want, you get to try it out. But
24 I don't know who it -- under whose ownership it
25 occurred, but I heard it went -- the sale had

1 occurred already to Tenet from the Stryker -- and
2 this was a -- a conversation I had with him, that
3 he would not bring his equipment to Coastal because
4 he had been told that Coastal Carolina had no
5 intention of buying any equipment. That it was
6 a -- just a sham to get him to bring the equipment
7 so they could borrow it at no cost, so...

8 Q. Okay. So going back to the laser
9 again, you had use of a laser --

10 A. Uh-huh.

11 Q. -- after you starting practice?

12 A. Yeah, they -- they -- they -- they
13 would rent one. If I gave them about a two-week
14 notice, they wanted me to try to -- to, you know,
15 block up cases so, you know, I used what -- I could
16 do a number of cases at one time.

17 Q. Okay. So you had access to one, that
18 is true?

19 A. I did have access to the CO2 laser. It
20 wasn't practical to do it that way. And once --
21 once LifePoint left, it -- the -- the OR had just
22 seemed to be incapable of getting the laser once
23 Tenet was running the show.

24 Q. Okay.

25 A. So that -- but while LifePoint was

1 there, they were able to rent me a laser.

2 Q. So Coastal did arrange to rent you a
3 laser --

4 A. On a few occasions, right, but that
5 stopped.

6 MR. HARVEY: Let him finish his
7 question.

8 THE WITNESS: I'm sorry.

9 BY MR. BELTON:

10 Q. So Coastal did arrange for you to use a
11 laser when you needed it for your patients?

12 A. Not when I needed it. They -- they
13 could arrange with two-week notification.

14 Q. Okay.

15 A. And so a lot of times -- and if I
16 needed something, you know, more quickly than that,
17 they couldn't -- they couldn't do it.

18 Q. Okay.

19 A. And then that was a temporary ability.
20 They seemed to be not able to do that after a
21 certain point in time.

22 Q. And the other piece of equipment was a
23 sinus navigational device?

24 A. Right.

25 Q. Okay. Did you use that on any patient?

1 A. I used a demo a few times and then that
2 dried up.

3 Q. Again, so you did use a sinus --

4 A. Maybe -- maybe three or four occasions,
5 but that came up even more commonly. I mean, I --
6 there were so many cases I could have done there
7 with -- with the -- the navigational equipment that
8 I couldn't do, so more cases.

9 And most occasions when I -- you know,
10 when I went back to that can we get a demo in or
11 whatnot, they weren't available to be rent or
12 leased like a CO2 laser. They -- and the
13 salespeople would not bring them because they were
14 told from their connections to the hospital that
15 they had no intention of buying one. So that --
16 couldn't do those cases. I lost cases, sinus
17 cases, a number of them because I couldn't schedule
18 them and they went to other -- I had to tell them
19 to go other places.

20 MR. HARVEY: Joe, it's 5:00, how much
21 longer have you got? I mean, we've been going
22 for --

23 THE WITNESS: Seven hours.

24 MR. HARVEY: -- seven hours.

25 MR. BELTON: Right. I've been going

1 maybe about 25 minutes.

2 MR. HARVEY: I understand. I
3 understand, but, you know, we got to -- we got to
4 shut this down at some point in time.

5 MR. BELTON: Well, I don't want to be
6 discourteous --

7 THE WITNESS: No, that's fine.

8 MR. BELTON: -- to you, I know you've
9 been here all day. I'm happy to come back at
10 another time and leave it open. I do probably
11 think it's going to take a little while longer.
12 Unfortunately I can't give you -- it's going to be
13 a little more than a half an hour and I dare say
14 it'll probably be close to 6:00.

15 THE WITNESS: I'll stay if you're going
16 to --

17 MR. BELTON: That's up to you. I'll go
18 as fast as I can, but I just don't think that it's
19 something that I can just close the book on.

20 THE WITNESS: Okay..

21 MR. BELTON: And I'll be happy to leave
22 it open and come back.

23 THE WITNESS: No, finish.

24 MR. HARVEY: No, we're not coming back.
25 I mean, we're talking about an active practitioner

1 who's come from out of town for the deposition --

2 MR. BELTON: Right.

3 MR. HARVEY: -- and you've been at him
4 for seven hours, so, I mean, for whatever reason we
5 got -- we got to conclude.

6 MR. BELTON: Again, I've been at him
7 about 25 minutes, but -- I'm going to get to these
8 in a second.

9 BY MR. BELTON:

10 Q. Did you -- you mentioned that your
11 initial contact was with Eric Deaton at the
12 hospital, correct?

13 A. No, the initial contact was with a
14 board member and then the -- then the -- then the
15 contact at -- was -- as I recall it, at which I
16 stated earlier with the --

17 Q. Okay.

18 A. -- the board member who I treated his
19 son and that -- and I think that's what initiated
20 the -- the -- the connection.

21 Q. Okay. And then you don't remember at
22 that point in time if Eric Deaton communicated to
23 you or you communicated to Eric Deaton about --

24 A. I think he called me. I think he
25 contacted me then.

1 Q. Okay. And so negotiations over your
2 possible employment with the hospital ensued from
3 there, correct?

4 A. Yes.

5 Q. Were they -- were your communications
6 about employment at CC -- at the Coastal Carolina,
7 were they exclusively with Eric Deaton?

8 A. Pretty much just with Eric. I mean, I
9 met some other people employed at the hospital, but
10 pretty much the -- all of the -- the negotiations
11 were with him. And I can't remember if at one
12 point -- I -- I believe at one point someone
13 from -- from Brentwood, you know, came down and
14 then had a final talk with me with Eric. Maybe it
15 was -- was it Veil who signed the contract?

16 Q. I don't know.

17 A. So his name is on -- but, anyways, I --
18 that's what I -- my recollection has been, you
19 know, that -- the last time we talked there was
20 someone from -- from -- from Tennessee.

21 Q. So all through the fall until signing
22 the contract except for one meeting was with Eric
23 Deaton?

24 A. For the most part. Other people may
25 have come, but almost all of them were with Eric --

1 all of that that I recall had Eric present as
2 the -- the main point person. And they started,
3 you know, way before the fall. We -- I think we
4 talked -- we talked in the summer as well some.

5 Q. Okay. All of the -- the deal points,
6 all the points in the contract, those were
7 negotiated through Eric Deaton?

8 A. Uh-huh.

9 Q. Nobody else at LifePoint that you
10 remember?

11 A. No. As far as talking to me and/or
12 Eric Deaton was there, you know, kind of the
13 spokesperson, yes, all of them I believe were with
14 Eric.

15 Q. Do you remember what I guess, if
16 anything, Mr. Veil contributed to the meeting?

17 A. No, I don't. I -- he may have just
18 been to say hello. I -- everything was done with
19 Eric pretty much. I -- he was there and maybe it
20 was even after I signed. I don't remember, but
21 he -- was there a -- we had a -- a meeting right at
22 the -- at the end there where he was there and we
23 talked. I think, you know, something about
24 going -- I could visit him in Tennessee and that
25 was the headquarters.

1 Q. Okay. Did you ever visit the
2 headquarters?

3 A. I did not.

4 Q. Okay.

5 MR. HARVEY: Take a short break. Let
6 me make a phone call.

7 (A recess transpired.)

8 BY MR. BELTON:

9 Q. I'm trying to understand I guess you
10 indicated in one of the -- the letters to Eric
11 Deaton that essentially it was a big risk for you
12 to be packing up at Memorial and coming over to --
13 to Coastal Carolina?

14 A. That's a big change -- I mean, that
15 was -- that was I would say something, yeah, a
16 little different, new.

17 Q. Substantially different, don't you
18 think?

19 A. Yes. Yeah.

20 Q. Okay. You indicated that your practice
21 was thriving at -- at Memorial, right?

22 A. Yeah.

23 Q. You were one of the top doctors there,
24 right?

25 A. Yeah. The data shows it. You have it

1 all.

2 Q. You'd been there for a long time?

3 A. That's true.

4 Q. Built up a large base of either
5 patients of your own or the hospitals that --

6 A. Uh-huh.

7 Q. -- that obviously that you, you know --

8 A. That's right.

9 Q. -- had, you know, pretty much
10 repeatable business year in and year out, correct?

11 A. That's correct.

12 Q. Okay. And then you decided to leave
13 that and go to Coastal Carolina?

14 A. That's correct.

15 Q. Kind of walk away from it?

16 A. I wouldn't -- I think that's a
17 mischaracterization. I just decided to start a
18 practice in Coastal Carolina and I would -- would
19 characterize it more as I brought them a mature
20 practice.

21 Q. But the patients actually didn't all
22 come, did they?

23 A. They did at first, a -- a lot came.
24 And I think they could have and would have
25 continued to come if things were different.

1 Q. Okay. You recognized in that letter, I
2 don't remember exactly what exhibit it is, that,
3 again, you were taking a big risk on making this
4 jump to a new startup practice, correct?

5 A. I was taking a risk. I thought I was,
6 yeah.

7 Q. Why would you characterize it as a
8 start up if you were essentially transporting all
9 your practice to the new location?

10 A. I -- I use that word. I -- I feel that
11 it wasn't really a startup, but it was a move. It
12 was a move. I think that's a more accurate way to
13 look at it. It was just a letter I wrote to the --
14 Eric Deaton.

15 Q. So it didn't really mean much?

16 A. It did mean a lot, but I think that --
17 I wouldn't get hung up on the word startup. It's
18 meaningless. It's a moot point getting hung up on
19 the word startup.

20 Q. Did you -- do you remember recognizing
21 in that letter that -- that the move to Coastal
22 Carolina might not work out?

23 A. I did. I did.

24 Q. So ultimately at the end of the two
25 years where your money was guaranteed, it wouldn't

1 be surprising or unrealistic that for whatever
2 reason your new practice at Coastal Carolina
3 wouldn't be panning out like you expected?

4 A. That was a possibility, but never in my
5 remotest dreams did I think while we were
6 negotiating this contract was LifePoint arranging
7 to sell the hospital to Tenet and not tell me about
8 it and leave. That's what they did.

9 That is completely -- I think is
10 unethical and -- and I did -- I had no idea. I was
11 caught totally by surprise. I can't believe that
12 he did that and -- or the company did that to me.

13 Q. But you would agree that the move and
14 the success of being able to move your practice
15 over to Coastal was dependent on a number of
16 variables that were uncontrollable by you?

17 A. That is true and we were guessing at
18 what they were, really. Could it -- did it require
19 more growth in the area, did -- you know, there
20 were always circumstances beyond our control. But
21 never did I contemplate that someone would
22 negotiate with me in bad faith and essentially
23 critical -- not reveal things that were critical
24 and essential to making the contract, and what's
25 what they did. LifePoint did that.

1 Q. You voluntarily left Memorial to come
2 to Coastal Carolina, correct?

3 A. Yes.

4 Q. You voluntarily chose to leave a what
5 seemingly was a very thriving practice to come to a
6 hospital that had no practice, correct?

7 A. Well, hospitals don't have practices,
8 doctors have practices. And I agreed to start a
9 practice at Coastal Carolina and I, again, brought
10 with me a very, you know, mature, viable practice,
11 which should have been -- and, you know, added to
12 their -- it was the same treatment area, region.

13 Q. As you mentioned earlier, though, it
14 was up to those patients to follow you to the new
15 hospital if they so chose, right?

16 A. Well, sure, but it was also up to -- I
17 have to qualify. It was up to LifePoint though to
18 negotiate in good faith with me and set up a -- the
19 practice that -- that we had discussed and they
20 didn't do that.

21 Q. Do you believe that LifePoint was also
22 taking a risk in hiring you?

23 A. Not a bit. Not a bit. It was a slam
24 dunk for them. They took my pro forma and they
25 handed it to Tenet and asked for a check.

1 Q. How do you know they did that?

2 A. Well, it's in their letter of intent.

3 They were able to -- they were able to buy the
4 assets and -- that -- that -- or Tenet had -- had
5 agreed to buy their assets and -- and their
6 businesses and that would be a physician practice.
7 And I'm sure we've asked for it, we haven't gotten
8 it, the specifics of it, but I'm sure that when
9 the -- that is provided then we'll see that Tenet
10 paid money for my practice and it wasn't an
11 assignable practice. Which, again, I -- I don't
12 understand, because, I mean, it's right there and
13 also in the letter of intent that they weren't
14 obligated to buy anything that wasn't assignable,
15 so...

16 Q. You mentioned a couple times that you
17 chose to leave Memorial because you wanted to build
18 your own practice. What do you mean by that?

19 A. You already asked me that question,
20 I -- I lived there, I built my dream home there,
21 how -- that's so obvious. You keep asking me the
22 same question.

23 Seriously, think about this, I built my
24 home in Levy. I wanted to practice and -- and have
25 a practice right there in my backyard. It's a

1 simple -- I mean, it's a -- it's a very obvious
2 thing. I mean, that -- you seem to not like that
3 answer. I don't understand that. That's -- I --
4 so I've answered that ten times.

5 Q. And maybe it's my interpretation of it.
6 I -- it seems that you -- you already had a
7 practice?

8 MR. HARVEY: Counselor --

9 THE WITNESS: I did.

10 MR. HARVEY: -- counselor, we're --
11 you're debating the semantics here. I mean, ask
12 the question. He's answered it ten times. You've
13 asked it ten times.

14 THE WITNESS: I moved it because that's
15 where I lived.

16 MR. HARVEY: Let's move on. I mean,
17 this is -- I know you're -- you -- this is
18 essentially cross-examination in front of a jury,
19 but you're -- you know, it's a deposition. I mean,
20 you've asked the question.

21 MR. MYRICK: Well, now in fairness, he
22 gets to ask his questions.

23 MR. HARVEY: Well, I understand --

24 THE WITNESS: How many times?

25 MR. HARVEY: -- he gets to ask the

1 question, but he doesn't get to ask the -- the
2 exact question ten times. I mean, let's move on.
3 Again, it's 5:15.

4 MR. MYRICK: We'll be glad to reconvene
5 it, Bill. We're trying to get it all wrapped up in
6 a day because that's what y'all want to do, but
7 it's a big claim he's made here.

8 MR. BELTON: I appreciate you allowing
9 me to move forward.

10 Can we go off the record for a second?

11 (Off-the-record conference.)

12 BY MR. BELTON:

13 Q. You mentioned in your earlier testimony
14 that you had a lawyer, a Mr. Merlin, negotiating on
15 your behalf?

16 A. That's right, he -- he helped me with
17 the contract.

18 Q. And this was for the Coastal Carolina
19 contract that you'd been entering into again by,
20 you know --

21 A. Right, he -- he didn't negotiate it.
22 He -- he reviewed the document, you know -- yes.

23 Q. Okay. Did he do the final review
24 before it was signed --

25 A. He did.

1 Q. -- by all parties?

2 A. He did a final review, as I recall.

3 Q. Okay. And did you indicate to him or
4 provide him with those basic necessities that you
5 had to have regarding the practice? For instance,
6 the CO2 laser and all of those things?

7 A. You know, I can't specifically recall
8 those -- those -- those items, what -- how I -- I
9 mentioned to him and -- and -- but I -- I don't
10 recall actually specifically mentioning to him
11 about that --

12 Q. Okay.

13 A. -- so...

14 Q. I got off track earlier with this
15 question, I just want to close the door on it. You
16 mentioned a few things in hindsight you believe, in
17 your opinion, Mr. Deaton was not upfront with you
18 about. The first thing you mentioned was the
19 disclosure of the sale, the second thing was your
20 desire to have a CO2 laser.

21 Correct?

22 A. Those -- those both are correct.

23 Q. Which is a verbal thing. And the third
24 thing is the sinus --

25 A. Sinus navigational --

1 Q. -- navigation?

2 A. Yeah, that's right.

3 Q. And those two devices actually, as we
4 mentioned, you did have access to and you did use
5 during the time period, correct?

6 A. I did not have -- I think that's not a
7 correct statement. Those -- there was a -- a very
8 slight and limited access to the CO2 laser and
9 virtually no access to the navigational equipment,
10 neuronavigational equipment. I think I maybe used
11 it two or three times at the -- where a -- a vendor
12 brought it in and after that, that was gone. And,
13 as I said, numerous times came up where I -- you
14 know, no navigational. So, I mean, just no --
15 that's -- I did not have access to it. They could
16 not get it for me, period. But the CO2 laser
17 they -- on a limited basis they could rent it and
18 that was only initially. Later on they seemed to
19 have difficulty doing that.

20 Q. Were there any other --

21 A. You know, I can't --

22 Q. -- in hindsight -- I'm sorry, that --
23 that you can think of that where, again, he was not
24 upfront with you, other than those -- those three
25 things?

1 A. Well, the -- the big thing is -- is
2 selling the hospital where he -- there's no way he
3 could, you know, build a -- a -- a practice -- you
4 know, we could build a practice together and -- and
5 so, I mean, that's huge. But, yeah, those are the
6 three main things.

7 Q. Okay. And so nothing else other than
8 those three, again?

9 A. That's correct -- well, I -- that --
10 that I can recall.

11 Q. Fair enough. When you came to Coastal,
12 were you dependent on the job? Were you dependent
13 on the job?

14 A. Once I had, you know, made the move, I
15 mean, I needed the job and the income from the job
16 to, you know, to pay my mortgage, pay my child's
17 tuition. Yeah, I was dependent on it.

18 Q. Other than the move and the physical
19 location of your practice, did anything else change
20 in your -- in your -- kind of your personal life?
21 Obviously -- it sounds like you lived in the same
22 place, kids went to the -- I assume the same
23 schools. Anything -- anything change again other
24 than the location as you put it earlier where you
25 worked?

1 A. I'm not sure what you mean. You're
2 asking me like when I moved from Memorial to --
3 to -- and took my job at Coastal Carolina, did my
4 life change personally? Yeah.

5 Q. Other than getting up in the morning,
6 getting dressed and going to Coastal Carolina to do
7 your job rather than getting in the car and going
8 to Memorial, did anything else change?

9 A. Oh, well, my -- my whole like future I
10 think changed when, you know, I -- LifePoint left
11 the community.

12 Q. I'm sorry --

13 A. And, you know, so my whole outlook on
14 my future, my career were radically different, yes.
15 It was a life altering -- it was one of the worse
16 experiences of my life.

17 Q. Let me kind of --

18 A. I still haven't recovered from it. I
19 mean, I'm living in Vidalia. I'm not living in my
20 home. I mean, you know, yes, my life just -- it
21 was -- it's probably -- I can't think of anything
22 worse than probably having someone die in my -- you
23 know, close to me in my family.

24 Q. That's bad.

25 A. That -- I mean, I think it destroyed my

1 career, yes. So it was a life-altering experience.

2 Q. And you're making how much money right
3 now?

4 A. I'm making \$400,000 right now.

5 Q. I'm sorry, poor question before. At
6 the time that you desired to enter into your
7 contract with Coastal Carolina Medical Center, at
8 that point in time, to make the change over, did
9 anything else in your life -- did you ever have to
10 make any other adjustments in your life other than,
11 again, the location of where you had to go in the
12 morning to work? At that point in time.

13 A. When I made the decision to -- to -- to
14 sign the contract?

15 Q. Yes.

16 A. No, I -- I can't think of anything
17 major that happened when I decided to sign to go --
18 that I would work for LifePoint, no.

19 Q. Okay. Thank you. Does Tenet still own
20 the Hardeeville -- or Coastal Carolina Hospital?

21 A. To the best of my knowledge, they do.

22 Q. Still there, the hospital is still
23 there?

24 A. It's still there, yeah.

25 Q. Still operating?

1 A. I -- as far as I know it is, yes.

2 Q. Okay. Do you know the financial health
3 of it currently?

4 A. I don't.

5 Q. Okay. I apologize if -- if this
6 question isn't right on. You mentioned earlier
7 about a small minority of your patients were
8 self-referrals and then another portion I guess.
9 came from -- can you refresh me on that again as
10 far as the make up of your --

11 A. And, again, I'm guessing. I don't have
12 the exact number breakdowns. But of -- of my
13 patients who came to see me, some -- some would
14 come to see me because they picked me outright
15 because they had a problem that was seen by an ear,
16 nose and throat doctor, so they would come and see
17 me on their own volition.

18 Q. Uh-huh.

19 A. And the majority had a problem which
20 they presented to maybe their primary care
21 doctor --

22 Q. Uh-huh.

23 A. -- or sometimes a certain specialist.
24 Specifically I think I mentioned -- the -- the two
25 groups that often send a lot of referrals to an

1 otolaryngologist are pulmonologists and allergists.
2 And so that's -- a lot of our referrals come from
3 other specialists, not primary care doctors.

4 But between primary care doctors,
5 internists, pediatricians, family physicians, and
6 other specialists, that's where the majority of our
7 patients come to. They're -- they're referred to
8 us by those doctors. If they have a problem they
9 see that doctor and they say, oh, you need to see
10 an ear, nose, and throat surgeon.

11 Q. And was this the same makeup of your
12 practice, self-referrals and referrals from other
13 doctors, that's pretty much the same at Coastal as
14 it was at Memorial and --

15 A. Yeah, I -- I don't know if I -- I can
16 answer that. I assume so, but I don't know for
17 sure.

18 Q. Okay. I just didn't know --

19 A. I -- I guess -- I guess I would say
20 that -- that I probably went through a period
21 where -- may have more self-referrals, just because
22 I had -- I had certain patients in the pipeline,
23 you know, that came to Coastal because of
24 self-referral.

25 But the same referring doctors is

1 still -- they referred to me even though I was over
2 there. In some cases it was -- they were doctors
3 in South Carolina. In some cases they were doctors
4 in Georgia.

5 Q. Okay. So you had the same amount of
6 need as far as when you were at Memorial you needed
7 certain other doctors to refer patients to you to
8 make up your -- to get the business?

9 A. Yeah. Part of when you build a -- as a
10 specialist, when you build a -- a practice, you're
11 building the -- the actual reputation in the
12 community with individuals in the community, but
13 you're also building it with doctors in the
14 community as -- as much doctors as -- as people who
15 think you do a good job with certain things and
16 send those patients, so...

17 Q. Okay. I apologize. I feel like I'm
18 making -- making tracks here --

19 A. Okay.

20 Q. -- so thank you for your patience. I
21 appreciate you staying later.

22 Currently where you're at in Vidalia,
23 are you -- let me just kind of back up. When you
24 moved on from Coastal Carolina back to Memorial
25 working for ACI, were you doing the same sort of

1 work, the same sort of practice or was it
2 different?

3 A. Compared to what? At --

4 Q. It's just an ENT surgical practice?

5 A. Well, I've always had a -- a -- done
6 more head and neck surgery and sinus surgery
7 versus, you know, ear or -- or maybe that kind of
8 thing. I've had an emphasis on head and neck
9 cancer, head and neck surgery. That's always been
10 there. And I -- I guess that that was more of an
11 emphasis when I went back to -- to Memorial the
12 last time.

13 Q. Okay. Well, I apologize, I just --

14 A. No, that's okay.

15 Q. -- want to understand, because the
16 names of the practices kind of throw me off.

17 A. It's --

18 Q. When I see cancer institute I'm
19 thinking you're doing more cancer work or if you're
20 doing -- something -- just -- so I just don't quite
21 understand it that much.

22 A. I've always done a lot of cancer work
23 and I did it at -- at Coastal Carolina as well, but
24 I did more at -- at -- when I went back to ACI,
25 somewhat more. In part when Eric Deaton said to

1 keep your privileges at Memorial and take some of
2 your bigger cases there, he -- I think he wanted me
3 to -- to continue to do those kinds of cases, you
4 know, as well.

5 Q. Okay. And then when you ended up
6 leaving ACI to go to Vidalia, is it the same or
7 similar sort of practice?

8 A. This -- this is a -- it has -- I do the
9 same kinds of things. I do less head and neck
10 cancer and more general kind of tonsils and septums
11 but a little bit more -- but it's still -- I still
12 have a -- a practice compared to a general ear,
13 nose, and throat surgeon, I have a practice that is
14 weighted toward head and neck cancer.

15 Q. Okay.

16 A. Doing those surgeries.

17 Q. Thank you. You mentioned earlier that
18 you -- you tended to receive solicitations for
19 different potential practice groups and things of
20 that nature --

21 A. Sure.

22 Q. -- that would pop up. Would they be, I
23 guess, specifically addressed to you? Say -- and,
24 again, something very personal, those letters, or
25 would they be almost -- they could have been

1 addressed to anybody?

2 A. No, they were more personal. They -- I
3 mean, it was -- that I think always goes on. Hey,
4 think about this or you want to do this. And --
5 and so that -- that went on -- that was -- that was
6 kind of always something that, you know, kind of
7 went on in the background.

8 Q. Okay. So when people --

9 A. But --

10 Q. I'm sorry.

11 A. Uh-huh. But they weren't specific.
12 They weren't -- they weren't just a generic -- it
13 wasn't like a recruiter calling you and saying, you
14 know, I've got a job in Texas, you know, no. They
15 were -- they were more specific to me.

16 Q. Were -- were the solicitations pretty
17 crystalized as far as, you know, what specifically
18 they were offering you? Were the terms pretty --

19 A. No, none of that. They -- and it
20 wasn't -- it wasn't anything formal from any -- any
21 corporate entity, it was mostly just, you know,
22 other doctors blue skying (sic), hey, we could do
23 this and I would -- you know, this is what I put
24 together, what do you think, that kind of thing.

25 Q. Okay. Well, let me show you this real

1 quick. I don't know if it already went in. I
2 apologize --

3 MR. MYRICK: It did not.

4 MR. BELTON: I only have one copy.

5 MR. MYRICK: It -- so it would be 20 if
6 you continue.

7 MR. BELTON: Exhibit 20. Okay. I
8 apologize, I only have one copy.

9 THE WITNESS: Yeah, this is when Jeff
10 Boyd was there. That was -- that was -- that --
11 but I wasn't interested in that. Didn't --
12 wouldn't do it.

13 BY MR. BELTON:

14 Q. Okay. So -- and you've seen Exhibit 20
15 before?

16 A. Yeah.

17 Q. Addressed right to your --

18 A. Yep.

19 Q. -- looks like it came right to --

20 A. Boyd, yeah.

21 Q. -- your home?

22 A. Yeah, he's -- yeah, before I went -- he
23 was fired before I got sent over. No, not --
24 not -- that was I think done at Steve Brower's
25 urging.

1 Q. Okay.

2 A. And --

3 Q. Well, I'm looking at this, is --

4 A. Yeah, and I don't know what he got as
5 far as a letter, you know, how much backing he got
6 off that, but, you know, that -- yeah, that did
7 come to me.

8 Q. Okay. Well, I haven't read it too
9 closely, I'm looking at the date and it looks like
10 it was addressed to you February 18th, 2008?

11 A. Yeah, and I'm not sure I received it
12 then but probably shortly thereafter.

13 Q. Okay. But you did receive it?

14 A. Yeah.

15 Q. Okay. And it's from the Department of
16 Surgical Oncology at the Anderson Cancer Institute,
17 ACI Memorial Health?

18 A. Right.

19 Q. And is this something different than
20 what you ultimately ended up joining?

21 A. Totally different, yes -- well, no, no,
22 I -- no, that is the same -- I -- I eventually
23 joined ACI Surgical Associates. But the -- what
24 they finally put together was different than --
25 than I think, you know, what they were offering. I

1 wasn't interested in that.

2 Q. Okay. And so -- but later in 2008
3 in -- in -- in September of 2008, you ended up
4 signing a contract with this same group, ACI?

5 A. ACI Surgical Associates, yeah.

6 Q. So the same group that ended up sending
7 you this letter of intent --

8 A. Right.

9 Q. -- you ended up signing a contract with
10 them later in the year?

11 MR. HARVEY: Listen to his question.

12 THE WITNESS: Correct.

13 BY MR. BELTON:

14 Q. Okay. Now, if you could take a look at
15 this since you know a little bit better than I do,
16 what are they offering you or what position are
17 they -- or type of employment are they offering you
18 in that letter of intent?

19 A. They're offering me -- they wanted me
20 to come in as a faculty member. Again, a lot of
21 this was done at -- at -- at Steve Brower's egging
22 on. And I don't think -- I mean; this never had
23 gone through anything formal at Memorial and I
24 wasn't interested. I never -- I didn't pursue
25 this. So, I mean, it's...

1 Q. Okay. In the letter of intent it
2 indicates that, you know, please respond to this
3 and mark -- acknowledge acceptable of the
4 non-binding letter of intent by signing on the
5 appropriate line below and returning it to me.

6 A. Yeah.

7 Q. Did you ever do that?

8 A. No. No. I -- no, I didn't.

9 Q. Okay.

10 A. Otherwise I would have had a
11 different -- total different contract and I would
12 have left at a different time. I didn't want to do
13 that.

14 Q. Okay. So you never indicated to ACI
15 your interest in -- in this?

16 A. I indicated I wasn't interested in
17 that.

18 Q. Oh, you -- you actually --

19 A. Yes.

20 Q. -- affirmatively sent something back
21 and said I'm not interested?

22 A. Oh, verbally said, no, I'm not doing
23 that.

24 Q. Okay. Who did you --

25 A. I don't think I -- I think Brower,

1 Steve Brower, but I don't remember who.

2 Q. So you don't remember calling -- did
3 you call Jeff Boyd and tell him you weren't
4 interested?

5 A. No, it was Brower I'm pretty sure.

6 Q. Okay.

7 A. Steve Brower.

8 Q. And where is he at these days?

9 A. He's in New York State. I'm not sure
10 where. But he -- he ended up after, you know,
11 eventually becoming the head of ACI for a period of
12 time.

13 Q. Okay. He was there when you were there
14 in late 2008?

15 A. Uh-huh. Yes, he was.

16 Q. Gotcha. I was looking at some of the
17 terms in the third paragraph. I noticed that the
18 base salary that they're offering is 265,000?

19 A. Right.

20 Q. Is that the same base salary that ended
21 up in your September 2008 contract?

22 A. No, I -- and it was based on a totally
23 different thing. And I never -- you know, I never
24 saw any -- any more details on this on that except
25 that I wasn't, you know, interested in this.

1 Q. Did you typically receive letter of
2 intents?

3 A. That's the only one I -- I -- I
4 received. You know, I got -- I got lots of chatter
5 and then, you know -- you know, they -- people knew
6 I was unhappy at -- at Coastal and so lots of
7 chatter. But nothing that went to a point where,
8 you know, I think I had an official, you know,
9 board sanction, like, okay, we're going to
10 negotiate and do a deal. Board being the hospital,
11 hospital board.

12 Q. Did you typically get these sorts of
13 correspondence at your home address?

14 A. No, I -- I think I got them at
15 Coastal -- well, at Coastal or, you know, e-mail,
16 and -- I got them over at my office at Coastal. I
17 don't think I got anything at my home address.

18 Q. Except for this one?

19 A. Maybe that one -- is that my home
20 address? I don't know. Is it? It is, yeah. You
21 know, I typically got them at Coastal, but that's
22 my home address.

23 MR. BELTON: Can I have this marked?

24 Sorry to...

25 (DFT. EXH. 20, Letter dated February

1 14, 2008 from Jeff Boyd, PhD, to Phillip B. Flexon,
2 MD, was marked for identification.)

3 BY MR. BELTON:

4 Q. So let's assume for a second that you
5 were interested in this.

6 A. Uh-huh.

7 Q. You would have responded back to
8 Mr. Boyd, correct?

9 MR. HARVEY: Objection to the form.

10 THE WITNESS: I -- I wasn't interested
11 in it, so...

12 BY MR. BELTON:

13 Q. Okay. But if you were, how would you
14 have responded?

15 A. I don't know, because I wasn't.

16 Q. Okay.

17 A. I mean, I really -- I wasn't.

18 Q. Okay. Do you think that Mr. Boyd and
19 this ACI group was -- do you think this was a
20 serious letter of intent?

21 MR. HARVEY: Objection to the form.

22 BY MR. BELTON:

23 Q. Do you think that they -- that they
24 generally wanted you or were interested in you?

25 MR. HARVEY: Objection to the form.

1 THE WITNESS: I -- I can't speak for
2 them. I certainly got a lot of things like this
3 from the -- from the doctors at ACI. I think they
4 wanted me to come on board.

5 BY MR. BELTON:

6 Q. So when you received this letter, is it
7 reasonable to believe in your shoes that there --
8 there was an opportunity for employment at another
9 group if you wanted it?

10 MR. HARVEY: Objection to the form.

11 THE WITNESS: Sure. You know, I had a
12 lot of opportunities for employment in some
13 capacity. I mean, I could have probably moved to
14 Vidalia then. I wanted to be in Levy, Hardeeville.

15 BY MR. BELTON:

16 Q. Right. But this was in Savannah,
17 correct?

18 A. Yeah.

19 Q. And your previous job was in Savannah,
20 correct?

21 A. That's right.

22 Q. And that -- that previous job you lived
23 in Hardeeville, right?

24 A. I did.

25 Q. I apologize for reading. It's going to

1 take a couple seconds.

2 MR. MYRICK: Could I look at your
3 letter? Thank you.

4 BY MR. BELTON:

5 Q. Okay. You were talking earlier about
6 your contract with Memorial after you left --

7 A. Uh-huh.

8 Q. -- CCM (sic) in September of 2008.

9 A. (Nodding head up and down.)

10 Q. Okay. And you were talking about
11 having negotiations, conversations with the folks
12 at Memorial about this, about your interest, and
13 then you indicated that things didn't really get
14 serious until the summer.

15 A. No, I -- I think I -- when I had
16 serious intent -- this is speaking for myself
17 now --

18 Q. Yeah, I don't want to mischaracterize
19 it, so go ahead, I'm sorry.

20 A. Yeah. When -- at or around when I had
21 the breakfast meeting with Teresa whenever that
22 was, and that was in the -- in the spring of 2008,
23 that's when, so it was -- somewhat before the
24 summer but I think it was late spring but I don't
25 know exactly when that was.

1 Q. Okay. So at that point in time you
2 were having conversations about another place of
3 employment at Memorial?

4 A. What's your question?

5 Q. I just kind to make -- I just kind of
6 want to -- just set the timeline again as far as
7 you're having conversations or -- with the folks at
8 Memorial about possible employment with them
9 because you're unhappy at Coastal; is that correct?

10 A. That's correct.

11 Q. Okay. And then those negotiations got
12 more in earnest as the summer went on?

13 A. That's correct.

14 Q. And then you eventually signed a
15 contract in September?

16 A. That's correct.

17 Q. Okay. I'm trying to remember back to
18 the questioning, but I think Mr. Myrick was asking
19 you about at what point in time did you inform
20 Coastal Carolina of your move to Memorial.

21 A. I don't remember.

22 Q. Okay. And I --

23 A. You could find out by looking at the
24 equipment stuff. So, I mean, they had plenty of
25 upfront -- to my -- best of my knowledge, they had

1 upfront awareness of it. I mean, we had -- we had
2 lots of -- of communications back and forth in that
3 summer, so I -- you know.

4 Q. Why didn't you inform Coastal Carolina
5 that you were planning on moving to Memorial in
6 April when you had the lunch with Teresa?

7 A. You know, I -- you know, I -- I don't
8 know. I mean -- I mean, I can't remember exactly
9 how those -- how those events transpired. I -- I
10 may have told her at the time -- I think I was -- I
11 was more concerned to talk to her about the billing
12 issues and -- and raise issues -- problems that I
13 had with my practice and their handling of my
14 practice. And I may have said that I want to
15 leave, I may have -- you know, that I'm thinking of
16 leaving.

17 I don't know exactly when I actually
18 brought that up. But it was around -- you know,
19 close to that time I think that I was -- you know,
20 and I was constantly -- there was no surprises
21 there that I had a lot of issues with their --
22 their mismanagement management of the practice.

23 Q. Uh-huh. Is it fair to say you wouldn't
24 want to tell them until you were sure that you're
25 actually going to get a contract from Memorial to

1 leave?

2 A. No, I don't think that's -- that's --
3 that's necessarily the -- the condition at all. I
4 think I -- I wanted to see -- at, you know, at
5 one -- at certain points where I would raise
6 issues, I wanted to see if they could, you know, in
7 good faith try to come to some sort of constructive
8 agreement with me. You know, so at some point it
9 went from there to, where, you know, I -- I need to
10 leave, but I can't tell you the exact trans -- you
11 know -- you know, how the -- the actual thing --
12 you know, timeline that it went by. I don't know
13 how important it is.

14 Q. Okay. I'm just curious. E-mail
15 accounts, did you have a work e-mail account at
16 Coastal?

17 A. I -- I think I did.

18 Q. Okay.

19 A. I don't think I used it.

20 Q. Okay. What -- what e-mail account did
21 you use?

22 A. I didn't use any. You know, I -- my
23 wife would e-mail stuff for me. Like I think that
24 one letter to Eric is done on my wife's e-mail
25 account.

1 Q. Other than that, you didn't have any
2 other e-mail accounts that you used?

3 A. I have a private one, but I just don't
4 e-mail much.

5 Q. What's that one?

6 A. What is it?

7 Q. Uh-huh.

8 THE WITNESS: I don't know -- do I have
9 to give him my e-mail account?

10 MR. HARVEY: Sure.

11 THE WITNESS: Oh, it's
12 pbflexon@aol.com.

13 BY MR. BELTON:

14 Q. How long have you had that account,
15 roughly?

16 A. Several years.

17 Q. Several meaning like --

18 A. Ten.

19 Q. -- ten?

20 Facebook account?

21 A. I don't do Facebook.

22 Q. Twitter?

23 A. I don't do Twitter. You need to read
24 the four hour work week. Stop e-mailing and...

25 Q. I understand. Not enough time for any

1 of it. I feel like I'm getting closer and I've got
2 according to my initial estimate 18 more minutes.
3 And I have a continuing apology to -- to Mr. Harvey
4 over there. And you, of course.

5 A. Yeah.

6 Q. Goes without saying.

7 A. That's right.

8 Q. You mentioned that -- that -- I'll call
9 it the new contract with Memorial, the second round
10 with those folks, things again apparently didn't
11 work out like you wanted it to with them and you
12 already talked about that earlier.

13 A. That's correct.

14 Q. Personnel issues, just things that, you
15 know, just didn't turn out right, that would you
16 say they made certain promises in their contract
17 that -- you know, commitments and obligations and
18 things like that that they just didn't live up to?

19 A. I -- I think in -- in -- that -- in
20 that situation, it was less a -- an issue with a
21 contract or breaching something in the contract and
22 more an issue of the hospital was just in such bad
23 financial situation and becoming paralyzed and --
24 and maybe some of the leadership of the ACI not
25 being able to -- to do what we had all talked

1 about. Not being empowered by the -- the
2 administration. But, I mean, it's very different
3 than -- than the Coastal Carolina situation.

4 Q. It sounded very similar to me when you
5 were talking about the personnel issues and not
6 having --

7 A. Enough.

8 Q. -- enough people to help out, right?

9 A. Well, that -- that was maybe the one
10 similarity and in that case it was -- it -- you
11 know, it wasn't where they -- they -- one group put
12 the right number in and the other group comes in
13 and -- and, without my knowledge, lets -- you know,
14 starts terminating things. This is a -- it was a
15 case of just not having money, budget freezes, and
16 couldn't -- couldn't function.

17 Q. But at the end of the day it came down
18 to actually having a physical human being or
19 multiple people doing their jobs to help you do
20 your job, correct?

21 A. Yeah -- in that case, yes, that -- that
22 was -- that was one of my big issues with it, yes,
23 it was. And now I'm in a situation where I have
24 plenty of people. Good -- good employee base.

25 Q. That's good. When you, again, started

1 your practice at Memorial for a second time for
2 ACI, was it your intention to stay there long term?

3 A. I think I was more cynical at that
4 point. I -- I had wanted to stay and my intent was
5 to stay and -- and have my practice in Jasper
6 County in -- in Hardeeville. That's where my farm
7 was, that's where I wanted to be. I'd still like
8 to be.

9 Q. When you were at Coastal, were any of
10 your patients either self-referred or referred by
11 physicians, other doctors, do they live in Georgia?

12 A. Uh-huh, yes, some do.

13 Q. Nice chunk of them live in Georgia?

14 A. Some did, yes, a good chunk of them.

15 Q. And so Savannah sits like really almost
16 right across the border?

17 A. Uh-huh.

18 Q. So would they -- would your patients
19 still come from the same vicinity and locations
20 of -- actually closer to where you practiced before
21 in Memorial?

22 A. Yeah. Maybe some little changes. It
23 was kind of interesting. Pooler patients actually
24 could come to Coastal real easily and they actually
25 found it easier to go there than Memorial. So it

1 did change a little bit. But Georgia -- plenty of
2 patients coming from Georgia.

3 Q. All right. You mentioned earlier about
4 kind of just going out on your own, not being
5 connected to a hospital. Why did you not do that?
6 Again, when -- this would be at the time of leaving
7 Memorial for the first time to go to Coastal,
8 instead of going to Coastal, you just --

9 A. Right. Well, I had -- I had -- that
10 was an option. An option was to go in with my old
11 group and start up new as a private practice with
12 that group. An option was to -- I actually think I
13 had a couple options with some people in town.
14 I -- I would have had to, you know, borrow money
15 and -- and I was -- would have felt that it would
16 have been better to have -- you know, be a little
17 younger to borrow the substantial amount of money.

18 I felt that to go on your own,
19 Georgia -- might have just been verbally the fact
20 the CON and the surgery center might have been, you
21 know, the best way to go and I didn't want to do an
22 investment like that.

23 South Carolina, again, that's where I
24 lived and I thought that the new hospital was a
25 great way to start and bring what practice I had

1 built, maintain it and start -- and grow it, again,
2 right in my backyard, so that's -- we're back to
3 the same -- those are -- that's what I wanted to
4 do.

5 Q. Your other sources of income besides
6 bank accounts, any sort of side businesses that you
7 had money coming in on? I -- I apologize if you've
8 already answered that question. I know you
9 mentioned you having some other sources, I just
10 couldn't remember exactly what those were.

11 A. Yeah, the only other, you know, is --
12 is being a -- giving -- you know, being an expert
13 witness and maybe that happens once a year.

14 Q. I believe I'm getting close so
15 hopefully -- it's not making Bill smile anymore
16 though. You mentioned the location of your
17 practice being 150 to 200 yards away from the
18 hospital.

19 A. My office.

20 Q. And you just mentioned that you had
21 another location in Beaufort -- or, not Beaufort,
22 excuse me, Bluffton --

23 A. Bluffton.

24 Q. -- I'm sorry?

25 A. Well, we -- we -- we had talked about

1 that would be a better location and originally
2 that's where I was going to be. And -- but that
3 didn't -- that didn't happen, so when I signed the
4 contract that was -- oh, we -- go in this office
5 location.

6 Q. Okay. Did you insist on the other
7 location in Bluffton?

8 A. No. No.

9 Q. For -- I hate to use the word startup
10 practice, because that's maybe that's a bad term,
11 but nonetheless starting a new ENT practice at the
12 hospital that wasn't there before, did you
13 understand that Coastal Carolina may have had
14 limitations to develop that practice? Again,
15 whether it's financially or otherwise as far as
16 commitments to certain things right away.

17 MR. HARVEY: Objection to the form.

18 THE WITNESS: I -- I really didn't. I
19 didn't see an obvious obstacle why we, you know,
20 couldn't sort of, if you will, hit it out of the
21 park. It didn't require that much on their part.
22 So, no, I didn't see any obstacles. And I
23 certainly didn't see selling the hospital and
24 leaving.

25 BY MR. BELTON:

1 Q. The -- I guess this goes without
2 saying, but the ENT practice that you had a -- that
3 you were employed at Coastal Carolina before the
4 sale in June of 2007, July 2007?

5 A. Okay, well half of March, April, and
6 May. Okay.

7 Q. All right. So that practice still
8 existed after the sale?

9 A. Well, I mean, I was there. I was going
10 to work. Patients were coming to see me, but --
11 yes.

12 Q. Tenet never said, by the way, Dr.
13 Flexon, we are discontinuing this practice? We are
14 no longer going to be having this a part of the
15 Coastal Carolina Hospital?

16 A. Not in so many words.

17 Q. Okay.

18 A. I think they did say my contract was
19 illegal at one point.

20 Q. I think Jim already asked you this
21 question, but just so Trudy doesn't get on me. In
22 Paragraph 8 of your complaint you talked about
23 plaintiff was enticed to sign the employment
24 agreement by representations of the employees,
25 plural, and agents, plural, of LifePoint that he

1 would enjoy a long relationship with LifePoint and
2 Coastal Carolina Medical Center.

3 My understanding after your testimony
4 today is the only person that made representations
5 to you and dealt with you at all as far as these
6 negotiations of the contract was Eric Deaton, is
7 that --

8 A. Yeah, for the most part, that's
9 correct. As I said, I think we had one meeting
10 with -- with a -- a LifePoint executive who also,
11 you know, again, welcome aboard kind of -- we're
12 glad you're coming aboard and, you know, you need
13 to come up to Brentwood and take a look around, you
14 know, so -- but, again, I guess in plural would be,
15 you know, referring to things like that. But
16 almost all the negotiations and everything was
17 through Eric, yeah.

18 Q. Okay. Anything substantive was with
19 Eric Deaton --

20 A. That's correct.

21 Q. -- is that a better way to put it?

22 A. I think that's the -- yeah, that's
23 correct. To the best of my recollection, it was
24 Eric.

25 Q. Any sort of affirmative representations

1 about what your employment at the hospital entailed
2 would have been made through Eric Deaton?

3 A. That's my recollection, yes.

4 Q. You realize that the contract had a
5 90-day termination clause in it, correct --
6 termination not for cause, either party could walk
7 away with 90 days -- I believe it was 90 days
8 notice?

9 A. If it -- it's written in there that --
10 that seems to be how I recollect it, yeah, there
11 was something to that effect.

12 Q. Okay. I mean, I'll be happy to pull it
13 out but if -- you disagree with that?

14 A. I don't think I disagree with that, no.
15 But, yeah, whatever it says, yes.

16 Q. Okay. Why would you feel that either
17 you or the hospital was committed to a long-term
18 relationship when there's always that possibility
19 by right under the contract either party could walk
20 away for no reason at all and terminate the --
21 terminate the contract?

22 A. Because of, again, my discussions with
23 Eric Deaton. I was very open with my intent. It's
24 the community I lived in. I wanted to be there.
25 And I got everything in return that, you know --

1 you know, we talked about different models,
2 whether, you know, you go on your own, you have a
3 partnership at the hospital, and we kind of talked
4 about long term we saw that that -- that's the way
5 healthcare was going. Hospital doctor partnerships
6 and I wanted to long-term relationship to build a
7 practice, build the -- you know, the -- the medical
8 center.

9 And that's what we talked about.
10 That's what I wanted. And I thought that's what
11 they wanted. That's why I signed the contract.
12 That's what this was about, I thought.

13 Q. But the contract, which you reviewed
14 prior to signing --

15 A. Sure, but, you know, anyone could have
16 walked away but it could have been a win-win
17 situation and it would have -- should have been a
18 win-win situation. No one should have wanted to
19 walk away if it had been done in good faith and
20 done correctly and -- and honestly.

21 Q. Well -- and the contract was negotiated
22 over the entire fall --

23 A. Uh-huh.

24 Q. -- and into the winter of 2006?

25 A. Correct.

1 Q. And you had a lawyer help you out?

2 A. Yes. And the whole time they were
3 going to sell the hospital and didn't tell me.

4 Q. But, again, in the contract it included
5 a clause where either party could walk away --

6 A. But that wasn't the intent.

7 Q. -- for whatever reason they wanted to?

8 A. Yeah, that -- that's in there, that's
9 written in there, yes.

10 Q. And, as far as you're aware, there
11 wasn't any affirmative recommendations made by
12 Deaton to you that the hospital, Coastal Carolina,
13 was not going to be sold, was ever not going to be
14 sold or anything to that effect?

15 A. He never said to me we're not going to
16 sell the hospital to Tenet or we're not going to
17 sell the hospital. We discussed when I came over
18 what was important to me were people, you know,
19 character of the people I worked with, reputation,
20 and I was coming over for a long-term commitment
21 with -- you know, and that's what I was making.

22 And he, you know, gave me every
23 indication that, you know, he hoped to work there
24 for a long time yet he was selling the hospital. I
25 mean, he totally misrepresented the situation. I

1 had no idea. I was led to believe that this was --
 2 we were making a -- you know, more than just a
 3 contract. We were making a -- you know, build
 4 something there together. I live there. You know,
 5 this is where I wanted to practice. Lived there a
 6 long time.

7 Q. I think this goes without saying too,
 8 but you were free to negotiate any terms in that
 9 contract that you wanted?

10 A. I could negotiate it, but whether they
 11 would give them to me, but I -- I tried to get some
 12 things in that didn't get in.

13 Q. That's true.

14 A. Yeah. But --

15 Q. So you could have negotiated for
 16 anything that you wanted that really mattered to
 17 you?

18 A. I did -- that's correct.

19 Q. And if they didn't give it to you, you
 20 could have always walked away, right?

21 A. That's true.

22 Q. You could have always continued to
 23 practice at Memorial Hospital?

24 A. I could have.

25 Q. I'm getting close guys. Tenet, other

1 than reputation, what else about Tenet would be
2 discouraging to cause you not to work for them?

3 A. Well, it isn't just reputation, it's --
4 it's past history. They had a past history that
5 was awful. Multiple, multiple instances that were
6 known nationally of patient -- horrible patient
7 care. And of -- nothing short of what you would
8 categorize as disasters.

9 On top of, as soon as they came, they
10 seemed to be completely unprepared to -- and -- and
11 have no knowledge of how to run practices. So it
12 was -- it was a horrible reputation, already -- not
13 just also nationally but with doctors conferring
14 with -- in South Carolina, in the Hilton Head area,
15 that had had bad experiences with -- with Hilton
16 Head Hospital and Tenet. So it wasn't -- wasn't
17 just a, you know, what happened on the national
18 scene, it was local as well.

19 You know, so I had no desire to -- to
20 work for a Tenet Hospital and wouldn't have worked
21 for a Tenet Hospital, would not have. And he --
22 Eric knew that.

23 You know, why all the secrets about the
24 deal? They didn't want anyone to know they were
25 selling to Tenet. It's even commented in the

1 newspaper it was unusual not to have announcements
2 before they did.

3 THE WITNESS: I'm almost done. I might
4 not even have another question. It's 6:06. That's
5 not bad. I can't think of anything else at the
6 moment, so I will turn it back over to you and then
7 we'll be done.

8 MR. MYRICK: I think we're done.

9 MR. BELTON: Okay. Thank you.

10 (The deposition was concluded at 6:06
11 PM.)

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SIGNATURE OF DEPONENT

DEPONENT: PHILLIP FLEXON, MD
DEPOSITION DATE: April 30, 2013
REPORTER: KELLY A. BALL
CASE CAPTION: PHILLIP FLEXON, MD vs. PHC-JASPER,
INC. D/B/A COASTAL CAROLINA MEDICAL CENTER

(Please return both Signature of Deponent pages)

I, the undersigned, PHILLIP FLEXON, MD, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: April 30, 2013
REPORTER: KELLY A. BALL
CASE CAPTION: PHILLIP FLEXON, MD vs. PHC-JASPER,
INC. D/B/A COASTAL CAROLINA MEDICAL CENTER.

PAGE	LINE	CHANGE	REASON

PHILLIP FLEXON, MD Date

I, Kelly A. Ball, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Kelly A. Ball
My Commission expires
November 19, 2017

1 CERTIFICATE OF REPORTER
2

3 I, Kelly A. Ball, Court Reporter and
4 Notary Public for the State of South Carolina at
5 Large, do hereby certify that the foregoing
6 transcript is a true, accurate, and complete
7 record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 30th day of April,
13 2013 at Charleston, Charleston County, South
14 Carolina.

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23
24 Kelly A. Ball
My Commission expires
November 19, 2017
25

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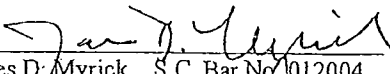
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	CASE NO. 2009-CP-27-331
Philip Flexon, M.D.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COASTAL CAROLINA MEDICAL
	)	CENTER, INC. AND TENET
PHC-Jasper, Inc., d/b/a/ Coastal Carolina	)	HEALTHSYSTEMS' NOTICE OF
Medical Center, Coastal Carolina Medical	)	DEPOSITION OF PLAINTIFF
Center, Inc., Lifepoint Hospitals, Inc. and	)	
Tenet Healthsystems,	)	
	)	
Defendants.	)	
	)	

TO: WILLIAM HARVEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

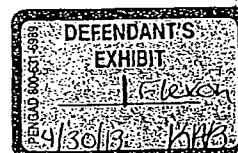
Please be advised that pursuant to the South Carolina Rules of Civil Procedure, the undersigned attorney for Defendants PHC-Jasper, Inc., d/b/a Coastal Carolina Medical Center, Coastal Carolina Medical Center, Inc., and Tenet Healthsystems will take the sworn deposition testimony of Plaintiff Philip Flexon, MD, beginning at 10:00 a.m. on Tuesday, April 30th, 2013. The deposition will take place at the offices of Harvey & Battey, PA, located at 1001 Craven Street in Beaufort, South Carolina.

The deposition will be taken pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, before a Notary Public, and will be taken either for discovery purposes or for evidence at the trial of the above case or both. You are invited to attend.

WOMBLE CARLYLE SANDRIDGE RICE, LLP


 James D. Myrick, S.C. Bar No. 012004
 Dana W. Lang, S.C. Bar No. 77946
 5 Exchange Street (29401)
 P.O. Box 999
 Charleston, SC 29402
 (843) 722-3400

March 28, 2013
 Charleston, South Carolina



CERTIFICATE OF SERVICE

I do hereby certify that on the 26 day of March, 2013 I served a copy of the within *COASTAL CAROLINA MEDICAL CENTER, INC. AND TENET HEALTHSYSTEMS' NOTICE OF DEPOSITION OF PLAINTIFF* in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

William Harvey, Esquire
Harvey & Battey, PA
1001 Craven Street
P.O. Drawer 1107
Beaufort, SC 29901-1107
Attorneys for Plaintiff

Trudy H. Robertson Esquire
Moore & Van Allen PLLC
40 Calhoun Street
Suite 300
Charleston SC 29401-3535
Attorneys for Defendant Lifepoint Hospitals, Inc.

Karla Koster

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



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JAMES D. MYRICK
ATTORNEY AT LAW
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DIRECT DIAL: 843-720-4643

March 26, 2013

William B. Harvey, III, Esq.
Harvey & Battey, P.A.
1001 Craven Street
P.O. Drawer 1107
Beaufort SC 29901-1107

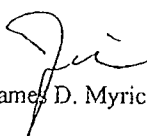
RE: *Philip Flexon, M.D. v. PHC-Jasper, Inc., d/b/a/ Coastal Carolina Medical Center, Coastal Carolina Medical Center, Inc., Lifepoint Hospitals, Inc. and Tenet Healthsystems,*
Case No. 2009-CP-27-331
WCSR File No. 75499.0012

2/11
Dear William:

Please find enclosed *Coastal Carolina Medical Center, Inc. and Tenet Healthsystems' Notice of Deposition of Plaintiff* in the above referenced matter.

With best regards, I am

Very truly yours,


James D. Myrick

JDM/def
Enclosures
cc: Trudy H. Robertson, Esquire

CURRICULUM VITAE

NAME: Phillip Billings Flexon M.D., FACS

BUSINESS ADDRESS: Coastal Carolina Ear Nose and Throat
1010 Medical Drive, Suite 210
Hardeeville, SC 29927

BUSINESS PHONE: (843) 784 7160

HOME ADDRESS: 2712 Levy Road
Hardeeville, SC 29927

DATE OF BIRTH: January 24, 1954

PLACE OF BIRTH: Fairmont, West Virginia

CITIZENSHIP: United States

EDUCATION:

High School: Ottawa Hills High School, Toledo, Ohio

Undergraduate: AB in Biology, 1976
Magna Cum Laude with Distinction
Kenyon College, Gambier, OH

Graduate School: MS in Biology (Genetics), 1980
Nominee, Harold Sterling Vanderbilt Scholar
Vanderbilt University, Nashville, TN

Medical School: M.D. 1984
Case Western Reserve School of Medicine
Cleveland, OH

GRADUATE TRAINING:

Internship: Case Western Reserve School of Medicine, University
Hospitals, Cleveland, OH 1984 - 1985, General Surgery

Residency: Massachusetts Eye and Ear Infirmary/Harvard Medical
School, Boston, MA, 1985 - 1989, Otolaryngology - Head
and Neck Surgery



FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -7-

Harvard Medical School, Brigham and Women's Hospital/
Beth Israel Hospital, Boston, MA, 1986 - 1987

Harvard Medical School, Boston Children's Hospital,
Boston, MA, 1987

APPOINTMENTS

Teaching Assistant, Biology, Bowling Green State
University, Bowling Green OH, 1976 - 1977

Teaching Fellow, Biology, Vanderbilt University,
Nashville, TN 1977 - 1980

Active Staff Appointment:

Coastal Carolina Medical Center

Consulting Staff Appointments:

Memorial University Medical Center, Savannah GA
Candler/ St. Hospital, Savannah GA

Chairman, Head and Neck Oncology Anderson Cancer
Institute at Memorial Health University Medical Center,
2002 - 2007

Section Chief of Otolaryngology Dept. of Surgery, 2003 -
2007

Vice Chairman of Dept. of Surgery Memorial University
Medical Center, 2005-2007

Assistant Professor, Mercer School of Medicine, 1995-
1999

Associate Professor, Surgery Section Otolaryngology,
Mercer School of Medicine 1999-2007

HONORS AND AWARDS

Rockefeller Foundation Research and Scholarship Award,
\$5,000, to attend and perform biological research at
University of Michigan Biology Station.

Nominee, Harold Sterling Vanderbilt Scholarship 1977

**FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -8-**

"Reconstruction of the Cervical Esophagus" – Won second place in resident competition at the New England Otolaryngological Society Meeting, Boston, MA, April 15, 1988

Resident Research Grant Award, \$2,000 from the New England Otolaryngology Society for research in Denervation Atrophy in Laryngeal Muscles, 1988 – 1989.

Outstanding Surgical Teaching Award for 1992, voted by residents of Memorial Medical Center, Savannah GA

"Best Doctor" award 2007-2008 by Best Doctors inc.

LICENSURE AND CERTIFICATION

Diplomate, National Board of Medical Examiners, 1985

Georgia State Medical License, issued August 1989

South Carolina Medical License, issued 1996

Diplomate of American Board of Otolaryngology, Fellow, 1989 (By examination, 93% passing score overall)

MEMBERSHIP IN PROFESSIONAL SOCIETIES

American Medical Association 1984 – Present

Georgia Medical Society 1989 – 2006

American Academy of Otolaryngology – Head and Neck Surgery, 1989 to Present

American Academy of Facial Plastic Surgery 1989 – 1993

Fellow American Rhinological Society – 1995

Hyperbaric Medicine Certificate – 2000

PROFESSIONAL PRESENTATIONS:

1. "Controlled Trial of Amoxicillin Plus Clavulanate Compared with Cefaclor in Acute Otitis Media," Beecham Antibiotic Symposium, New York, NY, November 1984
2. "The Management of Patients with Glottic and Subglottic Stenosis Resulting From Thermal Burns," presented at The American Laryngological Association Meeting, Palm Beach, FL, April 24, 1988
3. "Reconstruction of the Cervical esophagus and Use of a Cervical Thoracic Flap For Tracheostomal Reconstruction," Surgical Grand Rounds at Massachusetts General Hospital, ("Super Bowl"), December 1988
4. "Optic Nerve Decompression," American Academy of Facial Plastic Surgery, Toronto, Canada, June 1989
5. "Neck Mass," Grand Rounds, Liberty County Memorial Hospital, Hinesville, GA, September 1990
6. "Denervation Atrophy of Laryngeal Muscles," Featured research lecture at New England Society of Otolaryngology Meeting, October, 1990
7. "Sinusitis," Grand Rounds, Statesboro Medical Society Meeting, Statesboro, GA, September 1994
8. "Head and Neck Cancer," Teaching rounds, Lecture, Department of Family Practice, Memorial Medical Center, Savannah, GA, January, 1996
9. "Frontal sinus Obliteration," 18th Advanced Course: Image Guided Functional Endoscopic Sinus Surgery, Georgia Ear Institute, Savannah, GA April 4, 1997
10. "Frontal sinus Obliteration," 19th Advanced Course: Image Guided Functional Endoscopic Sinus Surgery, Georgia Ear Institute, Savannah, GA April 8, 1998
11. "Sleep Apnea," Teaching Rounds Lecture, Department of Internal Medicine, Memorial Medical Center, Savannah, GA April 1998
12. "Sleep Apnea," Grand Rounds, memorial Health University Medical Center, 2000

SCIENTIFIC PAPERS PUBLISHED

1. Rodell, CF, Flexon, PB: "Adaptation and Recombination" (Abstract) *Genetics*, 97:s90, 1981

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2. Flexon, PB, Rodell, CF: "Genetic recombination and Directional Selection for DDT Resistance in *Drosophila Melanogaster*," *Nature*, 198:672-674, 1982
3. Flexon, PB "The Effects of Directional Selection for Polygenic Trait on Genetic Recombination (Thesis monograph), Graduate School of Vanderbilt University, 115 pp, 1980
4. Marchant, CD, Shurin, PA, Johnson, CE, Murdell-Panek, D, Feinstein, JC, Futon, D, Flexon, PB, Carlin, SA, Vanhare, GF: "A Randomized controlled Trial of Amoxicillin Plus Clavulanate Compared with Cefaclor for Treatment of Acute Otitis Media" *Journal of Pediatrics*, 109(5):891-896, 1986
5. Flexon, PB, Kahn, M, Luria, G: "Effects of Potassium Chromate on Atherosclerosis Prevention and Regression in Rabbits," *Atherosclerosis*, 59:31-35, 1986
6. Chisin R, Ragozzino MW, Flexon PB, Joseph MP, Weber AL, Goodman ML; "MR assessment of a hamartoma of the nasal cavity," *Am J Roentgenol*, Nov: 149(5):1083-4 1987
7. Flexon, PB, Gargano, R, McGill, T, Arnold, J: "Bacterial Trachietis: An Unusual Pathogen," *Otolaryn. - Head and Neck Surg.*, 619-620, 1989
8. Flexon, PB, Cheney, ML, Montgomery, W, Turner, PA: The Management of Patients with Glottic and Subglottic Stenosis Resulting From Thermal Burns," *Annals of Otolary, Rhinology & Laryngology*, 98(1):27-30, 1989
9. Flexon, PB, Nadol, JB, Schuknecht, HF, et al.: "Bilateral Acoustic Neurofibromatosis (Neurofibromatosis 2): A Disorder Distinct from VonRecklinghausens's Neurofibromatosis (Neurofibromatosis 1)," *Annals of Otolary, Rhinology & Laryngology*, 100(10):830-834, 1991
10. Echeverri, A., Flexon, PB: "Electrophysiologic Nerve Stimulation for Identifying the recurrent Laryngeal Nerve in Thyroid Surgery; A review of 70 consecutive thyroid surgeries." *The American Surgeon*, 64(4): 3328-333, 1998, April
11. Emery, BE, Flexon, PB: "Radiofrequency Volumetric Tissue Reduction of the Soft Palate: a New Treatment for Snoring," *Laryngoscope*, 2000 July:110(7): 1092-8
12. Sher, AE, Flexon, PB, Hillman, D, emery, B, Swieca J, Smith, TL, Cartwright, R, Dierks, E, Nelson L: "Temperature-controlled Radiofrequency Tissue Volume Reduction in the Human Soft Palate," *Otolaryngology Head and Neck Surgery*, 2001 Oct: 125(4):312-8

CHAPTERS IN BOOKS

1. Flexon, PB and Baker, AS: "Infectious Diseases of the Salivary Glands," Management of Salivary Gland Lesions, Granick, MS and Hanna, DC, (eds.), Williams & Wilkins, Baltimore, 1992
2. Flexon, PB, et al "Somnoplasty: A Treatment for Snoring," Office Procedures in Otolaryngology, Krouse, J (eds). W.B. Saunders, Philadelphia, 1999

COURSES / MEETINGS ATTENDED

1. "Myocutaneous Flaps in Head and Neck Surgery," American Academy of Otolaryngology - Head and Neck Surgery, September 1985
2. Diagnosis and Management of Sleep Apnea Syndromes," American Academy of Otolaryngology - Head and Neck Surgery, September 1985
3. "Workshop on Concepts Fixation and Reconstruction in Maxillofacial Bone Surgery (Synthes Plating Course)," Department of Oral/Maxillofacial Surgery, Massachusetts General Hospital, May, 1988
4. "Functional Endoscopic Sinus Surgery," American Academy of Otolaryngology-Head and Neck Surgery course, September, 1988
5. "Microvascular Surgery: Principles and Applications in Head and Neck Surgery," American Academy of Otolaryngology-Head and Neck Surgery, September 1988
6. "Stroboscopic Evaluation of the Larynx," American Academy of Otolaryngology-Head and Neck Surgery, September, 1988
7. "Functional Endoscopic Sinus Surgery Workshop," University of Michigan, Ann Arbor, MI, December 1988
8. Temporal Bone Surgical Dissection Course, House Ear Institute, Los Angeles, CA, February, 1989
9. University of Iowa Head & Neck Surgery Course, Iowa City, IA, May 1991
10. "Advanced Endoscopic Sinus Surgery Workshop," Medical College of Georgia, Augusta, GA, April, 1992
11. Singer-Blom Workshop, Indianapolis, IN, July 1993
12. 36th Annual Meeting/COSM American Society for Head and Neck Surgery, Palm Beach, FL, May 1994

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13. University of Iowa Head & Neck Surgery Course, Iowa City, IA, June 1994
14. Sleep Apnea and Snoring, Orlando, FL, February 1996
15. Medicine in the Vocal Arts, Charleston, SC, May 1996
16. Contemporary Surgical Concepts and techniques in Obstructive Sleep Apnea, Stanford, University School of Medicine, Palo Alto, CA, July 1998
17. Advances in Diagnosis and treatment of Sleep Apnea, Orlando, FL, February 1999

RESEARCH

1. Primary Investigator, Recipient of \$50,000 Grant – Denmark Foundation. "Using Artificial Intelligence in the Establishment of a New Tumor Marker In Squamous Cell Carcinoma of The Head and Neck." 1996
2. Primary Investigator, Sponsored by Somnus Medical Technologies, Inc. "Radio Frequency Tissue Volume Reduction for the Treatment of Snoring." 1997 – Present

CIVIC AND COMMUNITY ACHIEVEMENTS:

1. Board of Directors, Savannah Science Museum, 1990 – 1995
2. Vice President, Savannah Science Museum, 1994
3. City of Savannah Philanthropist of the Year, Savannah Science Museum, 1995

Deaton Eric

From: Courtney Flexon [csflexon@gmail.com]
Sent: Tuesday, July 25, 2006 7:43 AM
To: Deaton Eric
Subject: Flexon contract

Eric,

We seem to be playing telephone tag, and so I thought I would email you some of my thoughts and concerns.

First, I need to convey to you that this is a huge life altering decision on my part, and I need to make sure I make a good decision for myself and my family.

As you know, it is becoming more and more difficult for physicians to live by CPT reimbursements alone, and physician ancillaries such as x-ray imaging, labs, surgery centers etc. are becoming more important in contribution to income. Section 11 in the agreement prevents income from ancillaries for five years. As Coastal Carolina will capture most all of my ancillaries for those same five years, I need to make sure I make enough in straight income.

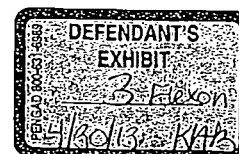
In our current scheme if the practice gets off and running as we both hope it will, and I have good patient volume and insurance reimbursement, Coastal Carolina will reap a substantial return with very little investment because I would rapidly make my own salary. The flip side of this for me is, if the practice doesn't get off to a good start because population growth does not occur as fast as predicted, combined with competition from the four otolaryngologists in Beaufort County, my down side is huge. While I get some support for two years, I then am in debt and can't leave without paying that debt off, and I could be stuck in a practice for three more years which might not be able to generate an income of even \$150,000 or \$200,000. Under this scenario I could lose my house. But even in that situation it is still likely that an otolaryngologist who is only at 50-75% capacity would still generate significant net revenue for the hospital.

The other two problems with leaving Georgia and coming to South Carolina are that first, many private insurance plans for some reason reimburse less, and second, single speciality surgery centers in Georgia don't require a CON as they do in South Carolina.

I have talked to a consultant who is very familiar with both Chatham County and Beaufort County named Jim Ramsey. He feels that 2009/2010 is the year that Jasper County will fully support an otolaryngologist. I have checked the Clemson University data and that year is when Jasper County population is projected to reach 52,360 and Hardeeville 26,813. One final problem I encounter with moving over here is that I leave Chatham County with office rents at \$16-\$19 a square foot to Bluffton where rents are at \$21 per square foot.

The positive side to moving over here is the smaller more manageable size of your hospital and being able to outfit a surgical set up with the latest and best equipment, and getting in on the ground floor of a growing and dynamic area. After talking with Jim Ramsey, he suggested two options; 1) Do a straight three year employment contract which allows me to buy my equipment at the end and continue in the area or leave if the community cannot support an otolaryngologist, or 2) modify the recruiting agreement to recognize our community's unique and tenuous nature of population projections and give me a fail

7/26/2006



CCMC 368

R0798

safe mechanism for the five year period. The first two years would guarantee a support of \$300,000, and the next three years a fail safe might kick in that would not allow my income to fall below \$240,000, not to exceed \$35,000 a year. This would provide downside protection in case for whatever reason population growth slows dramatically and simply isn't enough to support me yet; I am confident it ultimately will come.

The upside for you is that you get into place early a seasoned otolaryngologist with an established reputation in the community who has already demonstrated a record of hard work and productivity. I will send you the volume figures for the Memorial OR; in 2005 I was the most productive otolaryngologist there, and the 10th most productive surgeon overall. At year's end I had done over 300 cases, most of them major cases as in thyroid or cancer, and perhaps 30 at Candler.

Eric, I am being very open with you about my thoughts and concerns with every confidence that we can construct an arrangement that will benefit both of us for years to come. Please let me know what you think. I am available at home in the evenings, which is probably the best time to talk.

Regards,

Phil Flexon

7/26/2006

CCMC 369

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PHYSICIAN EMPLOYMENT AGREEMENT
LPH-460

Ref. No. 12/12/06

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 18 day of Dec 2006, by and between Coastal Carolina Medical Center ("Employer"), and Phillip B. Flexon, M.D., ("Physician").

RECITALS

WHEREAS, Employer is engaged in the business of operating and managing medical practices and other health care services in Jasper County, South Carolina (the "County");

WHEREAS, Physician is a licensed physician specializing in otolaryngology; and

WHEREAS, Employer desires to employ Physician, and Physician desires to be employed by Employer, to render professional physician services, in accordance with the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Physician, intending to become legally bound, agree as follows:

ARTICLE I
ENGAGEMENT

1.1 Employer engages Physician, and Physician accepts such engagement, as a physician primarily at the medical practice office located at 1010 Medical Center Drive, Hardeeville, South Carolina 29927, (the "Practice"), and such other practice sites in Beaufort and Jasper counties as may be reasonably designated by Employer from time to time, and to render professional physician services to patients, in accordance with the terms and conditions of this Agreement.

ARTICLE II
TERM

2.1 Term. The Agreement term initially shall be for five (5) year(s) (the "Agreement Term"), commencing on the Effective Date, defined below, and continuing until September 30, 2011, subject to earlier termination of this Agreement pursuant to Article VI [Termination] herein. The Effective Date means the date that Physician begins providing physician services for Employer pursuant to this Agreement, which date shall be October 1, 2006. The Effective Date is contingent upon Physician having obtained provider numbers for Medicare, Medicaid and insurance companies participating with Employer, but no later than ninety (90) days after the complete execution of this Agreement.

March 15, 2007 vs

ARTICLE III
DUTIES AND SERVICES

3.1 Work Schedule. During the Agreement Term, Physician agrees to devote his/her full professional working time and attention, at a minimum of forty (40) hours per work week at the medical practice office, to the practice of medicine for the benefit of Employer under the terms of this Agreement. Employer shall establish Physician's work schedule and on-call schedule, which schedule shall be inclusive of hours providing patient care at the facilities of Employer, any and all Active Medical Staff obligations, and administrative duties. Physician's Emergency Department unassigned patient call schedule responsibility shall be dictated by the Medical Staff's Rules/Regulations of Coastal Carolina Medical Center.

3.2 Non-Physician Personnel. Employer will provide Physician with a reasonable amount of non-physician personnel including, but not limited to, nurses, technicians, secretarial staff, and other medical and non-medical personnel, to assist Physician in the performance of his/her duties. Physician shall report to, consult with, and use the input of Employer regarding the hiring and firing of medical staff who work within the Practice and the overall operations of the Practice. All final decisions regarding hiring and firing of Practice personnel shall rest with Employer.

3.3 Availability and Duties. Physician shall be responsible for such duties as assigned to him or her from time to time by Employer. Physician shall make himself available to provide otolaryngology services to, and treat patients of Employer, whether such patients are outpatients or inpatients. Physician hereby agrees to devote his/her full working time and attention, together with Physician's best endeavors and skill, for the interest, benefit and best advantage of Employer and shall provide services on behalf of Employer in a manner that shall maintain the productivity of the Practice. Physician shall provide all professional medical services in accordance with



the policies and procedures established by Employer, and the appropriate standards of care of the community. Physician shall have the authority to refuse to treat a specific patient or to dismiss any particular patient if the patient has been abusive, disruptive or threatening or has refused to comply with Physician's orders, or for other reasons of a similar nature. In the case of any such dismissal, Physician agrees that appropriate notice by certified letter shall be sent to such patient and emergency care shall be provided by Physician to such patient for an appropriate period after such dismissal. Notwithstanding the foregoing, Physician agrees that he will not refuse to treat a patient and will not discriminate with respect to quality of care of a patient or otherwise on the basis of such patient's race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, disability or medical condition, or as otherwise provided by law. Except as otherwise stated herein, Physician specifically understands that Employer shall have the final authority over the acceptance or refusal of any person for whom professional services may be rendered and the amount of fees to be charged to such patients.

3.4 Patient Care. Nothing in the Agreement shall be interpreted to dictate Physician's practice of medicine, delivery of direct patient care or independent judgment in the practice of medicine. Physician shall have complete control over the diagnosis and treatment of patients and neither Employer nor any employee of Employer shall exercise any direct supervision or control over the individual treatment of the patient. Physician agrees that Physician's treatment and diagnosis of patients will be consistent with any rules and regulations promulgated by Employer dealing with the general treatment of patients.

3.5 Performance Standards. In performing services under this Agreement, Physician shall comply with the following Performance Standards:

- 3.5.1 promote cooperation and teamwork among other physicians and other employees and personnel of Employer;
- 3.5.2 develop standardization of otolaryngology practices and procedures;
- 3.5.3 attend all required management meetings;
- 3.5.4 assist Employer as request in the efficient and effective day to day management of the Practice;
- 3.5.5 respond to patient and referring physician needs and concerns regarding patient diagnosis and treatment as expeditiously as reasonably possible;
- 3.5.6 fully support Employer's overall quality improvement and quality assurance initiatives;
- 3.5.7 adhere to all reasonable Policies and Procedures adopted by Employer;
- 3.5.8 adhere to such other performance standards as established by Employer from time to time.

3.6 Location(s) for Services. Physician shall perform his/her duties at the Practice, those hospital facilities at which Physician maintains Medical Staff privileges and such other practice locations of Employer in Beaufort and Jasper counties as may be reasonably designated by Employer from time to time. Employer shall have reasonable discretion to consolidate and relocate practices operated by Employer, including the Practice.

3.7 Professional Fees/Outside Activities. Physician agrees not to engage in any medical professional business activity (whether or not such business activity is pursued for gain, profit or other pecuniary advantage), without the prior written consent of Employer, other than (i) rendering services on behalf of Employer pursuant to this Agreement, (ii) maintaining an ownership interest of less than five percent (5%) of the issued and outstanding stock of a publicly-traded corporation, or (iii) teaching, writing, lecturing, or providing expert witness testimony on otolaryngology topics; provided such activities shall not interfere or conflict with the performance of Physician's duties or provision of services under this Agreement. Physician shall not enter into any other physician employment contract or otherwise engage in the practice of medicine other than for the benefit of Employer. All remuneration and accounts receivable arising from or related to Physician's provision of any medical services pursuant to this Agreement are the property of Employer, and Physician agrees to provide to Employer any such remuneration immediately after it is received by Physician. Physician agrees to take all reasonable actions requested by Employer to assist in the collection of accounts receivable for services provided by Physician. Unless otherwise agreed, all fees or remuneration arising from or related to teaching assignments, lectures, speeches, publications, or expert witness testimony by Physician on or about matters related to the practice of otolaryngology shall also be considered compensation or professional service revenues to which Employer is entitled hereunder.

3.8 Workplace Rules. Physician shall observe and comply with the rules, regulations, policies and procedures established by Employer with respect to the performance of Physician's duties. In the event of any inconsistency between such rules, regulations, policies and procedures and this Agreement, the provisions of this Agreement shall prevail.

3.9 Managed Care. Physician, at all times during the Agreement Term, shall participate in all managed care arrangements made available by or through Employer. Employer shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations and third party payors; however, Employer agrees to consult and obtain input from Physician prior to entering Agreements. Upon request of Employer, Physician shall execute such managed care agreements, applications and other documents as reasonably required. Physician shall not otherwise contract with any managed care organization or third party payor. In connection with such managed care arrangements, Employer shall negotiate such managed care arrangements with the proviso that Physician shall not be individually responsible to the managed care company for any withhold and that no hold harmless provision shall be applicable or enforceable on Physician. Employer

shall use reasonable efforts to ensure that any capitation rates, discounted fees or other risk based arrangements are consistent and competitive with those rates as accepted by other physicians practicing in the same specialty in the County.

3.10 Other Services. During the Agreement Term, Physician and Employer may mutually agree to Physician rendering additional services. Such duties may include service on hospital staff committees, peer review organizations, or other committees of Employer, and serving on national and regional committees of Employer's Affiliates (which term as used in this Agreement shall include any person, corporation, partnership, general partner or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Employer); provided that such duties shall not interfere with the professional services provided by Physician on behalf of Employer pursuant to this Agreement.

3.11 Additional Physicians. Employer and Physician agree as an essential term of this Agreement that it is the intent of the parties to develop a comprehensive medical practice. It is further understood that Employer intends to negotiate and enter into employment relationships with additional qualified physicians. Physician agrees to use his/her best efforts to forge and establish an ongoing relationship and team approach with such additional physicians for the furnishing of physician and related services to patients.

3.12 Obtaining Staff Privileges. As a condition precedent to this Agreement, the Physician shall maintain active medical staff privileges at the Hospital. This Agreement shall not be effective until the date that the Physician obtains such privileges. If the Physician has not obtained such privileges on or before October 1, 2006, this Agreement shall automatically terminate. Nothing contained herein is intended to or shall be construed to operate as an agreement or undertaking by the Hospital or the Employer to grant or confer medical staff privileges upon the Physician. For purposes of this Agreement, the date upon which the Physician obtains provisional or active medical staff privileges at the Hospital and commences his or her employment hereunder shall be referred to herein as the "Effective Date."

3.13 Professional Courtesy. Physician agrees that no patients of the medical practice will be treated and have their charges written off a Professional Courtesy. In an event a patient has financial reasons impacting their ability to pay, Physician will refer the patient to the Practice Manager to be handled consistent with Employer's procedures.

ARTICLE IV COMPENSATION

4.1 Compensation. During the Agreement Term, Employer shall pay Physician compensation as set forth in Exhibit I attached hereto (the "Compensation").

4.2 Leave. Physician shall be entitled to twenty-five (25) paid days off annually according to the terms of the policy of Employer, which shall include vacation, legal holidays, personal days, and sick days. The maximum amount of time to be used, at any point in time, is ten (10) consecutive days. In addition, Physician will be reimbursed up to \$5,000 per contract year plus no more than five (5) CME days per contract year in connection with Physician attending medical conventions and/or continuing medical education seminars, including travel, lodging and meals. Physician's leave will be earned and accrued on a monthly basis consistent with other Physician employees of Employer. All leave shall be pre-approved by Employer. Leave is to be used during the year it is awarded and cannot be carried over to the following year. Leave may not be cashed in at any time to include termination of employment.

4.3 Benefits. Employer shall provide Physician with medical benefits for Physician and Physician's beneficiaries that are comparable to the coverage available, from time to time, to the other employees of Employer. Employer will provide life, disability, and dental benefits for Physician on similar terms as the other employees of Employer. Employer's life insurance company may require Physician to satisfactorily pass a physical examination in order to issue a life insurance policy to Physician. The employee portion of the costs of all such benefits are deemed Physician Benefits as hereafter defined. In addition, Employer may elect to obtain key-man life insurance coverage on Physician, and Physician hereby agrees to submit to any required physical therefor. Physician shall be entitled to participate in Employer's retirement and other benefit plans as offered from time to time at a level commensurate with the retirement benefits offered to other employees of Employer.

4.4 Income and Employment Taxes. Physician shall be an employee of Employer for all purposes. Employer shall withhold amounts from Physician's compensation in accordance with the requirements of applicable law for federal income tax, FICA, FUTA, and amounts from Physician's compensation in accordance with the requirements of applicable law for federal employment or payroll tax purposes. It shall be Physician's responsibility to report and pay all federal taxes arising from Physician's receipt of compensation hereunder.

ARTICLE V INSURANCE

5.1 Medical Liability Insurance. As part of Physician Expenses, as defined in Exhibit I, Employer agrees to directly pay the premium for Physician's professional medical liability insurance during the Agreement Term, with minimum coverage of One Million

Dollars (\$1,000,000.00) per occurrence with a yearly maximum of Three Million Dollars (\$3,000,000.00) in the aggregate (occurrence type policy). Such professional medical liability insurance coverage may be coverage established through an insurance affiliate of Employer. Physician shall maintain on-going coverage or purchase tail insurance covering medical malpractice claims made following the Effective Date that relates to services rendered by Physician to patients prior to the Effective Date and Employer shall have no responsibility therefore.

ARTICLE VI TERMINATION

6.1 **Termination by Employer "For Cause".** The Agreement Term (including any Renewal Term) may be terminated prior to its expiration, at the election of Employer, under any of the following circumstances:

6.1.1 Upon written notice to Physician, if Physician is in a material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation to the reasonable satisfaction of Employer within thirty (30) days after notice in writing by Employer to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or

6.1.2 Immediately upon written notice by Employer to Physician (or Physician's estate) for any of the following reasons:

- (a) Physician's death or permanent disability. The term "permanent disability" shall be defined as the failure of Physician to perform his/her duties and responsibilities hereunder for a total of one hundred twenty (120) days or more, regardless of whether such days are consecutive, during any twelve consecutive months;
- (b) Physician's license to practice medicine is suspended, revoked or canceled or a restriction or limitation by any governmental authority having jurisdiction over Physician is placed or imposed upon him so that he cannot perform the professional services for which he was engaged hereunder;
- (c) Physician is terminated or suspended from Medicare, Medicaid or any successor program;
- (d) Physician's failure to maintain unrestricted staff membership or privileges on the medical staff of Hospital;
- (e) Physician is convicted of a felony or a crime of moral turpitude;
- (f) Physician conducts himself in a manner in which Employer determines to be unethical or fraudulent, is detrimental to patient care, or impairs the reputation or operations of Employer;
- (g) Upon repeated failure by Physician to meet utilization, performance, efficiency, or quality standards established by Employer;
- (h) Upon repeated failure by Physician to conform and comply with Employer's professional requirements concerning maintenance of medical records;
- (i) Upon cancellation of Physician's coverage, or Physician's uninsurability, under the terms and conditions of the professional liability insurance provided; or
- (j) Upon the use of alcohol or a controlled substance, which materially impairs the ability of Physician to effectively perform Physician's duties and obligations under this Agreement.

6.2 **Termination by Physician "For Cause".** The Agreement Term (including any renewal Term) may be terminated prior to its expiration, at the election of Physician, under any of the following circumstances:

6.2.1 Upon written notice to Employer, if Employer is in material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation within thirty (30) days after notice in writing by Physician to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or

6.2.2 Immediately upon written notice by Physician to Employer for any of the following reasons:

- (i) bankruptcy or receivership of Employer; or
- (ii) revocation or suspension of Employer from the Medicare or Medicaid Programs or any successor program.

6.3 Termination "Without Cause". Employer or Physician may terminate this Agreement hereunder, without cause, at any time upon ninety (90) days prior written notice.

6.4 Obligations After Termination. Upon termination of the Agreement for any reason, Physician's Compensation shall immediately cease and Physician (or Physician's estate) shall be entitled to receive only those amounts earned or accrued on services provided by Physician up to the date of termination. Physician's rights to any on-going or continuing benefits shall be determined in accordance with the terms of the applicable benefit plan of Employer. Termination of the Agreement shall not release or discharge Employer from any obligation, debt or liability incurred prior to the date of termination of the Agreement.

6.5 Other Requirements Upon Termination. Upon termination of this Agreement for any reason: (i) the Physician's participation in any of Employer's fringe benefit plans shall immediately cease (subject to any post-termination benefits, if any, expressly stated in the then-current plans for such benefits); and (ii) the provisions of Articles VIII, IX, and X hereof shall remain in full force and effect, except as otherwise specifically provided herein.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Physician represents and warrants at all times during the Agreement Term (including any renewal term) that:

- (a) Physician is duly licensed and registered and in good standing under the laws of the State of South Carolina to engage in the practice of otolaryngology, and that said license and registration have not been suspended, revoked or restricted in any manner.
- (b) Physician is qualified for membership in good standing on the medical staff of a local acute care facility.
- (c) Physician has current controlled substances registrations issued by the State of South Carolina United States Drug Enforcement Administration, which registrations have not been surrendered, suspended, revoked, expired or restricted in any manner.
- (d) Physician has disclosed and will disclose to Employer the following matters, whether occurring at any time during the past five (5) years prior to the date of this Agreement or at any time during the Agreement Term:
 - (i) any actual or threatened malpractice suit, any actual or constructive known claim (whether or not filed in court), settlement, settlement allocation, judgment, verdict or decree against Physician;
 - (ii) any actual or threatened disciplinary, peer review or professional review investigation, proceeding or action instituted against Physician by any licensure board, hospital, medical school, health care facility or entity, professional society or association, third party payor, peer review or professional review committee or body, or governmental agency;
 - (iii) any criminal complaint, indictment or criminal proceeding in which Physician is named as a defendant;
 - (iv) any actual or threatened investigation or proceeding, whether administrative, civil or criminal, relating to an allegation against Physician of filing false health care claims, violating anti-kickback laws, violating fee-splitting laws, or engaging in billing improprieties;
 - (v) any organic or mental illness or condition that impairs or is likely to impair Physician's ability to practice medicine;
 - (vi) any dependency on, or habitual use or abuse of, alcohol or controlled substances, or any participation in any alcohol or controlled substance detoxification, treatment, recovery, rehabilitation, counseling, screening or monitoring program;

(vii) any actual or threatened allegation, or any investigation or proceeding based on any allegation, against Physician for violating professional ethics or standards, or engaging in illegal, immoral or other misconduct (of any nature or degree), relating to the practice of medicine; and

(viii) any denial or withdrawal of an application in any state for licensure as a physician, for medical staff privileges at any hospital or other health care entity, for board certification or recertification, for state or federal controlled substances registration, or for malpractice insurance.

- (e) Physician is board certified in Otolaryngology by the *American Board of Otolaryngology*.
- (f) Physician shall at all times render services to patients in a competent, professional and ethical manner, in accordance with prevailing standards of medical practice in the relevant community, perform professional and supervisory services in accordance with recognized standards of the medical profession, and act in a manner consistent with the Principles of Medical Ethics of the American Medical Association, and any and all applicable statutes, regulations, rules, orders and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction.
- (g) In connection with the provision of professional services to patients of Employer, Physician shall use the equipment, instruments, pharmaceuticals and supplies furnished by or on behalf of Employer for the purposes for which they are intended and in a manner consistent with sound medical practice.
- (h) Physician shall participate in the Medicare and Medicaid Programs, workers compensation, other federal and state reimbursement programs, and the payment plan of any commercial insurer, health maintenance organization, preferred provider organization, accountable health plan, or other health benefit programs.
- (i) Physician shall keep and maintain (or cause to be kept and maintained) appropriate records, consistent with prevailing standards of medical practice in Physician's relevant community, relating to all professional services rendered by him under this Agreement and shall prepare and attend to, in connection with such services, all reports, claims, and correspondence necessary or appropriate in the circumstances, as determined minimally by Employer and Physician, all of which records, reports, claims, and correspondence shall belong to Employer.
- (j) Physician covenants not to use, or permit any other personnel under the supervision of Physician to use, any part of the premises of Employer for any purpose other than the performance of services hereunder.
- (k) Physician has not at any time been excluded from participation in the Medicare and/or Medicaid programs, and Physician shall immediately notify Employer in the event Physician receives any notice whatsoever of a possible exclusion action being brought against Physician.

ARTICLE VIII DISCLOSURE OF INFORMATION

8.1 Custody of Medical Records. Physician understands and agrees that during the Agreement Term and thereafter all medical records, case records, case histories, x-ray files, or personal or regular files concerning patients of Employer or any of Employer's Affiliates, or patients consulted, interviewed or treated and cared for by Physician, shall belong to and remain the property of Employer. Upon termination of this Agreement Physician shall not be entitled to keep original records or preserve records of Employer or any of Employer's Affiliates as to any patient unless the patient shall specifically request a different disposition of his or her records, or copies thereof, and in no event shall Physician be entitled to the records, or copies thereof, of patients not treated by Physician. Employer agrees at all times, both during and after termination of this Agreement, to maintain and preserve such records in a manner consistent and in compliance with all applicable laws and regulations. If Employer provides Physician with original patient records pursuant to the terms hereof, Physician shall retain all of such records and, upon Employer's request, shall make such originals available to Employer. If any medical malpractice or other claim, audit or business need of Physician arises and involves records which are retained by Employer pursuant to the terms hereof, Employer agrees to make such original medical records available to Physician, or Physician's designated counsel or representative for inspection and copying, during regular business hours, in accordance with applicable law.

8.2 Disclosure of Information. Physician recognizes and acknowledges that all records, files, reports, protocols, policies, manuals, databases, processes, procedures, computer systems, materials and other documents pertaining to services rendered by Physician hereunder, or to the operations of Employer, belong to and shall remain the property of Employer and constitute proprietary information and trade secrets of Employer. Physician recognizes and acknowledges that the terms of this Agreement, as well as Employer's proprietary information and trade secrets as they may exist from time to time, are valuable, special, and unique assets of Employer's business. Physician shall not, during or after the Agreement Term, disclose such proprietary information of Employer or trade secrets of

Employer to any other firm, person, corporation, association or other entity for any reason or purpose whatsoever, or use such information for Physician's own benefit, without the prior written consent of Employer, unless otherwise required to disclose such information in accordance with appropriate judicial process.

8.3 Injunction. Physician acknowledges that the confidentiality restrictions contained in this Article VIII are a reasonable and necessary protection of the legitimate trade secrets and business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article VIII, including monetary damages and relief.

ARTICLE IX COVENANT NOT TO COMPETE

9.1 Restrictive Covenant. With the exception of the services and duties that Physician performs for Employer or on Employer's behalf pursuant to the terms of this Agreement, Physician agrees that during the Agreement Term and for a period of two (2) year(s) after the termination of the Agreement Term for any reason whatsoever, Physician shall not:

9.1.1 Within a fifty (50) mile radius of the Practice, as determined at the time of termination, (the "Restricted Territory") engage in any medical practice, or engage in any business or perform any service, directly or indirectly, in competition with the medical services of Employer or any of Employer's Affiliates. Notwithstanding the foregoing, the restrictive covenant shall not prohibit Physician from engaging in the private practice of medicine as an independent Physician including performing ancillary services, but only those provided in Physician's practice on behalf of Employer on or before ~~October 1, 2006~~ ^{March 15, 2007}. Further, Physician will not, without Hospital's prior written consent (which it may grant, withhold or condition in its sole discretion), directly or indirectly have any financial interest in any hospital, surgery center, imaging center, MRI, outpatient therapy center, medical office, clinic or other facility that competes with Employer, within the Restricted Territory. For purposes of this Agreement, a "financial interest" includes, without limitation, any direct or indirect financial relationship, whether as an employee, independent contractor, principal, agent, joint venture partner, security holder (except for ownership of securities traded on a recognized stock exchange) creditor, landlord, consultant, officer, director or otherwise. Nothing contained in this Section shall restrict Physician from establishing staff privileges at, referring any service to, or treating any patient at any hospital of Physician's choice.

9.1.2 Solicit, recruit or hire any person who is or was an employee of Employer or any of Employer's Affiliates, whether for Physician's benefit or for others with whom Physician may become associated unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.2 Within the Restricted Territory, Physician further agrees that for a period of time equal to two (2) year(s) after termination of the Agreement Term for any reason whatsoever (including expiration), Physician shall not within the Restricted Territory:

9.2.1 Solicit, serve or accept any business from patients, insurance companies, managed care plans, employers or other customers of the business conducted by Employer, or its affiliates, for services competitive with those of Employer and the Practice or request, induce or advise patients, insurance companies, managed care plans, employers or other customers of the business as conducted by Employer to withdraw, curtail or cancel their business with Employer or assist, induce, help or join any other person or company in doing any of the above activities unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1; or

9.2.2 Solicit the services of any employee, consultant, or provider which render services to, or for the benefit of, Employer or any of Employer's Affiliates for Physician's use or benefit or for any other person's or company's use or benefit, or induce or help to induce any employee, consultant or provider that renders services to, or for the benefit of, Employer or any of Employer's Affiliates to leave for other employment, without Employer's prior written consent unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.3 No Running of Covenant During Breach. With respect to any restrictive covenant which applies after the termination of the Agreement Term, if Physician violates such restrictive covenant and Employer brings legal action for injunctive or other relief, Employer shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such restrictive covenant. Accordingly, after the termination of the Agreement Term for any reason, for any time period that Physician is in violation of the restrictive covenants set forth in this Article IX, such time period shall not be included in calculating any such restrictive covenant time period described in this Article IX.

9.4 Duration and Geographical Limits. If it shall be determined that the duration or geographical limit of any restriction contained in this Article IX is unenforceable, it is the intention of the parties that such restrictive covenant set forth herein shall not thereby be terminated or void but shall be deemed amended to the extent required to render it valid and enforceable to the greatest extent permissible by the applicable law and public policy, such amendment shall apply only with respect to the operation of this Article IX.

9.5 Injunction. Physician acknowledges that the restrictions contained in this Article IX are a reasonable and necessary protection of the legitimate business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article IX.

ARTICLE X FEES

10.1 Fees for Services. Except as otherwise may be provided in Section 3.7, all fees, compensation, monies, and other things of value received or realized as a result of the rendering of medical services by Physician, pursuant to this Agreement, shall belong to and be paid and delivered to Employer. Remuneration received by Physician from business activities unrelated to the practice of medicine, which do not interfere or conflict with the terms of this Agreement, or with the applicable provisions of this Agreement, may be retained by Physician, so long as such activity is approved in advance by Employer, and is not performed in the capacity of serving as an employee of Employer.

10.2 Setting of Fees. Employer shall have exclusive authority to determine the fees, or a procedure for establishing the fees, to be charged patients, even though such patients may be treated by Physician in the course of Physician's employment by Employer.

10.3 Power of Attorney. Physician does hereby appoint Employer as Physician's attorney-in-fact to execute, deliver or endorse checks, applications for payment, insurance claim forms or other instruments required or convenient, as determined by Employer in its sole discretion, to fully collect, secure or realize all sums lawfully due to Employer, for services rendered by Physician under this Agreement during the Agreement Term. The power of attorney is coupled with an interest, is irrevocable and shall survive expiration or termination of this Agreement.

10.4 Billing and Collection. Physician agrees that, during the Agreement Term, Physician shall not bill to or collect from any patient or third party payor any amount for services rendered hereunder. Physician hereby irrevocably assigns and grants to Employer the right to bill and collect from patients or third party payors for all services rendered by Physician hereunder, regardless of the location where any such services may be rendered by Physician. Physician agrees to execute any and all documents deemed necessary or desirable by Employer to carry out the provision of this Section. Unless otherwise agreed by Physician, all billing and collection activities shall be conducted as part of the regular business operations of the Practice. Such procedures shall include, but not be limited to, sending bills, filing insurance claims, and making phone calls.

10.5 Accounting Reports and Review. Employer shall have available for Physician lists of fees charged for particular services for particular payors and shall update these lists on a regular basis as fees and payors change. Employer also shall provide to Physician, on a monthly basis, production reports which list the billings attributable to services provided by Physician and in the Practice, the collections, in connection with the services provided by Physician and the Practice, and accounts receivable in connection with provision of said services, such reports to be provided within thirty (30) days after the applicable month to which such reports relate.

ARTICLE XI LIMITATIONS OF AUTHORITY

11.1 Physician agrees not to enter into any transactions on Employer's behalf without the express written consent of Employer, including, but not limited to, the following actions:

- (i) Pledge the credit of Employer or any of its other employees;
- (ii) Bind Employer under any contract, agreement, note, mortgage or other agreement;
- (iii) Bind, release, or discharge any debt due Employer; or
- (iv) Sell, mortgage, transfer or otherwise dispose of any assets of Employer.

11.2 Physician shall hold Employer harmless from any loss attributable to a violation of this covenant. Notwithstanding anything to the contrary in this Article XI, Physician shall advise and assist Employer in securing and retaining contracts in the name and for the account of Employer with such individuals or entities necessary for the proper and efficient functioning of Employer.

**ARTICLE XII
NOTICE**

12.1 All notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be effective upon delivery if delivered to the addressee in person, effective three (3) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, or effective the next business day if delivered by overnight courier with charges prepaid, as follows:

If to Employer: 103 Powell Court, Suite 200
Brentwood, TN 37027
Attn: Vice President, Physician Services

With copies to: 1000 Medical Center Dr. 103 Powell Court, Suite 200
Hardeeville, SC 29927 Brentwood, TN 37027
Attn: CEO Attn: General Counsel

If to Physician: 2712 Levy Rd
Hardeeville, SC 29927

or to such other address as either party shall have designated for notices to be given to him or it in accordance with this Article.

**ARTICLE XIII
MISCELLANEOUS**

13.1 Recitals. The recitals are true and correct and are incorporated herein in their entirety.

13.2 Severability. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision of this Agreement shall be held invalid or unenforceable under any particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

13.3 Assignment. In addition the contract shall affirm that no transfer, assignment or other modification affecting the terms or conditions of the contract will be effected unless extenuating circumstances are shown to exist, as determined by the South Carolina Department of Public Health, and approved by the U.S. Attorney General in accordance with applicable federal rules and regulations.

13.4 Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the courts, state or federal, within the State of South Carolina, and the parties expressly waive the right to bring any legal action or claims in any other courts. The parties hereto hereby consent to venue in any state or federal court within the State of South Carolina having jurisdiction over the County for all purposes in connection with any action or proceeding commenced between the parties hereto in connection with or arising from this Agreement.

13.5 Arbitration. Except as to the provisions contained in Articles VII and IX, the exclusive jurisdiction of which shall rest with a court of competent jurisdiction in the state where the hospital is located any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in the County, in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by the AHLA.

13.6 Waiver. Any waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision hereof and shall not be effective at all unless in writing. A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by either party, and such waiving party shall be free to reinstate any such term or condition, with or without notice to the other party.

13.7 Entire Agreement/Amendment. This Agreement contains the entire agreement between the parties hereto. No change, addition or amendment shall be made except by written agreement executed by all of the parties hereto.

13.8 Survival. The provisions of this Agreement, including but not limited to Articles VIII and IX, shall survive the termination of Physician's relationship with Employer and the assignment of this Agreement by Employer to any successor or assign.

13.9 Confidentiality. Except as otherwise required by law, Physician hereby agrees to hold in the strictest confidence all of the terms and conditions set forth herein; provided, however, Physician may disclose the terms hereof to his/her attorneys, accountants and other financial and legal advisors as reasonably necessary.

13.10 Expenses. Each party to this Agreement shall pay its own costs and expenses in connection with the transaction contemplated hereby.

13.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.12 Binding Effect. This Agreement shall not become effective or legally binding upon either party until signed by both Employer and Physician, and approved by Employer's Division President and Legal Counsel pursuant to a Physician Employment Certificate form which is separate here from.

13.13 Corporate Integrity Agreement. Employee represents and warrants that as of the date of this agreement: (i) it is not excluded, debarred or otherwise ineligible to participate in Medicare, Medicaid or any other federal or state healthcare programs or in any federal or state procurement or non-procurement programs; or (ii) has not been convicted of a criminal offense related to the provision of federal health care items or services, that could lead to debarment or exclusion.

Further, Employee agrees to immediately notify the other party to the contract in the event the foregoing representation and warranty is no longer completely accurate. Employee acknowledges and agrees this is a material term of the agreement and any breach or non fulfillment of same will entitle the other party to immediately terminate this agreement.

13.14 JCAHO. Physician shall perform all services hereunder in accordance with any and all regulatory and accreditation standards applicable to Hospitals and the relevant service, including without limitation those requirements imposed by the JCAHO, the Medicare/Medicaid conditions of participation and any amendments thereto.

13.15 Non-Discrimination. Facility does not discriminate against any person on the basis of race, color, national origin, disability or age in admission, treatment, program participation, services, activities or employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS:

PHYSICIAN:

Phillip Flexon, M.D.

Social Security Number: 246-74-7776

EMPLOYER:

By: W. Vail Willis
W. Vail Willis
Vice President, Physician Services

REVIEWED AND APPROVED:

Chief Executive Officer

Division President

APPROVED AS TO FORM:

AK 12/22/04
Legal Counsel

8/28/2006

EXHIBIT I

PHYSICIAN COMPENSATION

I. The following definitions shall apply in the calculation of Physician Compensation:

- A. *Net Practice Revenues* - is defined as all cash collected (minus insurance and patient refunds) for patient services provided after the Effective Date in the Practice location(s) that are generated on behalf of the Practice as a result of professional medical services personally furnished to patients by Physician and other fees or income (as meets the Medicare criteria for "incident to") generated by non-physician employees or other Practice personnel under Physician's direct supervision and control, whether such services are rendered in an inpatient or outpatient setting and whether services are rendered to HMO, PPO, Medicare, Medicaid or other patients, including, without limitation, Capitation Payments, and revenues from testing, clinical trials and other drug research studies. Provided, however, that Net Practice Revenues shall not include cash collected for the non-professional or technical fee component for any ancillary services (e.g., laboratory, radiology, diagnostic testing or outpatient surgery) or inpatient or outpatient hospital services.
- B. *Practice Operating Expenses* - is defined as all direct and indirect expenses incurred subsequent to the date hereof in the day-to-day management and operation of the Practice, including, without limitation:
1. salaries, bonuses, benefits, payroll taxes, and other direct costs of all direct Practice employees (including Physician Compensation) and other Practice personnel;
 2. allocable rent for any medical offices, furniture and equipment used by the Practice, utility expense, management information systems, office and medical supplies;
 3. personal property and intangible taxes assessed against assets used by the Practice;
 4. utility expenses related to the medical offices used solely by the Practice, including cellular phone and pager expenses;
 5. direct office and medical supplies;
 6. premises and general liability insurance for Employer related to the Practice and;
 7. direct repairs and maintenance of the medical offices used in the Practice;
 8. professional liability insurance of employee;
 9. Physician's medical licensure fees, medical staff memberships, board certification fees and costs of membership in professional associations; and
 10. Costs of continuing medical education of Physician.
 11. Costs of contract services, including allocation for hospital services and practice management.

- C. *EBDITA - [Earnings Before Depreciation, Interest, Taxes and Amortization]* - Net Practice Revenues less Practice Operating Expenses including Physician Compensation equals EBDITA.

II. *Bonus:*

- A. *Productivity Bonus* - Physician will be entitled to an annual productivity bonus equal to 95% of positive EBDITA. In the event the contract is terminated for any reason, Employer will calculate Physician's Productivity Bonus based on year-to-date EBDITA as of the last day of Employment.
- B. *Bonus Draws* - During the term of the Agreement, on a Quarterly basis, Physician will be eligible to take a "Bonus Draw" against Seventy-Five percent (75%) of year-to-date earned Annual Bonus (any prior "Bonus Draws" will be included as a year-to-date expense) less applicable benefits and payroll taxes. At the end of each contract year, reconciliation will occur based on actual EBDITA, excluding any "Bonus Draws". In the event Physician has earned a bonus greater than Employer has paid during the year (in the form of a "Bonus Draw"), Employer will pay Physician within sixty (60) days from the end of the contract year less applicable benefits and payroll taxes. In the event Employer has paid Physician during the year (in the form of a "Bonus Draw") greater than the bonus actually earned (i.e., Excess Payment) based on the year-end EBDITA, Physician will reimburse Employer the Excess Payment within sixty (60) days of the contract year. In the event payment is not made by Physician or Employer the parties agree to execute a Promissory Note with an interest rate at Prime Plus 2%.

- III. *Base Compensation, (Year 1 and Year 2).* During Year 1 and Year 2 ^{March 15, 2007} ~~October 1, 2006~~ until ^{March 14, 2008} ~~September 30, 2008~~, Employer will provide Physician a base compensation equal to Twenty Five Thousand Dollars (\$25,000) per month. Physician compensation will be paid consistent with the timeframe of other Physician employees of Employer.

IV. *Community Obligation:*

- A. At the end of Year 2, Physician's financial records shall be prepared by a representative of Employer to determine Physician's cumulative Year-End EBDITA for both Year 1 and Year 2. Physician's re-payment of any negative EBDITA shall be due and payable immediately unless Physician requests a deferred payment plan. If the payment plan is to extend longer than six (6) months, Physician's obligations shall be evidenced by a promissory note from Physician to Employer. Such note shall bear interest at the fixed rate of prime plus two percent (2%), with interest accruing from the end of Year 2. Physician shall cooperate fully with Employer's efforts to obtain repayment.
- B. Notwithstanding the provisions of Paragraph A, Section III, of this Exhibit, in recognition of the fact that Physician is initiating a start-up, initial practice and to induce Physician to remain in the Community beyond Year 2, Employer agrees that it will forgive and cancel one thirty-sixth (1/36th) of the Physician's debt to Employer for each full calendar month Physician remains in the full-time practice of medicine in Hardeeville, South Carolina, as either an employed physician or independent physician, after the end of Year 2, and (a) maintains Active Medical Staff Membership and privileges in good standing at Coastal Carolina Medical Center, and (b) remains available for unassigned emergency room coverage for patients of Coastal Carolina Medical Center's emergency room.

V. *Physician Compensation. (Years 3-5):*

A. *Base Compensation.* Physician shall receive as base compensation, draw payable consistent with the timeframe of other Physician employees of Employer in the amount of (\$75,000) per quarter (i.e. \$25,000/month), subject to quarterly adjustments as more particularly described below, as well as the year-end reconciliation described herein. The adjustment shall be performed quarterly based on year-to-date (YTD) EBDITA.

Beginning the pay period following completion of the previous quarter, base compensation draw shall be reduced one dollar-for every dollar that year-to-date EBDITA was below the Target Amount.

Target Amount - As used herein, the Target Amount for each Quarter Year-To-Date shall be as follows:

	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
QTR 1	(\$6,250)	(\$6,250)	(\$6,250)
QTR 2	(\$12,500)	(\$12,500)	(\$12,500)
QTR 3	(\$18,750)	(\$18,750)	(\$18,750)
QTR 4	(\$25,000)	(\$25,000)	(\$25,000)

Example: QTR 1 YTD EBDITA = (\$500)
QTR 1 Target Amount = \$0

In this example, the Target Amount was missed by \$500. The adjustment, beginning the first pay period in Quarter 2 would be a reduction in Quarterly compensation of \$500, for a total Quarterly compensation beginning Quarter 2 of \$74,500. At the end of the second and third Quarters, the same calculation would be performed based on YTD EBDITA and the Target Amount for that Quarter.

At the end of the fourth Quarter, a reconciliation will occur based on actual YTD EBDITA for the year, and the calculation described above will be performed using a Target Amount of (\$25,000) for Year 3, (\$25,000) for Year 4, and (\$25,000) for Year 5. The parties shall use their best efforts to complete the reconciliation within thirty (30) days of the end of the contract year. In no event shall the Employer incur an EBDITA loss for Physician's practice. Any payment due either to Physician or to Employer pursuant to the reconciliation shall be made within thirty (30) days after the reconciliation is completed. In the event payment is not made within 30 days, the payment balance will immediately begin accruing interest at the prime rate (effective from the last day of the reconciliation period) plus 2%. It is agreed that each contract year will be treated as separate years with respect to the Loss Limit Allowance and any repayments will not be carried over to the next contract year.

Physician agrees that in the event the Agreement is terminated and his/her contract YTD EBDITA is below the Loss Limit Allowance, Physician will repay the difference to Employer within sixty (60) days of their last day of Employment.

VI. *Force Majeure.* Either party shall be excused for failures and delays in performance of its respective obligation under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion, or inability due to any of the aforementioned causes to obtain necessary labor, materials, or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other

party, provided that failure to give such notice shall not in any way limit the operation of this provision.

PHYSICIAN:

P. Flexon
Phillip B. Flexon, M.D.

EMPLOYER:

S. Van der Willig
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

[Signature]
Division President

APPROVED AS TO FORM:

[Signature] 12/22/00
Legal Counsel

8/28/2006

EXHIBIT 2
MARKETING EXPENSE REIMBURSEMENT

This Addendum is attached to, made a part of and executed simultaneously with that certain Physician Employment Agreement between the undersigned, dated the 18 day Dec, 2006.

1. Hospital shall pay for the expenses of (i) placing local newspaper advertisements announcing the Physician's new business location, (ii) printing and mailing announcement cards, and (iii) placing listings in local telephone directories. Such amounts shall be limited to a total maximum of \$10,000.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community for five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement, Physician shall immediately, upon demand, pay to Employer the unamortized amount of the total sums reimbursed to Physician pursuant to this Exhibit II. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums paid reimbursed hereunder by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term (i.e. five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement). The denominator of said fraction shall be equal to sixty (60) months.

PHYSICIAN:

Phillip B. Flexon, M.D.

EMPLOYER:

Vice President, Physician Services

REVIEWED AND APPROVED:

Chief Executive Officer

Division President

APPROVED AS TO FORM:

Legal Counsel

R0815

10/17/2006

EXHIBIT 3
SIGN ON BONUS

1. In order to induce Physician to relocate his place of employment to Hardeeville, South Carolina, Hospital shall pay Physician the sum of \$25,000. Sign on Bonus shall be paid fifty percent upon Employment Agreement being fully executed and fifty percent when Physician starts employment.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community for five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement, Physician shall immediately, upon demand, pay to Employer the unamortized amount of the total sums reimbursed to Physician pursuant to this Exhibit II. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums paid reimbursed hereunder by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term (i.e. five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement). The denominator of said fraction shall be equal to sixty (60) months.

PHYSICIAN:

P. B. Flexon, M.D.
Phillip B. Flexon, M.D.

EMPLOYER:

W. V. Williams
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

[Signature]
Division President

APPROVED AS TO FORM:

[Signature]
Legal Counsel

R0816

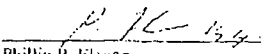
10.17.2006

EXHIBIT 4
FORGIVENESS OF DEBT DUE TO DEATH OR PERMANENT DISABILITY

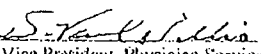
This Addendum is attached to, made a part of and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the 18 day of Dec. 2006.

1. In the event of Physician's death or "Permanent Disability", Physician will be released from any and all obligations and liabilities under the Agreement. For purposes of this paragraph, "Permanent Disability" shall mean a disability that is reasonably certain to prohibit the physician from practicing medicine for the remainder of Physician's natural life as a result of a physical or mental impairment. Such determination shall be made by a physician selected by Employer, but reasonably acceptable to Physician.

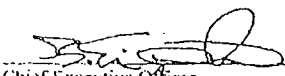
PHYSICIAN:

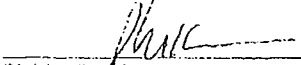

Phillip B. Flexon

EMPLOYER:

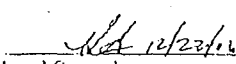

Vice President, Physician Services

REVIEWED AND APPROVED:


Chief Executive Officer


Division President

APPROVED AS TO FORM:


Legal Counsel

R0817

EXHIBIT 5
EXCEPTION TO RESTRICTIVE COVENANT 9.1.1

PHYSICIAN:

EMPLOYER:

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

12/27/12
Legal Counsel

September 18, 2008

To: Mr. William Harvey

I, (Linda Patricia Brady, LPN), began working for Dr. Phillip Flexon and Coastal Carolina Medical Center (CCMC)/ Coastal Carolina ENT on March 19, 2007 in the position of physician's office nurse. I continued filling the position as assistant nurse to Dr. Flexon until March 10, 2008 when my duties in the office suddenly changed. I had returned from a weekend vacation to find that, Priscilla Greene, the front office co-ordinator had resigned her position, leaving me alone to handle the office. Coastal Carolina Medical Center's Human Resources department and the acting CEO knew of her resignation, but did not offer to get me any help or a replacement for her position, despite Dr. Flexon's persistent request, so that the office could be run more efficiently. I continued to work alone handling incoming calls, making appointments for patients, updating chart information, scheduling and pre-certifying diagnostic test, scheduling and pre-certifying surgery cases, assisting Dr. Flexon with patient care and procedures, maintaining a log of daily office procedure charges and a monthly log of surgery procedure charges that I hand carried to the billing office of CCMC, who was to be doing the billing for the office. I continued to fulfill these duties until my resignation on August 15, 2008.

Earlier in the year, January 2, 2008, Phyllis Yingling with Apple-A-Day billing services, who had been doing our billing since the initiation of the contract in March, 2007, dropped off a box of papers to Priscilla which included all of the billing transactions she had been handling up until July 1, 2007. I was unaware of this transaction since I was not handling any billing transactions or information at that time. Phyllis Yingling had been told by CCMC executives that she was to do NO more billing for Dr. Flexon's practice (Coastal Carolina ENT) and on December 31, 2007, Phyllis was fired from the practice by CCMC. I found out that the box of billing information Phyllis had brought to the office existed when Vickie Cunningham, head of the billing office for CCMC came into the office one day inquiring about it and told me that Phyllis had told her it was there. We searched around and found it.

Another tragedy befell the practice when in November, 2007, Dan Gemmell, our office manager was fired by CCMC, leaving me with another position to take on. CCMC never replaced anyone in Dan's unfilled position.

Despite our best efforts to keep this thriving practice afloat, with no help from CCMC and no replacement of any of the missing staff; no billing being done and no noticeable interest in the practice from the Managing Corporation, Coastal Carolina Medical Center, we were forced to cut patient volume and unfortunately close our doors.

Sincerely,

L. Patricia Brady, LPN

L. Patricia Brady, LPN



FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -44-

Dr. Flexon Physician Practice
Cumulative EBITDA Analysis - March 15, 2007 thru February 28, 2009

	LifePoint Mar 15 - Jun 30, 2007	Tenet July 1 - Dec 31, 2007	Tenet 2008	Tenet Jan 1 - Feb 28, 2009	Cummulative Mar 15, 2007 - Feb 28, 2009
Visits	20	780	708	-	1,508
Gross Patient Revenue	146,971	337,640	302,702	-	787,313
Deductions from Revenue	69,956	226,990	215,974	1,118	514,038
Net Patient Revenue	77,015	110,650	86,728	(1,118)	273,275
Bad Debt	14,190	12,429	118,681	(4,916)	140,390
COLLECTABLE PATIENT REVENUE	62,819	98,221	(31,953)	3,798	132,885
OPERATING EXPENSES					
Salaries and Wages	144,740	211,911	248,836	-	605,487
Employee Benefits/Taxes	2,018	12,452	25,068	-	39,538
Supplies	18,404	1,393	2,675	-	22,472
Fees & Services	6,362	15,662	6,351	(1,914)	26,461
Utilities & Phones	2,581	6,938	8,257	(488)	15,288
Repairs, Maintenance & Equip Rental	1,860	307	861	-	3,028
Other Controllable Expenses	5,433	330	263	-	6,025
Total Rent	8,572	21,652	53,011	(65)	83,170
Insurance and Licenses	2,600	1,267	17,007	-	20,874
TOTAL OPERATING EXPENSES	192,570	271,912	360,330	(2,466)	822,346
EBITDA	(129,751)	(173,691)	(392,279)	6,264	(589,457)

787

1000
(700)
↓

80,934

99

150

CCMC 475



DRAFT FOR CONSIDERATION ONLY
CONFIDENTIAL & PRIVILEGED ATTORNEY/CLIENT COMMUNICATIONS

PROPOSAL

**DEPARTMENT OF SURGICAL ONCOLOGY
ANDERSON CANCER INSTITUTE
MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER**

November 7 __, 2007



**FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -45-**

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- I. PURPOSE
- II. SYSTEM/PHYSICIAN BENEFITS
- III. ORGANIZATIONAL STRUCTURE
- IV. GOVERNANCE/MANAGEMENT
- V. CARTS
- VI. COMPENSATION/MODEL
- VII. STRATEGIC PLANNING

I. PURPOSE

The purpose in creating the Department of Surgical Oncology ("DSO") is to focus the collective efforts of surgical oncologists in the Savannah area (the "Physicians"), Memorial Health University Medical Center ("Memorial"), and the Anderson Cancer Institute ("ACI") in establishing ACI as a pre-eminent destination cancer center, renowned for excellent quality clinical care, cutting edge research, excellence in academic study in conjunction with the Mercer School of Medicine – Savannah, and innovative strategic planning. ACI is a division of Memorial.

Many national cancer centers are moving toward collaborative efforts with their physicians. Concentrated collaboration between Memorial/ACI and the Physicians in developing and managing the surgical oncology service line will significantly benefit the community, the region, and ultimately the country, as the parties work together to establish the most effective and cost-efficient delivery system for cancer treatment and research. Each group has important, unique strengths to contribute to the DSO. The physicians bring: clinical excellence, a desire to participate in decision-making process for the DSO and Memorial to create a recognized, well-regarded specialty department, a commitment to further the education of medical students and surgical residents, and a strong loyalty to the Memorial hospital system, ACI and the community. Memorial brings the infra-structure of an established, well-known hospital system, the facilities and relationships necessary to combine clinical care, academia and research, and a commitment to its physicians and its community. Increasing the degree of physician participation in the development process will further strengthen the relationships of the parties and the physicians' commitment to Memorial.

II. SYSTEM/PHYSICIAN BENEFITS

A collaborative arrangement for the development and operation of the DSO at ACI has numerous benefits to the Memorial Health System, the Physicians and the community, including:

- 1) Expense Savings – physically locating all of the DSO physicians at ACI will enable Memorial and the Physicians to eliminate duplicative
 - (i) lease payments for the various physician offices,
 - (ii) equipment, and
 - (iii) personnel.
- 2) Revenue Enhancement Opportunities – physically locating all of the DSO physicians at ACI will enable to Memorial and the physicians to increase revenue opportunities through:
 - (i) convenient patient access to related services among the various DSO physician specialties as well as through outreach efforts with the medical oncologists and the radiation oncologists;
 - (ii) concentrated presence of specialty physicians in one location to attract other specialists to ACI;
 - (iii) concentrated presence of specialty physicians to enhance market presence in the region, and eventually the country; and
 - (iv) collaborative (as opposed to independent, solo) efforts for the development of both clinical care and ancillary services for oncology patients.
- 3) Joint Venture Opportunities – collaborative efforts will reduce competition between Memorial/ACI and Physicians for patients and services. It will also strengthen the System as a whole as a competitive force in the marketplace

Draft Proposal for Department of Surgical Oncology

RECOMMENDATION TO THE BOARD OF DIRECTORS
ANDERSON CANCER INSTITUTE PHYSICIANS
SENIOR PARTNER EMPLOYMENT AGREEMENT
AUGUST XX, 2007

DRAFT

Recommendation

Management recommends the Board of Directors approve a new employment contract, compensation structure and governance structure for physicians working at Memorial under the Anderson Cancer Institute. These physicians are

Summary

The physicians outlined above will become employed with Provident Health System rather than MPPG, Inc.

The employment contract shall be two (2) year term beginning January 1, 2008, renewable for additional two (2) year terms hereafter unless terminated on ninety (90) days notice prior to renewal. The compensation structure will include a base salary, teaching stipend and incentive compensation. The base salary will be established by taking the physician's previous years work RVU and gross revenue production compared to a blend of three compensation survey data. If a physician has produced at the 50th percentile, then base plus teaching will put the physician at the 50th percentile.

The physician will have the opportunity to receive incentive compensation based on 1.) Work RVU productivity metrics as well as 2.) Anderson Cancer Institute goals and objectives. The work RVU portion of the bonus will give physicians incentive compensation for work RVUs produced above the level that established in the base salary. For example, if a physician's base salary is at the 50th percentile and the physician produces at the 60th percentile for work RVUs, then the difference will be paid in incentive compensation. The Anderson Cancer Institute goals and objectives will allow the physician to earn incentive compensation up to \$50,000 annually based on specific strategic objectives of ACI outlined on an annual basis by the Chairman, Department Surgical Oncology. These objectives will include an ACI profitability metric and may also include (but not limited to) product line growth and recruitment metrics for physicians.

*Much
Change*

Page 1 of Draft



FLEXION v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -49-

Analysis of Various Department of Surgery Scenarios

Memorial Health University Medical Center, (MHUMC), agrees that Anderson Cancer Institute (ACI), will be the exclusive entity through which Memorial Health System will employ physicians in oncology specialties currently provided by ACI.

The Agreement may be terminated without cause on ninety (90) days notice by ACI or physician. The duties and responsibilities are the same as the prior MHUP agreement for physicians.

In the Senior Partner Agreement Covenant Not to Compete the physician agrees not to compete with ACI within a defined area (depending on Physician's practice) for the entire term of the Agreement, even if the Agreement is terminated early by Physician. The Physician can "buy-out" the restriction by paying two (2) times his/her prior year compensation.

Governance

The ACI physician's governance structure will include representation on the "Physician Strategy" subcommittee of the MHUMC board.

- Board will have physician representation from ACI, MHUP, Education (Hospital based practices) and
- Subcommittee will report directly to MHUMC board

Financial Impact

????? To be completed at a later date.

Benefits

- Multi-specialty oncology physician group in southeast Georgia maintains association with health system and ACI
- Strong physician quality
- Provide educational opportunities for Residents and physicians
- Provide essential outpatient indigent care to the community
- Provides leadership on MHUMC committees
- Supports clinical trials and research at MHUMC
- Allows growth in oncology and research

Risks

Page 2 of Draft

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2009-CP-27-331

Phillip Flexon, M.D.,
Plaintiff,

v.

PHC-Jasper, Inc., d/b/a Coastal
Carolina Medical Center, Coastal
Carolina Medical Center, Inc.,
Lifepoint Hospitals, Inc., and Tenet
Healthsystems, Inc.,

Defendants.

ANSWERS TO
INTERROGATORIES OF
DEFENDANT
COASTAL CAROLINA
MEDICAL CENTER, INC.

TO: JAMES D. MYRICK, ESQUIRE, COUNSEL FOR DEFENDANT COASTAL
CAROLINA MEDICAL CENTER, INC.:

The Plaintiff would answer the Interrogatories of Defendant Coastal Carolina Medical
Center, Inc., as follows:

INTERROGATORY NUMBER 1. Give the names and addresses of persons
known to you or your counsel to be witnesses concerning the facts of the case and indicate
whether or not written or recorded statements have been taken from such witnesses and
indicate who has possession of such statements.

ANSWER:

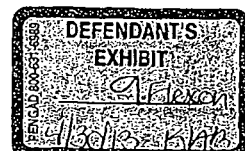
Philip Flexon, M.D., Hardeeville, SC

Courtney Flexon, Hardeeville, SC

Patty Brady, Savannah GA—Plaintiff's nurse

Priscilla Green, Hardeeville, SC—former receptionist for Plaintiff

Eric Deaton, address unknown—former CEO of Hospital



Teresa Urquart, address unknown—former CFO of Hospital
Dan Gemmell, Savannah, GA—former practice manager for Plaintiff
Phyllis Yingling, Bluffton, SC—Apple A Day Billing
Steve Rapp, Charleston, SC, former sales representative of Stryker
Brian Holtsclaw, Bluffton, SC—manager of equipment at Hospital
George Warner, M.D.—Hilton Head Island—former neurologist at Hospital
Employees who worked on billing at Hospital
Scott Mabry, Houston, TX—Director of Operations, Impel Medical Management, Inc.
Elizabeth Lamkin—CEO of Hospital
Vail Willis, Brentwood, TN—VP physician services of LifePoint
Timothy Vaughn—Lifepoint
Robert Klein—Lifepoint
Holly Tyler—Accountant at Hospital
Angie Swearingon—CFO of Hospital
Mary Jane Zabinski, address unknown
Plaintiff is in possession of statements from Patty Brady and Phyllis Yingling.

INTERROGATORY NUMBER 2. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory #1 above.

INTERROGATORY NUMBER 3. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to the claim or defense in the case.

ANSWER: See Responses to Requests for Production

INTERROGATORY NUMBER 4. Set forth an itemized statement of all damages claimed to have been sustained by the Plaintiff in connection with the incident alleged in your Complaint.

ANSWER: From his gross charges at Memorial Medical Center for the 6 months prior to commencing at Coastal, Plaintiff believes he should have been paid \$416,000 per year at Coastal if the Defendants had met their contractual and represented obligations. Currently at his practice in Savannah, Plaintiff makes a base salary of \$265,000 per year which will continue for the future. Plaintiff claims as damages the difference in these salary amounts until he retires. Plaintiff lost 6 weeks of salary moving his practice to Coastal, and 6 weeks of salary moving his practice from Coastal to Savannah. He also has moving costs from moving back to Savannah of approximately \$7,000. Total lost past and future income, plus out of pocket expenses, \$1,834,000. There are equipment costs that will be calculated and provided with supplemental responses. Additionally, Plaintiff claims damages for the harm to his reputation, as well as emotional stress.

INTERROGATORY NUMBER 5. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

ANSWER: Plaintiff has not yet retained an expert witness for use at trial, but reserves the right to supplement these answers if and when an expert is retained.

INTERROGATORY NUMBER 6. For the past ten (10) years, state the names and addresses of each of the employers of the Plaintiff, including current employer, or, if self-employed, the business address or addresses along with the dates of commencement and termination for each such source of employment.

ANSWER: Memorial Health University Hospital, 4700 Waters Ave., Savannah, GA 31405

INTERROGATORY NUMBER 7. Identify any and all actions you undertook to promote your practice at Coastal Carolina Medical Center. Please include dates and a list of documentary evidence supporting your assertions.

ANSWER: According to the Contract, Lifepoint/Coastal was responsible for marketing the practice for the first two years. As Coastal Carolina ENT was being set up, Coastal/Lifepoint bought a yellow pages ad, printed brochures, placed ads in local newspapers, and set up lunches with local doctors who might refer patients to the Plaintiff. However, an average of 60% of Plaintiff's patients are self referred, not sent by another physician. Any momentum Plaintiff had started to build from mid-March 2007 fell off dramatically after the sale of the hospital to Tenet was announced in June. Many of Plaintiff's patients refused to come at all, and those who did had to cross a picket line of protesters the first few weeks. Several patients brought newspaper clippings or references to the book that exposed Tenet's history of malpractice and malfeasance. In addition, many Savannah doctors stopped referring patients to Plaintiff because of Tenet's horrible reputation. Since the hospital made all the arrangements for marketing, they would have the records.

INTERROGATORY NUMBER 8. When did you begin negotiations to return to Savannah? Who initiated these conversations? Please list documents evidencing these negotiations.

ANSWER: Plaintiff began considering his options shortly after Tenet took over and things began to fall apart. Plaintiff's contract was with LifePoint, and Plaintiff had carefully researched and satisfied himself that LifePoint was a good company to align himself with. As evidence of this, Plaintiff's contract had a strict "no-assignment" provision. Never would Plaintiff have signed with Tenet because of its very poor reputation. Plaintiff did not sign Tenet's assignment document. Plaintiff had invested substantially in establishing a new

practice (he was the first ENT in Jasper County) and Plaintiff desperately wanted it to work. July 24, 2007 was when Plaintiff's patients first had to cross a picket line, and this was a turning point. After Plaintiff received a deaf ear with his questions to Tenet about what they were going to do to improve their reputation, and the reputation of Plaintiff's practice, Plaintiff came to the conclusion that the corporate culture of Tenet was not going to change. When Tenet brought in Impel, Plaintiff thought for awhile that most of the billing and management issues could be solved by them and things might work out. He then learned in February 2008 about the billings for his services which had gone unsubmitted from July 7, 2007 through December 31, 2007 being placed in boxes without his knowledge. In May, 2008, Plaintiff learned that Impel wasn't coming, which was a huge disappointment. Plaintiff started negotiations with Memorial in earnest during the summer of 2008.

INTERROGATORY NUMBER 9. Did CCMC ever refuse to rent a CO2 laser for your surgical use during your time at Coastal Carolina Medical Center? If yes, please state:

- a. The manner and date you requested the laser;
- b. The date and reason given for refusal; and
- c. The name of the party who refused your request.

ANSWER: Yes, as well as sinus navigation equipment.

- a. verbal
- b. Date of refusal, summer of 2007
- c. Brian Holzclaw, Mark Kolbush and others. In June of 2007 Plaintiff was told by Mark Kilbush that the equipment they were supposed to supply the OR for Plaintiff would take half their capital budget and they were not going to do that. Whenever Plaintiff would request a CO2 laser for a surgical procedure, Coastal would "rent" one, but Plaintiff later learned they were using the equipment reps to do a free demonstration and give the hospital a "loaner." Once the reps learned what was going on, they and their "loaners" became increasingly unavailable. Plaintiff would try to schedule a surgery and they would tell him they could not get the equipment (this happened multiple

times). The availability of equipment became so unreliable that Plaintiff started taking him complicated cases to Memorial.

INTERROGATORY NUMBER 10. Please list what documents you contend make up your employment agreement with Coastal Carolina Medical Center.

ANSWER: The contract plus selected correspondence and data exchanged before the contract was signed, most notably the documents where Eric Deaton notes in his own writing that a CO2 laser and sinus navigational equipment would be necessary.

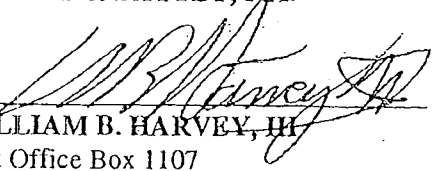
INTERROGATORY NUMBER 11. What do you contend your EBIDTA was at the time of your termination?

- a. Who prepared that calculation?
- b. On what data is it based?

ANSWER: Plaintiff believes that any attempt to calculate EBIDTA from his practice at Coastal after the sale to Tenet is farcical. From July 1, 2007, unbeknown to the Plaintiff, no billing for his services was done for almost 7 months. Phyllis Yingling had been fired without Plaintiff's knowledge. Several unmarked boxes of paper billing data were dumped at Plaintiff's office without his knowledge, and no one knew they were there for months. Even after Teresa Urquhart was made aware of these records, it took months for the hospital to start billing. Many of the bills were time sensitive, and had to be submitted to the insurance companies within 90 or 120 days of service. Because insurance claims were not submitted, patients were charged additional deductibles if they had another doctor visit or procedure during that calendar year because the first procedure had never been billed or applied to their insurance. This caused patient discontent with Plaintiff's office and accentuated the bad reputation of Tenet.

The Plaintiff reserves the right to amend/supplement these Answers to Interrogatories,
as appropriate, up to and including at time of trial.

HARVEY & BATTEY, P.A.

By: 

WILLIAM B. HARVEY, III

Post Office Box 1107

Beaufort, South Carolina 29901-1107

843-524-3109 telephone

843-524-6973 telefax

Attorneys for Plaintiff

Beaufort, South Carolina

Dated: April 29, 2010

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Tuesday, July 24, 2007

04:00 PM



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Protesters try to spread word against Tenet's purchase of Coastal Carolina Medical Center

By PETER FROST

pfrost@islandpacket.com

843-706-8169

Published Tuesday, July 24, 2007

2 Comments | [Email it](#) | [Print it](#) | [RSS](#) | [EXCERPTS](#) | [Feeds](#)

Organizers with a national health care workers union held signs and handed out fliers in front of the Hilton Head Island and ~~Port of Charleston~~ ~~Monday~~ ~~questioning Tenet Healthcare's commitment to patient care.~~

Five protesters held signs that read: "Tenet: \$ for CEOs not patient care," and "Tenet puts profit before patient care." They stopped motorists entering and leaving the hospitals to hand them fliers criticizing the company.

The protesters represent SEIU Healthcare, a Washington-based union composed of 900,000 nurses, doctors, lab technicians, and nursing-home and home-care workers across the country. No employees of Hilton Head Regional Medical Center or Coastal Carolina belong to the union.

~~The union, which calls Tenet Healthcare's purchase of Coastal Carolina Medical Center "a \$15 million in misplaced priorities," will protest outside the two hospitals here and at a Tenet-owned medical center near Charleston over the next two weeks, said Grant Williams, an organizer.~~

"We're trying to educate the public that all of their concerns about Tenet are valid," Williams said at about 4 p.m. Monday near the entrance of Coastal Carolina. "From what we've seen so far, there are a lot of hospital employees that don't like the changes out here, and they're real happy that we're here."

Local hospital officials directed questions to Tenet spokesman Steven Campanini.

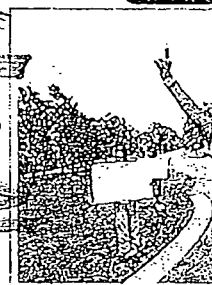
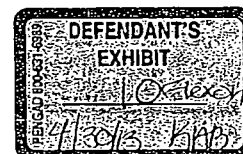


Photo: Mary Small-McSavannah, hands out fliers

**FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -5-**

<http://www.islandpacket.com/news/local/story/6598631p-5876348c.html>

7/25/2007

MEMORIAL HEALTH
FINANCE COMMITTEE
April 28, 2008

OPEN SESSION

I. CALL TO ORDER & APPROVAL OF MINUTES OF March 24, 2008

There being a quorum present for the transaction of business, Finance Committee Chair Curtis Lewis, III, called the meeting to order. Other Members present were William T. Daniel, William J. Degenhart, M.D., Kay Ford, Brian Foster, and Karen Pannell. Others attending were Sharon Bell, Darcy Davis, Mills Fleming, Maggie Gill, Ra Meguiar, M.D., Jeff Treasure, and Hart Williford.

Committee Member Curtis G. Anderson was absent with prior notification.

UPON MOTION DULY SECONDED AND CARRIED BY THE AFFIRMATIVE VOTE OF THOSE PRESENT, THE COMMITTEE APPROVED THE FINANCE COMMITTEE OPEN SESSION MINUTES OF MARCH 24, 2008.

II. EXECUTIVE SESSION

UPON MOTION DULY SECONDED AND CARRIED BY THE AFFIRMATIVE VOTE OF THOSE PRESENT, THE MEETING ADJOURNED INTO EXECUTIVE SESSION FOR THE PURPOSE OF PERSONNEL, LEGAL, PROPERTY, AND STRATEGIC PLANNING MATTERS. Following Executive Session, Open Session reconvened.

III. ACTION ITEMS

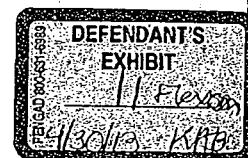
A. Physician Contracts (For Vote Only)

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MH 49

Finance Committee
Open Session
April 28, 2008
Page 2 of 2

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-
- Philip Flexon, M.D. – Employment Contract

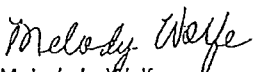
UPON MOTION DULY SECONDED AND CARRIED BY AFFIRMATIVE
VOTE, WITH ONE DISSENTING VOTE, THE ABOVE PHYSICIAN
CONTRACTS WERE APPROVED FOR RECOMMENDATION TO THE
BOARD.
subject to

IV. INFORMATION ITEM

A. Consolidated Financials -

There being no further business in Open Session, the meeting was adjourned.

Respectfully submitted,


Melody L. Wolfe
Assistant Secretary

MH 50

R0836

SENIOR-PHYSICIAN EMPLOYMENT AGREEMENT

This SENIOR-PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into as of the 18th day of September, 2008, by and between PROVIDENT HEALTH SURGICAL ASSOCIATES, INC. d/b/a ACI Surgical Associates, a Georgia corporation (the "Practice"), and Phillip B. Flexon, M.D., a licensed physician ("Physician"):

WITNESSETH:

WHEREAS, the Practice operates a physician group practice providing multi-specialty physician services in Savannah, Georgia and surrounding areas; and

WHEREAS, the Practice is an affiliate of Memorial Health, Inc. ("Memorial") which owns and operates, among other things, Memorial Health University Medical Center (the "Hospital"); and

WHEREAS, the Practice desires to employ Physician to provide medical services for the Practice and as part of Memorial's integrated healthcare delivery system (the "Integrated System"); and

WHEREAS, Physician desires to accept such employment with the Practice upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein set forth, the sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I EMPLOYMENT

Section 1.01 Engagement. Subject to the terms of this Agreement, the Practice hereby employs Physician to render medical services on its behalf on and after the "Commencement Date" (as hereinafter defined), and Physician hereby accepts such employment.

Section 1.02 Existing Employment Agreement Superseded. The Practice and Physician agree that any and all provisions of any existing or former employment agreement or arrangement, written or oral, express or implied, by and between the Physician and the Practice, Memorial, or any affiliates or subsidiaries of such entities are hereby terminated, replaced and superseded in their entirety by this Agreement, and the provisions of this Agreement shall hereafter govern as to any such matters.

Section 1.03 Reporting Procedures. Physician shall report to the Chief Executive Officer of Memorial or a designee mutually agreed upon between the Chief Executive Officer of Memorial and the Practice for administrative, operational, clinical and financial aspects of the Practice.

744584-03



MH 19

R0837

ARTICLE II
TERM

Section 2.01 Term. The initial term of this Agreement shall commence on September 18, 2008 (the "Commencement Date") and, unless sooner terminated as provided in this Agreement, shall remain in full force and effect through July 31, 2010 (the "Initial Term"), and shall be automatically extended and renewed for successive one (1) year terms (each, a "Renewal Term"), subject to earlier termination as provided in this Agreement, unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to the expiration of the Initial Term or the then current Renewal Term, as the case may be. Both the Initial Term and any Renewal Term shall be hereinafter referred to as the "Term", subject to the termination provisions of Article VIII hereof.

ARTICLE III
DUTIES OF PHYSICIAN

Section 3.01 Services/Duties. During the Term, Physician shall provide medical services on behalf of the Practice. Physician agrees as follows:

- (a) to devote Physician's full business time, attention, and abilities to his duties hereunder and shall use his best efforts in the performance of his duties as a physician of the Practice;
- (b) to provide services at the location of the Practice and other locations identified and approved by the Practice;
- (c) to comply with the work schedule and on-call schedule established by the Practice;
- (d) to participate in managed care arrangements entered into by the Practice and/or Memorial as the Practice may approve;
- (e) to cooperate with, participate in and comply with, the quality assurance, risk management and peer review programs, applicable Administrative and Personnel Policies and Procedures, grievance procedures and utilization control mechanisms implemented by the Practice and Memorial;
- (f) if applicable, to participate in and comply with the rules and regulations applicable to the Medicare and Medicaid programs and to provide nondiscriminatory medical treatment for Medicare and Medicaid patients;
- (g) to actively support the health care mission, values, goals and objectives of Memorial and the Hospital and to facilitate the ongoing integration of the activities of the Integrated System;

- (h) to participate in monthly administrative, clinical and strategic planning activities of the Practice and Memorial, including departmental and committee activities;
- (i) to participate in and comply with the corporate compliance program(s) of the Practice, Memorial and the Hospital;
- (j) to perform such other duties relating to the provision of medical services as may be assigned to Physician from time to time by the Practice;
- (k) to maintain unrestricted or associate medical staff privileges at the Hospital; provided, however, the provisions of this Agreement shall not preclude Physician from maintaining medical staff privileges at other facilities;
- (l) to comply with the performance standards of Exhibit A attached hereto and incorporated herein by reference; and
- (m) to adhere to the Practice's policies regarding the development and implementation of the Electronic Health Record System.

Section 3.02 Medical Education and Research Functions. Physician may be responsible for providing certain medical education and research services. If applicable, the scope of such services are set forth on Exhibit B attached hereto and incorporated herein by reference.

Section 3.03 Medical Record, Coding, and Billing Documentation. Physician shall comply with all applicable laws, rules and regulations (including Medicare and Medicaid laws, rules, regulations, and carrier instructions) regarding medical record, coding, and billing documentation. Physician shall be responsible for the accuracy of the medical record, coding, and billing documentation performed and provided by Physician. Physician shall be responsible for any repayments, liabilities, or obligations to payors for inadequate or inaccurate medical record, coding, or billing documentation by Physician for services performed under this Agreement. Notwithstanding the above, Physician shall not be responsible for any liabilities, repayments, or obligations to payors for any inaccuracies or inadequate activities with respect to medical record, coding, and billing documentation which are the responsibility of Physician Services of Memorial ("Physician Services") or Practice a vendor, as appropriate, and such repayments, liabilities, or obligations shall be the responsibility of Physician Services.

Section 3.04 Excluded Activities. Physician shall not, without the express prior written consent of the Practice, directly or indirectly, engage in any other gainful occupation requiring Physician's personal attention; provided, however, this restriction shall not restrict or prevent Physician from personally or on Physician's own account investing or trading in stocks, bonds, securities, commodities, real estate, or other forms of investment for Physician's own benefit or that of Physician's family, or from having other non-medical business interests which do not

interfere with Physician's full-time employment as a practicing physician employed by the Practice.

ARTICLE IV PROFESSIONAL INCOME

Section 4.01 Fees. All charges and income derived from professional medical activities accepted or undertaken by Physician on behalf of the Practice during the Term shall be for the benefit of the Practice, and Physician hereby assigns such charges and income to the Practice. Charges, fee schedules and coding for professional services rendered to patients by Physician shall be established by Memorial or its designee. Physician agrees and understands that charges for supplies, drugs, laboratory services and other non-professional components of the services provided by the Practice shall be established by Memorial or its designee with input from the Practice. Further, Physician agrees and understands that charges for supplies, drugs, laboratory services and other non-professional components of the services provided by the Hospital shall be established by the Hospital. Physician shall record, daily and accurately, professional services rendered by Physician and the charges therefore on forms established by Memorial or its designee. Physician shall comply with all applicable policies and procedures of payers concerning fees, charges, records and forms relating to professional, medical services provided by Physician. Memorial or its designee shall coordinate all billing and collection activities relating to professional services performed by Physician pursuant to this Agreement. Physician hereby adopts and affirms the provisions of Exhibit C attached hereto and incorporated herein by reference.

Section 4.02 Non-Patient Care Fees. With respect to fees from non-patient care activities which do not incur expenses for the Practice, such as seminar honorariums and expert witness litigation fees ("Non-Patient Care Fees"), Physician shall be entitled to retain such Non-Patient Care Fees up to a maximum amount of \$20,000 per calendar year. Any Non-Patient Care Fees (and activities related to such fees) in excess of the maximum amount during a calendar year must be approved by the CEO of Memorial or his or her designee, or the Memorial Board of Directors or its designee (collectively referred to herein as the "Board").

ARTICLE V PHYSICIAN'S WARRANTIES AND PERFORMANCE STANDARDS

Section 5.01 Representations and Warranties; Indemnification.

- (a) *Representations and Warranties of Physician.* Physician represents and warrants to the Practice that Physician is duly licensed to practice medicine in the State of Georgia. Physician further represents and warrants to the Practice that: (i) Physician's license to practice medicine in any state (and Physician's permit to dispense or prescribe drugs and other controlled substances) has never been suspended, restricted or revoked; (ii) Physician has never been reprimanded, sanctioned or disciplined by any governmental entity, licensing board or state or local medical society or specialty board; (iii) Physician has never been denied membership or

reappointment of membership on the medical staff of any hospital, that no hospital medical staff membership or clinical privileges of Physician have ever been suspended, curtailed or revoked, and that Physician has never voluntarily withdrawn an application for appointment or reappointment to the medical staff of any hospital, which required a report to the National Practitioner Data Bank; and (iv) Physician's discussion, negotiation, execution and performance of this Agreement has not, does not and will not result in a violation or breach of any provision of any contract or obligation of Physician's, or any of the entities with which Physician is affiliated, with any third party (including but not limited to any restrictive covenant).

- (b) *Indemnification Obligations of Physician.* Physician agrees to indemnify, defend and hold harmless the Practice and its affiliates, successors, officers, employees, representatives, agents and assigns ("Practice Indemnified Parties") in respect of any and all claims, actions, causes of action, arbitrations and proceedings (collectively, "Claims") and/or any losses, damages, liabilities and expenses, including, without limitation, settlement costs and attorneys' fees (collectively, "Damages"), incurred in connection with, resulting from, relating to or arising out of any: (i) false representation or warranty contained in this Agreement, including those made in Section 5.01(a), (ii) breach or representation of any representation or warranty contained in this Agreement, including those made in Section 5.01(a), and (iii) any litigation arising out of or related to the foregoing.
- (c) *Notice of a Claim; Damages.* If Physician receives notice of the assertion of any demand or Claim or of the commencement of any action, suit, arbitration, hearing, inquiry, proceeding, complaint or charge (an "Action") with respect to which the Physician is or may be obligated to provide indemnification hereunder, the Physician shall promptly notify the Practice in writing ("Claim Notice"); provided, that the failure to provide such notice shall not relieve or otherwise affect the obligation of the Physician to provide indemnification hereunder. The Physician shall have thirty (30) days after receipt of the Claim Notice by the Practice Indemnified Parties (unless the Claim or Action requires a response before the expiration of such thirty (30) day period, in which case the Physician shall have until the date that is ten (10) days before the required response date) to acknowledge responsibility and undertake, conduct and control, through counsel of its own choosing, and at its expense, the settlement or defense thereof, and the Practice Indemnified Parties shall cooperate with the Physician in connection therewith; provided, that (i) the Physician shall permit the Practice Indemnified Parties to participate in such settlement or defense through counsel chosen by the Practice Indemnified Parties, (ii) the Physician shall not settle any Claim without the Practice Indemnified Parties' consent if the settlement requires any of the Practice Indemnified Parties to admit wrongdoing, pay any fines or refrain from

any action, which consent shall not be unreasonably withheld or delayed and (iii) if, in the written opinion of counsel to the Practice Indemnified Parties, any of the Practice Indemnified Parties have separate defenses from the Physician or that there is an actual conflict of interest between the Practice Indemnified Parties and the Physician or if there is any danger of criminal liability of any of the Practice Indemnified Parties, then the Practice Indemnified Parties shall each be permitted to retain special counsel of its own choosing at the sole expense of the Physician. So long as the Physician is vigorously contesting any such Claim in good faith, none of the Practice Indemnified Parties shall pay or settle such Claim without the Physician's consent, which consent shall not be unreasonably withheld. Physician agrees to pay the Practice Indemnified Parties all reasonable fees, expenses and costs of the Practice Indemnified Parties' legal representation in connection with the settlement or defense of any such claim which shall be paid within fifteen (15) days of presentment of a bill or invoice for such costs by the Practice Indemnified Parties. If the Physician does not notify the Practice Indemnified Parties within thirty (30) days after receipt of the Claim Notice (or before the date that is ten (10) days before the required response date, if the Claim or Action requires a response before the expiration of such thirty (30) day period), that it acknowledges responsibility and elects to undertake the defense of the Claim described therein, the Practice Indemnified Parties shall have the right to contest, settle or compromise the Claim in the exercise of its reasonable discretion at the expense of the Physician; provided, that the Practice Indemnified Parties shall notify the Physician of any compromise or settlement of any such Claim. This Section 5.01 shall expressly survive the expiration or termination of this Agreement.

Section 5.02 Standards. In performing services under this Agreement, Physician shall (a) use diligent efforts and professional skills and judgment, (b) perform professional services in accordance with recognized standards of the medical profession, (c) act in a manner consistent with the Principles of Medical Ethics of the American Medical Association, (d) comply with the bylaws, policies, rules and regulations of the Practice, (e) comply with applicable standards of the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO"), (f) comply with all applicable federal, state and local laws, rules and regulations, (g) comply with the Conflicts of Interest Policy of the Practice and Memorial, and (h) comply with the requirements of Exhibit A attached hereto, which may be amended from time to time by the Board at its reasonable discretion, and agreed upon by the Practice. Notwithstanding the above, it is agreed that neither the Practice, Physician Services, Memorial nor the Hospital shall exercise control over the professional actions and medical techniques of Physician in Physician's practice of medicine for the Practice or the Hospital. All the medical and professional matters shall be the responsibility of the Physician, and the Physician shall have complete freedom and control over the provision of Physician's professional services. Notwithstanding the foregoing, the Physician shall comply with good medical practice and with the performance standards set forth in this Article V and the duties set forth in Article III.

ARTICLE VI
COMPENSATION

Section 6.01 Compensation. During the Term, the Practice shall pay Physician in consideration of the services provided under this Agreement, compensation determined pursuant to the methodology set forth on Exhibit D attached hereto and incorporated herein by reference. It is recognized by Physician and the Practice that Physician's compensation under this Agreement at all times must be consistent with the principles under which the Practice is obligated to conduct its affairs, including, without limitation, federal and state laws, rules, regulations and guidelines regarding Medicare and Medicaid and, as applicable, the tax-exempt status of Memorial and its affiliates.

Section 6.02 Continuing Medical Education ("CME") Benefits. During the Term, Physician shall be entitled to CME benefits in accordance with the policies and practices established by the Practice. CME shall be considered a budgeted Practice expense.

Section 6.03 Other Benefits. The Practice shall provide or make available to Physician certain employee benefits, such as vacation and sick leave benefits, health insurance, life insurance and disability insurance which are normally offered to other physician employees of the Practice. A list of current benefits offered by the Practice, which may be amended from time to time by the Practice at the Practice's reasonable discretion, are set forth on Exhibit E attached hereto and incorporated herein by reference.

ARTICLE VII
DUTIES OF THE PRACTICE

Section 7.01. Delegation of Duties to Physician Services. The parties recognize that the Practice may engage Physician Services to provide certain administrative services for the Practice. In addition, the Practice may engage other third party vendors to provide administrative services for the Practice. Thus, many of the duties of the Practice set forth in this Article VII may be delegated to Physician Services.

Section 7.02 Office Space. During the Term, the Practice shall provide Physician with professional office space at locations determined by the Practice, which Physician may use for the performance of Physician's duties hereunder.

Section 7.03 Equipment and Supplies. During the Term, the Practice shall provide expendable and non-expendable medical equipment, drugs, supplies, furniture and fixtures which the Practice determines, in its sole discretion, to be necessary for the proper operation and conduct of the Practice. The Practice shall bill exclusively for all supplies issued as patient charges.

Section 7.04 Utilities and Support Services. The Practice shall provide all utilities, housekeeping, laundry and other non-medical support services as may be required, in the discretion of the Practice for the proper operation and conduct of the Practice.

Section 7.05 Personnel. All non-medical and medical personnel determined, in the sole discretion of the Practice, to be necessary for the proper operation of the Practice shall be employed or engaged by Memorial or its designated entity.

Section 7.06 Malpractice Insurance. During the Term, the Practice shall maintain professional malpractice liability insurance covering the Physician and the Practice in an amount approved by Memorial or its designated entity. Upon termination of this Agreement, the Practice shall require the Physician to maintain tail coverage. If there is a premium cost associated with such tail coverage, the Practice will be responsible for such cost. Physician agrees to comply with and be bound by all of the terms and conditions set forth in the insurance contract under which the above coverage is provided, as such provisions may change from time to time, including without limitation, Physician's duties to report claims, cooperate with the insurer and other parties, and provide evidence as set forth in the provisions in the insurance contract concerning insured's duties in the event of a medical incident or claim.

Section 7.07 License Fees and Membership Dues. During the Term, the Practice shall pay Physician's fees for Physician's professional license and agreed upon membership dues for professional associations and other contracting or provider organizations designated by the Practice up to a maximum annual limit established by the Practice in the annual budget.

Section 7.08 Taxes. Physician shall be an employee of the Practice, and the Practice shall withhold all amounts required to be withheld by local, state and federal taxing authorities.

ARTICLE VIII TERMINATION

Section 8.01 Automatic Termination. The Practice shall have the right to terminate this Agreement immediately, with cause, upon written notice to Physician if:

- (a) Physician dies or becomes "Disabled" (as defined in Section 8.07 of this Agreement);
- (b) Physician's license to practice medicine (or permit or license to dispense or prescribe drugs or controlled substances) in Georgia or any other state shall have been revoked, suspended or restricted;
- (c) If applicable, Physician's right to participate in the Medicare and Medicaid programs shall have been revoked, suspended or restricted;
- (d) Physician is found to have engaged in unprofessional conduct by any governmental entity or professional organization;
- (e) Physician is charged with or indicted for any alleged criminal act which relates to the Physician's professional activities or which, in the good faith determination of the Practice, is detrimental to the reputation of the Practice;

- (f) Physician shall commit an act or omit to take an act that in the good faith and reasonable belief of the Practice jeopardized or could have jeopardized patient health or safety;
- (g) Physician becomes ineligible for medical liability insurance coverage upon the same terms and conditions as other physicians engaged by the Practice; or
- (h) Physician shall commit an act or omit to take an act that in the good faith and reasonable belief of the Practice materially impacts the business of the Practice or negatively impacts the Practice or could result in discredit or damages to the Practice.

Physician shall have the contractual right to request in writing within three (3) business days after termination under this Section 8.01 for the Board to review the termination decision. The Board shall review the termination decision within ten (10) business days after Physician's request. Confirmation of the termination shall require the affirmative vote of two-thirds (2/3) of the Board, and such decision shall be conclusive and binding. During the period between termination and the review decision by the Board, the Physician shall be deemed terminated, shall not provide services at the Practice or on behalf of the Practice and shall not receive compensation for such period.

Section 8.02 Termination for Breach. This Agreement may be terminated by either party if the other party hereto shall have materially breached this Agreement and shall have failed to cure the same within thirty (30) days after written notice from the non-breaching party specifying the breach and requesting that it be cured.

Section 8.03 Termination Without Cause. The Physician may terminate this Agreement without cause upon ninety (90) days prior written notice to the Practice; provided, that the Practice, in its sole discretion, may accelerate the effective date of the Physician's voluntary termination to any date not less than thirty (30) days following the date of such notice by Physician, and upon such acceleration, Physician shall receive compensation for the entire ninety (90) day period. The Practice may terminate this Agreement without cause upon ninety (90) days prior written notice to the Physician; provided, however, that a termination decision by the Practice under this Section 8.03 shall be ratified by two-thirds (2/3) of the Board; and provided, further that the Practice, in its sole discretion, may accelerate the effective date of Physician's termination, and upon such acceleration, Physician shall receive compensation for the entire ninety (90) day period.

Section 8.04 [Reserved]

Section 8.05 Effect of Termination. Except as otherwise provided in this Agreement, following the effective date of termination of this Agreement, the provisions of this Agreement shall be of no further force or effect, and the Physician shall relinquish Physician's duties as an employee of the Practice. In the event this Agreement is terminated or expires, it is recognized

by Physician and the Practice that upon termination or expiration of this Agreement, Physician may be subject to the confidentiality and non-compete provisions set forth in Article X of this Agreement.

Section 8.06 Termination of Physician's Teaching Functions. Notwithstanding anything to the contrary set forth in this Agreement, the termination of Physician's medical education and research functions outlined in Exhibit B, if any, shall not effect or terminate this Agreement, except that Section 3.02 and Exhibit B of this Agreement shall no longer apply to Physician, and Physician shall no longer receive a Teaching Stipend, if any.

Section 8.07 Definition of Disability. The Physician shall be subject to the Practice's written policies and procedures concerning disability. For purposes of this Agreement, the term "Disabled" or "Disability" shall be defined and determined in accordance with the Practice's policies and procedures which shall conform to the determination of "Disability" for purposes of Social Security disability payment eligibility.

ARTICLE IX MEDICAL RECORDS AND ACCESS TO RECORDS

Section 9.01 Ownership of Records. Physician acknowledges and agrees that during the Term and upon termination or expiration of this Agreement for any reason, all Practice patient records, including, but not limited to x-rays and charts, of any patient attended by Physician shall be and remain the property of the Practice. Physician shall maintain all patient records in accordance with all applicable laws and regulations pertaining to the confidentiality thereof. Physician also shall document and chart the medical records in a thorough and timely manner in accordance with policies and procedures established by the Practice. Upon termination of this Agreement, Physician shall not be entitled to keep or preserve records of the Practice as to any patient for whom services were performed unless such patient shall specifically request in writing a different disposition of his records.

Section 9.02 Access to Records. Until the expiration of four (4) years after the furnishing of services hereunder, Physician shall make available, upon written request, to the Secretary of Health and Human Services, or, upon written request, to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, including all amendments hereto, any books, documents and records of Physician that are necessary to certify the nature and extent of costs for services provided hereunder.

ARTICLE X CONFIDENTIALITY AND RESTRICTIVE COVENANTS

Section 10.01 Confidentiality Restrictions. During the "Confidentiality Restriction Period" (as defined in Section 10.04 below), Physician agrees that he will not, without the Practice's prior written consent, use any copyrighted, proprietary, secret or confidential information or products of the Practice (the "Proprietary Information and Products") except in furtherance of the performance of such Physician's responsibilities and duties as an employee of the Practice under this Agreement. Such Proprietary Information and Products shall include, but

not be limited to, symbols, trademarks, service marks, designs, management information systems, policy and procedure manuals, utilization procedures and protocols, forms and claims processing techniques, utilization review and quality assurance mechanisms and data, agreements with managed care organizations and purchasers of services, educational programs related to the Practice activities, any information related to the Practice's or Memorial's financial affairs, business and marketing plans and strategies, contract negotiations with managed care organizations, the Practice's fee schedules, the Practice's vendor and patient lists and records, information that constitutes a trade secret under Georgia law and any other information that the Practice considers to be a trade secret or confidential information. This covenant shall not apply to any Proprietary Information and Products now or hereafter voluntarily disseminated by the Practice to the public, or which otherwise has become part of the public domain through lawful means. The Proprietary Information and Products shall at all times be and remain the property of the Practice. Physician shall cease any and all use of the Proprietary Information and Products and shall return any Proprietary Information and Products in Physician's possession to the Practice immediately upon termination of Physician's employment with the Practice. Physician agrees that during the Confidentiality Restriction Period, Physician will keep such Proprietary Information and Products confidential and shall not disclose any such Proprietary Information and Products to the extent not generally known to the public, to any third party or entity.

Section 10.02 Solicitation Restrictions.

- (a) Subject to the "Exceptions" (as defined in Section 10.09 below) and the buy-out provision of Section 10.08, during the "Term Restriction Period" (as defined in Section 10.04 below), Physician agrees that he will not knowingly, directly or indirectly, alone or as a shareholder, partner, officer, director, member, manager, employee, independent contractor, consultant, investor, lender or stockholder of any company or business organization, recruit, solicit or otherwise seek to induce employees of the Practice or Physician Services with whom Physician had contact because of his position with the Practice to terminate their employment relationship with the Practice or Physician Services or to violate any agreement with the Practice or Physician Services.
- (b) Subject to the Exceptions and the buy-out provision of Section 10.08, during the Term Restriction Period, Physician agrees that he will not directly or indirectly by assisting others, solicit or divert, or attempt to solicit or divert, any of the Practice's patients with whom such Physician had material contact (i.e., treated, supervised treatment on) during the 12-month period preceding the termination or expiration of such employment with the Practice, for purposes of providing medical services that are competitive with those services provided by the Practice.

Section 10.03 Term Non-Competition Covenant.

- (a) Physician acknowledges that (i) the Practice has a large investment of time, effort, and money in obtaining contracts and developing patient relationships; (ii) the Practice's success depends upon its developing and maintaining such relationships; (iii) the Practice's continued relationship with its patient population constitutes assets and property of the Practice; (iv) the recruitment and orientation of Physician to the patients represents a substantial investment by the Practice; (v) Physician's contact with the patients in performing physician services under this Agreement constitutes a position of trust which may result in the establishment of a relationship whereby Physician could influence the future actions of the patients relative to renewal or cancellation of their relationship with the Practice; and (vi) if the relationship between the Practice and its patients is terminated or not renewed because Physician solicited or agreed to perform (directly or indirectly) similar services as were provided by the Practice, then the Practice would be damaged as set forth above, and
- (b) Such solicitation by Physician would constitute a breach of trust by Physician and an interference with the relationship between the Practice and its patients by reason of Physician's position of trust.
- (c) Subject to the Exceptions and the buy-out provision of Section 10.08, during the Term Restriction Period, Physician shall not, directly or indirectly, engage in the practice of medicine in the specialty of surgical oncology (the "Specialty") (either alone or with others, including, without limitation, personally maintaining an office or office hours for physician services in the Specialty) in the Territory (as defined in Section 10.06 below). As to the foregoing, Physician acknowledges that Physician has the ability to practice medicine within or without the Territory and that the practice of medicine outside the Territory would not constitute a hardship or an unreasonable restriction on Physician or restrict Physician from earning a livelihood from the practice of medicine.
- (d) Notwithstanding anything to the contrary set forth in this Agreement, services provided by Physician in connection with this Agreement shall not be deemed a violation of this Section 10.03.

Section 10.04 Restriction Periods. The term "Confidentiality Restriction Period" as used herein shall mean (a) indefinitely, with respect to all Proprietary Information and Products that are considered to be trade secrets under the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 et seq.; and (b) the period beginning on the Commencement Date of this Agreement and ending on the second anniversary of the termination or expiration of this Agreement for any reason with respect to all other Proprietary Information and Products. The term "Term Restriction Period" as used herein shall mean the period beginning on the Commencement Date of this Agreement and ending on the expiration date of the Initial Term or the expiration date of a Renewal Term, if

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applicable, and regardless of whether this Agreement was terminated before the expiration date of such Initial Term or Renewal Term; provided, however, that notwithstanding anything herein to the contrary, in no event shall the Term Restriction Period be greater than two (2) years from the date of termination of this Agreement.

Section 10.05 Liquidated Damages Provision. Subject to the Exceptions, in the event the "Precondition" (as defined below) occur, Physician agrees that he shall pay to the Practice liquidated damages in the amount of the "Buy-Out Amount" as defined in Section 10.08 below. The Practice and Physician acknowledge that (a) the injury caused by a breach of this Agreement through an occurrence of the Preconditions would be difficult or impossible to estimate; and (b) that the Buy-Out Amount is a reasonable pre-estimate of the probable loss associated with the breach and the occurrence of the Precondition. Physician shall pay the Buy-Out Amount within thirty (30) days after written notice from the Practice indicating that the Precondition have occurred. In order for this Section 10.05 provision to apply to the Physician, the following "Precondition" must occur: Within one (1) year after the termination or expiration of this Agreement for any reason, either (1) forty percent (40%) or more of the surgical oncologists of the Practice (as determined on the Commencement Date of this Agreement) are engaged in the practice of medicine (either alone or with others within the Territory) as an employee or an independent contractor or pursuant to any contractual relationship with St. Joseph's/Candler Health System or any of its related entities, or (2) forty percent (40%) or more of the specialty physicians of the Practice (as determined on the Commencement Date of this Agreement) are engaged in the practice of medicine (either alone or with others within the Territory) as an employee or independent contractor or pursuant to any contractual relationship with St. Joseph's/Candler Health System or any of its related entities.

The liquidated damages provision of this Section 10.05, however, shall not apply to Physician in the event the Physician's relationship with St. Joseph's/Candler Health System is limited to being a member of the medical staff of St. Joseph's/Candler Health System.

Section 10.06 Territory. The term "Territory" as used herein shall mean the geographic area within a twenty five (25) mile radius from the Practice's main campus located at 4700 Waters Avenue, Savannah, Georgia.

Section 10.07 Acknowledgement of Reasonableness. Physician acknowledges and agrees that: (a) the restrictions contained in this Article X are reasonable (including, without limitation, with respect to the duration of the Term Restriction Period, the geographic size of the Territory, and the protectable interests of the restrictions), and (b) the Practice has a valid interest to protect pursuant to this Article X (including, without limitation, the Practice's relationship with its patients, the protection of the confidential information and other protectable interests). Physician agrees that the covenants and agreements contained in this Article shall be construed as agreements independent of any other provisions of this Agreement and that ascertainment of damages in the event of a breach of this Article would be difficult, if not impossible; and, therefore, Physician hereby agrees that the Practice, in addition to and without limiting any other remedy it may have, shall have the right to an injunction issued by a court of competent jurisdiction enjoining any such breach, and Physician hereby waives (i) any defense he may have

that the Practice has or will then have an adequate remedy at law with respect to any such breach, and (ii) any right to require the Practice to post a bond to enforce this Article X.

Section 10.08 Buy-Out Provision. In the event this Agreement is terminated by the Practice or the Physician and Physician desires to be released from the restrictive covenants set forth in Sections 10.02, 10.03, or 10.05, Physician can "buy-out" of such restrictive covenants by paying to the Practice a "Buy-Out Amount" as set forth herein. For purposes of this Agreement, the "Buy-Out Amount" shall mean an amount equal to two (2) times the average of Physician's annual income, as shown on his W-2 forms (after withholdings for federal and state tax purposes) prepared by the Practice, for the two (2) most recent twelve (12) month periods (or for the most recent twelve (12) month period in the event the Physician has not been practicing with the Practice for at least two (2) years).

Section 10.09 Exceptions to Restrictive Covenants. Notwithstanding anything to the contrary set forth in this Agreement, the restrictive covenants set forth in Sections 10.02, 10.03 and 10.05 shall not be applicable to Physician in the following instances (the "Exceptions"):

- (a) In the event this Agreement is terminated by the Practice without cause under Section 8.03 of this Agreement; or
- (b) The Physician terminates this Agreement under Section 8.02 of this Agreement due to a material breach of this Agreement, which breach is not timely cured, by the Practice as provided therein.

ARTICLE XI REPORTING REQUIREMENTS

Section 11.01 Reporting Requirements. During the Term, Physician shall notify the Practice in writing within three (3) working days of actual notice of any of the following:

- (a) Any proposed adverse action or other adverse action, whether final or pending, taken by any hospital, institution, insurance company, health maintenance organization, preferred provider organization, governmental agency or professional review organizations against Physician;
- (b) Any report that has been filed with the Georgia Board of Medicine or other state board of medicine or with the National Practitioner Data Bank regarding Physician;
- (c) Any summons, complaint, written claim or other document alleging professional negligence or other injury arising from medical practice, whether before or during employment by the Practice; or
- (d) Any other event which raises a reasonable probability that the event will result in a legal, governmental or licensure claim or action against Physician relating to the practice of medicine.

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**ARTICLE XII
MISCELLANEOUS**

Section 12.01 Assignment. Physician recognizes that the duties to be performed by Physician are personal in nature and are to be performed by Physician personally. Accordingly, Physician agrees that Physician may not assign this Agreement in whole or in part to any other person or entity, by operation of law or otherwise, without the prior written consent of the Practice. Any attempted assignment by Physician without the Practice's prior written consent shall be null and void. Practice may assign this Agreement to an entity which is in control of, is controlled by, or is under common control with the Practice.

Section 12.02 Gender. Whenever the masculine, feminine or neuter gender is used herein, it shall be deemed to include all other genders, as appropriate.

Section 12.03 Successors. All the provisions herein contained shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Practice and of Physician; provided, however, that nothing contained in this Section 12.03 shall be construed as a consent by Practice to an assignment of this Agreement or of any interest herein by Physician except as provided in Section 12.01 above.

Section 12.04 Headings. The headings to the various sections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

Section 12.05 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and each of such counterparts shall together constitute but one and the same agreement.

Section 12.06 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been received by the person to whom it is addressed when delivered if delivered in person or three (3) days after it is deposited in the United States mail, if mailed by certified or registered mail, postage prepaid and addressed as follows:

If to Physician:	Phillip B. Flexon, M.D. 4700 Waters Avenue Savannah, Georgia 31404

If to the Practice:	Provident Health Surgical Associates, Inc. 4700 Waters Avenue Savannah, Georgia 31404 Attn: President

With a copy to (but which shall
not constitute notice):

T. Mills Fleming
Hunter, Maclean, Exley & Dunn, P.C.
P.O. Box 9848
Savannah, Georgia 31412-0048

or to such other person and address as either party may designate in writing.

Section 12.07 Effect of Invalidity. Should any part or provision of this Agreement, for any reason, be declared invalid or illegal, such invalidity or illegality shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid or illegal portions thereof eliminated.

Section 12.08 Applicable Law; Rights Cumulative. This Agreement shall be construed in accordance with the laws of the State of Georgia. All rights of the Practice hereunder shall be cumulative with all rights which the Practice hereto may have at law or in equity.

Section 12.09 Amendments. This Agreement constitutes the entire agreement between the Practice and Physician with respect to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by an authorized representative of the Practice and by Physician; provided, however, any amendments to this Agreement authorized under this Agreement shall not be subject to this sentence.

Section 12.10 Third Party Beneficiaries. Memorial shall be a third party beneficiary with respect to Article X of this Agreement and shall have the authority and right to enforce the restrictions and provisions of Article X against Physician and such rights and authority shall survive the expiration or termination of the this Agreement. Except for Memorial's rights with respect to Article X, there are no third party beneficiaries to this Agreement.

Section 12.11 No Waiver. No waiver of any provision of this Agreement shall be effective against either party hereto unless it is in writing and signed by the party granting the waiver. No waiver of any provision hereof shall be deemed a continuing waiver or a waiver of any other provision hereof.

Section 12.12 Survival. All obligations of the parties which have accrued as of termination of this Agreement shall survive any termination of this Agreement. In addition, the provisions of Articles VIII, IX, X, and XII shall survive any termination of this Agreement.

Section 12.13 Special Medicare Covenant. The Practice and Physician hereby agree to comply in all respects with the Medicare and Medicaid laws and regulations, including, without limitation, the anti-kickback and fraud and abuse provisions thereof, and no direct or indirect payments shall be made by one party to the other to induce, or in consideration of, the referral by the other party of a Medicare and Medicaid patient. Pursuant to this Agreement, Physician is employed for the provision of items and services covered by the Medicare program.

744584-03

Section 12.14 Arbitration. The parties hereto will attempt in good faith to resolve any controversy, dispute or claim arising out of or relating to this Agreement promptly by negotiations between the parties. If a controversy, dispute or claim should arise, the Practice, or its designee, and the Physician shall meet at least once in an attempt to resolve the matter. Either person may request the other to meet with them in fourteen (14) days at a mutually agreeable time and place. If the matter has not been resolved within twenty (20) business days after their first meeting, which may be extended by mutual agreement, the dispute may, at the option of either party, be submitted to Memorial's Chief Executive Officer or his or her designee within thirty (30) days after notice to Memorial of the dispute. If the matter has not been resolved within ten (10) business days after the meeting of , the dispute shall be submitted to final and binding arbitration under the rules of the American Arbitration Association (the "AAA Service"), said arbitration to be held in Savannah, Georgia or such other forum determined under the AAA Service rules.

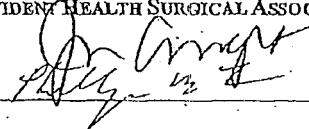
Section 12.15 Confidentiality. Except as otherwise required by law, each party hereto agrees to keep this Agreement and its contents confidential and not to disclose the same to any third party, except their respective legal, consulting and accounting representatives.

Section 12.16 Severability; Reformation. If any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by an arbitrator or court, the validity and enforceability of the remaining provisions, or portions thereof, will not be affected and shall continue in force. If any arbitrator or court determines that the scope, duration or geographical limit of any of the restrictions contained in this Agreement is unenforceable, it is the intention of the parties, if authorized under Georgia law, that the restrictions and covenants shall not thereby be terminated but rather shall be amended and revised to the extent required to render them valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PRACTICE:

PROVIDENT HEALTH SURGICAL ASSOCIATES, INC.,

By: 

PHYSICIAN:

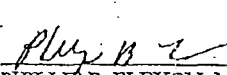
 (L.S.)
PHILLIP B. FLEXON, M.D.

EXHIBIT A

Professional Performance Standards

1. Available for scheduled patient care which provides access and availability for prompt patient appointment scheduling. The following guidelines and expectations are for full time professionals; if working less than full time, the equivalent pro-rata number of hours:
 - a. Office Based Practices with Hospital Responsibilities (depending on inpatient case load) will normally average scheduled appointment hours of 33-36 scheduled appointment hours per physician per week.
 - b. Office Based Practices with no hospital responsibilities will normally average 38-40 scheduled appointment hours per physician per week.
 - c. Surgeons and proceduralists will typically schedule appointment hours, considering their surgical/scheduled procedure caseload with the expectation that a physician is available for office referrals when the specialty practice is open.
2. Attend Group Meetings as requested by the Practice or Memorial's Chief Executive Officer or his or her designee.
3. Participate in committee structure for Practice, as determined from time to time.
4. Attend "mandatory" training sessions of the organization (e.g., Coding, Compliance Training, etc.).
5. Achieve conformance with Quality Improvement/Management initiatives' initiated by the Practice or Memorial or its designee.
6. Achieve conformance with Patient Satisfaction score expectations and action plans established by Memorial or its designee.
7. Document all patient care (dictation, coding and charge capture) in a timely manner.
 - a. Charges submitted for care in the office within twenty-four (24) hours of the date of service.
 - b. Charges submitted for other "outpatient care" (surgical procedures, etc.) within seventy-two (72) hours of completion of procedures.
 - c. Charges submitted for inpatient hospital services within seventy-two (72) hours of encounter (and receipt of necessary diagnostic testing and/or pathology results.)
 - d. All dictation/documentation of care completed within twenty-four (24) hours of the date of service.
8. Comply with policies, procedures, rules, and regulations of Memorial.
9. When requesting time off, physicians will ensure that the Practice has appropriate physician coverage.

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10. Share equitably all scheduled time off within Physician's specialty or sub-specialty—avoiding one member scheduling all prime weeks (holidays, summer, etc.).
11. Show respect and courtesy to colleagues, administrative and clinical support staff, and administration.
12. Abide by Memorial's Code of Business Practice in effect from time to time.
13. Hospital Medical Staff duties and other obligations will be upheld, as indicated.
14. Maintain membership in the appropriate professional societies, especially those representing the Physician's specialty/sub-specialty.

EXHIBIT B

Medical Education and Research Functions

Minimum Responsibilities for Part Time Faculty at
Memorial Health University Medical Center

The Program Director will specify the components of each duty to best meet the needs of his/her residency. These expectations will be written to the faculty at the start of each academic year. Clear evaluation tools will be developed to correspond to the expectations, and faculty will be evaluated at least once per year. Physician shall be expected to:

1. Actively participate in daily supervision and education of assigned students;
2. Actively participate in daily supervision and education of assigned residents;
3. Evaluate all learners during and following each rotation;
4. Provide high quality clinical care both outpatient and inpatient;
5. Maintain professional specialty certification and commit to life long learning;
6. Sustain effective relationships with all customers;
7. Provide leadership with respect to change; and
8. Serve as a role model for your profession.

3/27/06

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EXHIBIT C

To Physician Employment Agreement ("Agreement")

DATED SEPTEMBER 18, 2008

BETWEEN

PROVIDENT HEALTH SURGICAL ASSOCIATES, INC. (the "Practice")

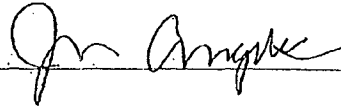
AND

PHILLIP B. FLEXON, M.D. ("Physician")

Physician agrees that all fees and charges arising out of Physician's services on behalf of the Practice during the Term shall be and remain the property of the Practice. Physician irrevocably assigns and transfers to the Practice all right, title and interest of Physician to any fees or charges (whether in cash, accounts, goods or other property of value) resulting from or incident to Physician's practice of medicine pursuant to the Agreement and does hereby appoint the Practice as Physician's agent and attorney-in-fact to bill and collect the same and to enforce Physician's interest therein.

PRACTICE:

PROVIDENT HEALTH SURGICAL ASSOCIATES, INC.,

By: 

PHYSICIAN:

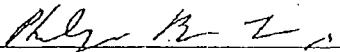
 (L.S.)
Phillip B. Flexon, M.D.

EXHIBIT D

PHYSICIAN'S COMPENSATION

Physician shall be compensated in accordance with the following compensation model. There are three (3) potential levels of compensation for the Physician, including, (1) Teaching Stipend, (2) Base Salary and (3) Incentive Compensation:

(1) Teaching Stipend. Physicians who provide medical education and research services on behalf of Memorial Health University Medical Center, Inc. ("Memorial") shall receive a stipend in accordance with an exhibit attached to such Physician's Agreement with the Practice. During the Term, Physician's annual education stipend shall equal \$25,000 ("Teaching Stipend"). The Practice and Physician recognize that payment of the Teaching Stipend shall be subject to the Memorial Graduate Medical Education Committee's or its designee's approval paid to the Physician in accordance with the Practice's usual payroll policies in effect from time to time.

(2) Base Salary.

- (a) During the first year of the Term of Physician's Employment Agreement, Physician's annual "Base Salary" shall equal \$265,000. The Base Salary shall be paid by the Practice to Physician in accordance with the timeframes and procedures established by the Practice for payment of base salaries.
- (b) At all times subsequent to the first year of the Term of Physician's Employment Agreement, Physician's Base Salary shall be determined as follows:
 - (i) Physician's annual Base Salary shall be established by comparing (y) an average of Physician's actual wRVUs for the previous two (2) years, or in the case of the second year of the Term, Physician's actual wRVUs for the previous one (1) year, with (z) the average and/or agreed upon blend of the compensation and wRVU survey data published by the MGMA Physician Compensation and Production Survey and the Sullivan Cotter Associates Physician Compensation and Productivity Survey Report (or if such surveys and reports are no longer available or not applicable, then such other data as is available) ("Survey Data") for physicians under similar and like circumstances. If Physician produces wRVUs at a specific percentile of the Survey Data, then Physician's Base Salary shall be equal to that percentile of the Survey Data. If the Physician falls between quartiles, the Physician's Base Salary shall revert to a lower quartile. If a Physician's wRVU production falls below the 25th percentile, Physician's Base Salary shall be seventy five percent (75%) of model prediction. Physician's Base Salary

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shall be capped at the ninetieth percentile (90%) of the Survey Data.

- (ii) Except as provided for above in Section 2(b)(i), in the event Physician's average wRVU production information for the previous two (2) years is not available, Physician's Base Salary shall be the amount equal to the twenty fifth percentile (25%) of the Survey Data for physicians under similar and like circumstances.
- (iii) Physician's Base Salary shall be adjusted annually, using the formula outlined in Section 1(b)(i) above, and shall be reviewed and agreed upon by December. The Base Salary shall be paid by the Practice to each Physician in accordance with the timeframes and procedures established by the Practice for payment of Base Salaries.

(3) Incentive Compensation. Physician may be eligible to receive Incentive Compensation, payable on a semi-annual basis, after each of the second and fourth calendar quarters, in accordance with the following definitions and procedures:

- (a) During the first year of the Term of Physician's Employment Agreement:
 - (i) *Determining Incentive Compensation.* Physician shall only receive incentive compensation in the event that his wRVU production during the first year of the Term exceeds 5,327 wRVUs ("Minimum wRVU"), as determined by the customary procedure and sole discretion of the Practice. Subject to the limitations of subsection 3(a)(ii) below, for each wRVU that Physician produces during the first year of the Term over the Minimum wRVU, Physician shall receive \$49.75 per wRVU.
 - (ii) *Limitations on Incentive Compensation.* In addition to the limitations set forth in Section 5 below, during the first year of the Term, in no event shall the Physician's Incentive Compensation exceed \$15,000.
 - (iii) *Payment of Semi-Annual Incentive Compensation.* The final semi-annual Incentive Compensation amount calculated under this Section 3(a) shall be determined by the Practice's administrative staff or independent accountants, approved by the Practice and paid by the Practice in accordance with timeframes and procedures established by the Practice, subject to the limitations set forth in herein. The semi-annual Incentive Compensation, if any, shall be paid within forty-five (45) days after the end of the applicable semi-annual period.

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(b) At all times subsequent to the first year of the Term of Physician's Employment Agreement:

- (i) *Determining Incentive Compensation.* Physician's "Incentive Compensation" shall be an amount equal to Incentive WRVU multiplied by the Conversion Factor (as both terms are defined below).
- (ii) *Limitations on Incentive Compensation.* In addition to the limitations set forth in Section 5 below, for each year of the Term, the Physician's Clinical Compensation shall not exceed the amount represented by the Survey Data at the percentile equal to Physician's Production Percentile.
- (iii) *Payment of Semi-Annual Incentive Compensation.* The final semi-annual Incentive Compensation amount calculated under this Section 3(b) shall be determined by the Practice's administrative staff or independent accountants, approved by the Practice and paid by the Practice in accordance with timeframes and procedures established by the Practice, subject to the limitations set forth in Section 3(b)(ii) above and Section 5 below. The semi-annual Incentive Compensation, if any, shall be paid within forty-five (45) days after the end of the applicable semi-annual period.

(4) Definitions for Exhibit D.

- (a) "Incentive WRVU" shall mean an amount equal to Physician's WRVU production less WRVU required to achieve Base Salary quartile for such year of the Term.
- (b) "Conversion Factor" shall mean an amount equal to the value of the 50th percentile of WRVUs divided into the median percentile of base compensation of the averaged Survey Data for the Physician's specialty or subspecialty.
- (c) "Clinical Compensation" shall mean an amount equal to the sum of Physician's Base Compensation plus Physician's Incentive Compensation for such year of the Term.
- (d) "MGMA Physician Compensation and Production Survey" and "Sullivan Cotter" means the most recent surveys published by the Medical Group Management Association ("MGMA") and Sullivan Cotter for Physician's specialty.
- (e) "Production Percentile" means the percentile at which Physician's WRVU production for such year of the Term falls on the most recent survey of WRVU production for Physician.

(5) Regulatory Compliance Analysis. Notwithstanding anything herein to the contrary, the Physician, as an employee, and the Practice acknowledge and agree that the compensation package set forth in this Agreement as described in this Exhibit D, is for identifiable services; is commercially reasonable even if no referrals were made to the Practice; is consistent with fair market value and does not take into account volume or value of referrals;

and is intended to comply in all respects with the applicable requirements under the Federal Stark law (42 U.S.C. §1395nn), the False Claims Act (31 U.S.C. §§3729-3733) and the Federal Anti-kickback Statute (42 U.S.C. §1320a-7(b)).

(6) Semi-Annual Compensation Review and Adjustment. The Practice reserves the right to review and adjust, on a semi-annual basis, Physician's Base Salary based on the Survey Data when compared to Physician's WRVU production level.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

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EXHIBIT E

Benefits

See Attached

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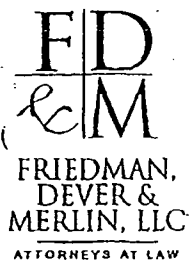
D-1

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Flexon Equipment From Coastal Carolina

(6) Frazier Suctions	10 FR	Xomed
(8)	7 FR	X
(8)	5 FR	
(6)	3 FR	
(12) bayonet forceps		SSI
(16) nasal speculums		Xomed
(2) pediatric nasal speculums		Xomed
(14) fine alligator forceps		Xomed
(2) sets of lacrimal probes		
(4) sets of suture removal instruments (forceps + scissors)		SSI
(1) stainless steel Classic II cabinet		Jedmed
(2) mirror warmer and beads		Jedmed
(2) welch allyn kits with otoscope and charger		Jedmed
(2) airlift stool with backrests		Jedmed
(2) fiber optic scope with camera and video cart		Stortz
(1) small autoclave		Ritter
(30) otoscope speculum, 30 of each size		
(25) #3 mirrors		Xomed
(1) 30 degree rigid sinus scope		Stortz
(2) small stainless steel instrument trays		



5555 GLENRIDGE CONNECTOR, NE
SUITE 925, GLENRIDGE HIGHLANDS
ATLANTA, GEORGIA 30342-4728
TELEPHONE 404.236.8600
TELECOPIER 404.236.8601

direct dial: 404.236.8608
email: lmerlin@fdmlaw.com

August 15, 2008

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

70070220000477118332

Coastal Carolina Medical Center
103 Powell Court
Suite 200
Brentwood, Tennessee 37027
Attention: Vice President, Physician Services

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

70070220000477118349

Coastal Carolina Medical Center
103 Powell Court
Suite 200
Brentwood, Tennessee 37027
Attention: General Counsel

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

70070220000477118356

Coastal Carolina Medical Center
1000 Medical Center Drive
Hardeeville, SC 29927
Attention: CEO

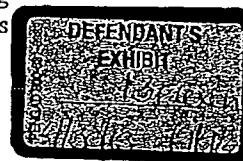
Re: Physician Employment Agreement dated December 18, 2006, by and
between Coastal Carolina Medical Center ("Employer"), and Phillip
B. Flexon, M.D. ("Physician") (the "Contract")

Dear Sir or Madam:

This law firm represents Phillip B. Flexon, M.D. This letter shall serve as formal notice of termination of the referenced Contract by Physician "for cause" pursuant to the terms of Section 6.2.1 of the Contract. Specifically, the Employer is in material breach, default and violation of the Contract in the following particulars:

1. Billing Malfeasance. Since July 1, 2007, the Employer and its representatives have failed and refused to submit charges for Dr. Flexon's services to Medicare, Medicaid and private insurance carriers. This has continued in spite of Dr. Flexon continuing to see patients in the office, cover the Employer's Emergency Room and perform surgeries. This failure in basic office medical management makes it impossible for Dr. Flexon to receive his bonus compensation as set forth in the Contract. This is a clear and material violation of the Contract. The lack of billing has been repeatedly brought to the attention of hospital officials including on more than one occasion its CEO. Yet despite this, nothing has happened and the bills remain unsent.

FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -42-



2. Staffing. The Employer has materially breached the Contract by repeatedly not providing Dr. Flexon reasonable personnel staffing and support, such as billing and marketing as required by Section 3.2 of the Contract. In November 2007, the Employer fired Dan Gemmell, Dr. Flexon's Practice Manager without Dr. Flexon's knowledge or consent and failed to reinstate him after Dr. Flexon's repeated protests. The position has not been filled to date.

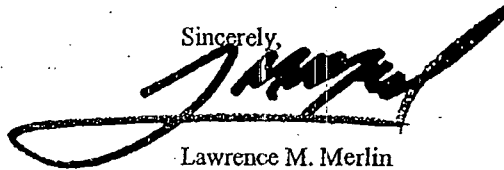
On December 31, 2007, Employer terminated Dr. Flexon's Office Billing Director, Phyllis Yingling without Dr. Flexon's knowledge or consent. Later it was learned that Ms. Yingling was specifically instructed by the Employer to stop billing Dr. Flexon's time as of July 1, 2007. The Office Billing Director position has not been filled to date.

In March 2008, Priscilla Green, Dr. Flexon's Scheduler and Receptionist resigned because of working conditions at the Employer. She has not been replaced.

The fact of the matter is for over six months and despite Dr. Flexon's repeated protests and meetings with hospital officials, my client has had no Practice Manager, no Receptionist or Scheduler, and no billing management. He is down to one employee which makes it impossible for him to see and care for his regular patient load that he has established over the last eighteen years (18) before coming to the Employer. My client's practice has been reduced to half its normal patient level.

The Contract allows the Employer thirty (30) days within which to cure these material breaches. However, I am unconvinced that certain of the breaches can in fact be cured due to the amount of time that has passed. However, I would be interested in hearing from you regarding the Employer's position on the content of this letter and its plans, if any, to remedy these defaults. I await your response.

Sincerely,



Lawrence M. Merlin

LMM/jd

cc: Phillip B. Flexon, M.D.

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Memorial University of Newfoundland
Please complete this entire form and return to Human Resources

Team Member Data Change Form

Name: Philip B. Flexon, MD EMPLID 90002109 RCD# Effective Pay Period Date: 09/18/08

Use this form for:

- ☐ Decrease in employment status (i.e. FT to PT, FT to Casual, PT to Casual)
- ☐ Increase in hours/same employment status (i.e. .4 to .6, or .9 to 1.0)
- ☐ Pay Rate Change/Technical Adjustment (change in hourly rate without changing title, dept or status) - VP &
Human Resources Signature Required before pay rate can be processed
- ☐ LOA Status Change
- ☐ Demotion - Must have an open requisition in position control - forward directly to HR Business Consultant
- ☐ Career Ladder
- ☐ Other (enter reason in the comments section below)



Do not use this form for transfers, promotions, additional positions and employment status increases. Please contact your HR Business Consultant for more information or assistance regarding these actions.

Employment Status Code: F - Fulltime P - Parttime C - Casual/PRN M - Medical Resident T - Temporary W - Worker's Comp LOA
L - Normal LOA D - Physician

ITEM	FROM	TO
Department Number/Name		902800 ACI - Surgical Assoc.
Job Title		Physician
Employment Status Code		D
Hourly Rate/Grade		\$290,000/annually (\$265,000/base, \$25,000/teaching stipend)
Percent of Change		
Hours Scheduled per PAY PERIOD		
Supervisor's Team Member ID		
Human Resources Business Consultant:		
HUMAN RESOURCES ONLY		
Job code		
Requisition (Demotions Only)		
Months of experience		

Comments/justification regarding changes identified above:

Base Salary = \$265,000 Teaching Stipend = \$25,000

If this is a change in status inform your Team Member to contact a benefits representative in Human Resources, ext. 22363.

Dept. Manager / Director

Date

Vice President

Date

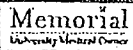
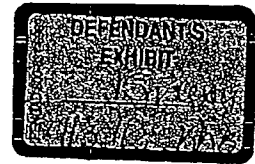
Human Resources

Date

9/29/2008T:\PMR\MSO_ADM\Practice Communications\Gwen\EDCs\Philip Flexon9-29-08.xls

MH 16

R0866



Please complete this entire form and return to Human Resources

Team Member Data Change Form

Name: Phillip Flexon, M.D.

EMPLID 988882109 RCD#

Effective Pay Period Date: 02/05/10

Use this form for:

- ☐ Decrease in employment status (i.e. FT to PT, FT to Casual, PT to Casual)
- ☐ Increase in hours/same employment status (i.e. .4 to .6, or .9 to 1.0)
- ☒ Pay Rate Change/Technical Adjustment (change in hourly rate without changing title, dept or status) -VP & Human Resources Signature Required before pay rate can be processed
- ☐ LOA Status Change
- ☐ Demotion - Must have an open requisition in position control - forward directly to HR Business Consultant
- ☐ Career Ladder
- ☐ Other (enter reason in the comments section below)



Do not use this form for transfers, promotions, additional positions, and employment status increases. Please contact your HR Business Consultant for more information on all matters regarding these actions.

Employment Status Code: F - Fulltime P - Parttime C - Casual/PRN M - Medical Resident T - Temporary W - Worker's Comp LOA
L - Normal LOA D - Physician

ITEM	FROM	TO
Department Number/Name		
Job Title		
Employment Status Code		
Hourly Rate/Grade	\$260,000.00	\$257,378
Percent of Change		
Hours Scheduled per PAY PERIOD		
Supervisor's Team Member ID		
Human Resources Business Consultant:		
HUMAN RESOURCES ONLY		
Job Code		
Requisition (Demotions Only)		
Months of Experience		

Comments/justification regarding changes identified above:

Cost Center Number 921800

If this is a change in status inform your Team Member to contact a benefits representative in Human Resources, ext. 22363.

John Gross 1/25/10
Dept. Manager / Director Date

[Signature] 1/26/10
Vice President Date

[Signature] 2-9-10
Human Resources Date

Team Member Data Change Form

Name: Phillip Flexon

EMPLID 900082109 RCD#

Effective Pay Period Date: 01/02/11

Use this form for:

- ☐ Decrease in employment status (i.e. FT to PT, FT to Casual, PT to Casual)
- ☐ Increase in hours/same employment status (i.e. .4 to .5, or .9 to 1.0)
- ☒ Pay Rate Change/Technical Adjustment (change in hourly rate without changing title, dept or status) VP &
Human Resources Signature Required before pay rate can be processed
- ☐ LOA Status Change
- ☐ Demotion - Must have an open requisition in position control - forward directly to HR Business Consultant
- ☐ Career Ladder
- ☐ Other (enter reason in the comments section below)



Do not use this form for transfers, promotions, additional positions and employment status.
For transfers, promotions, additional positions and employment status, contact your HR Business Consultant for more information on the HRIS.
Regarding these actions:

Employment Status Code: F - Fulltime P - Parttime C - Casual/PRN M - Medical Resident T - Temporary W - Worker's Comp LOA
L - Normal LOA D - Physician

ITEM	FROM	TO
Department Number/Name		
Job Title		
Employment Status Code		
Hourly Rate/Grade		\$171,309
Percent of Change		
Hours Scheduled per PAY PERIOD		
Supervisor's Team Member ID		910001939
Human Resources Business Consultant:	Jennie Williams	
HUMAN RESOURCES ONLY		
Job Code		
Requisition # (Promotions Only)		
Months of experience		

Comments/justification regarding changes identified above:
Adjust 2011 base salary

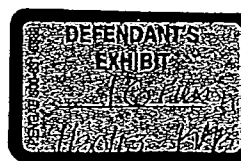
If this is a change in status inform your Team Member to contact a benefits representative in Human Resources, ext. 22363.

all 2/4/2011 Date
Dept. Manager / Director

Shmely Date
Asst. President

[Signature] 2-7-11 Date
Human Resources

2/3/2011M:\EDC.xls



MH 10

January 28, 2011

VIA HAND DELIVERY

Phillip B. Flexon, M.D., FACS
Provident Health Surgical Associates, Inc.
d/b/a ACI Surgical Associates, Inc.
4700 Waters Avenue
Savannah, Georgia 31404

Dear Dr. Flexon:

As you know, representatives of ACI Surgical Associates and Physician Services have met with you on numerous occasions to discuss your continued non-compliance with the terms of your employment agreement. We have provided counselling, made schedule accommodations and provided assistance to you to resolve your non-compliance. While there have been some slight improvements, your non-compliance persists.

On May 13, 2010, Physician Services, as manager of and on behalf of ACI Surgical Associates, provided you with written notice that your non-compliance with the terms of your employment agreement was a material breach and provided you with thirty (30) days to cure that breach. You were again notified in writing on September 10, 2010 and December 29, 2010 regarding your repeated and uncured non-compliance with your employment agreement, which was a breach of the agreement, as well as our request that you cure those breaches and our intent to terminate your employment agreement if those breaches were not cured. Unfortunately, the breaches have not been cured and you remain non-compliant with the terms of your employment agreement.

Accordingly, this letter is to inform you that under Section 8.02 of your employment agreement, your employment with ACI Surgical Associates, will be terminated effective April 26, 2011. You provide needed services to our ACI Program patients and we would like to continue a professional working relationship with you in the ACI Program, albeit not as an employee of ACI Surgical Associates. Therefore, while we have the right to terminate your employment agreement immediately, we want to provide you with time to make arrangements for your private practice and to enter into any managed care arrangements necessary to make your practice a success. We would like for you to continue as an employee of ACI Surgical Associates through April 26, 2011 under the following conditions.

From today through April 26, 2010, we expect you to continue to provide care to patients of ACI Surgical Associates in a timely, professional and non-disruptive manner. We expect you to document all patient care you provide from now through April 26, 2010 in the patient medical records in a timely manner. We expect you to complete all coding and charge capture for those patient care services in a timely manner. We also expect you to complete all missing and delinquent documentation of patient care services by April 26, 2010. We will continue to pay you your base compensation identified in your employment agreement through April 26, 2010. Upon completion of all delinquent patient medical record documentation for patient care services rendered by you on or before April 26, 2010, we will pay

4731 Waters Avenue • Savannah, GA 31401

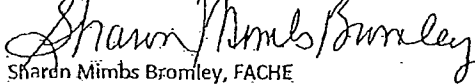


MH 7

you any accrued incentive compensation for the time period up until your termination as well as your final paycheck.

Please do not hesitate to contact me (350-4916) with any questions. I look forward to our new relationship in the service of patients of the ACI Program.

Sincerely,



Sharon Mimbs Bromley, FACHE
Executive Director, Physician Services

/jag

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

PHILIP FLEXON, M.D.)

Plaintiff(s))

vs.)

PHC-Jasper, Inc., d/b/a Coastal Carolina Medical)
Center, Coastal Carolina Medical Center, Inc.,))
Lifepoint Hospitals, Inc., and Tenet Healthsystems,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2008-CP - 27- 331

(Please Print)

Submitted By: William B. Harvey, III

Address: Harvey & Battey, P.A.

1001 Craven Street, Beaufort, SC 29902

SC Bar #: 2792

Telephone #: 843-524-3109

Fax #: 843-524-6973

Other:

E-mail: bharvey@harveyandbattey.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

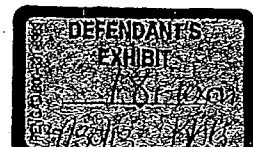
NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Stander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: 5/21/09

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2009-CP-27- 331

Philip Flexon, M.D.,

Plaintiff,

v.

PHC-Jasper, Inc., d/b/a Coastal
Carolina Medical Center, Coastal
Carolina Medical Center, Inc.,
Lifepoint Hospitals, Inc., and Tenet
Healthsystems, Inc.,

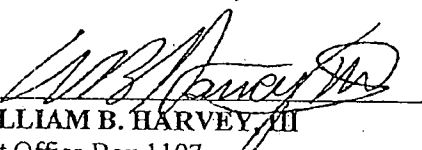
Defendants.

**SUMMONS
(JURY TRIAL DEMANDED)**

TO: THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on Plaintiff or his attorney, William B. Harvey, III, Esquire, at 1001 Craven Street, Beaufort, South Carolina, 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HARVEY & BATTEY, P.A.

By: 

WILLIAM B. HARVEY, III

Post Office Box 1107

Beaufort, South Carolina 29901-1107

843-524-3109 telephone

843-524-6973 telefax

Attorneys for Plaintiff

Beaufort, South Carolina

Dated: May 21, 2009

HARVEY & BATTEY, P.A.
Attorneys and
Counselors at Law
Beaufort, South Carolina

Summons.wpd

R0873

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2009-CP-27-

Philip Flexon, M.D.,

Plaintiff,

v.

PHC-Jasper, Inc., d/b/a Coastal
Carolina Medical Center, Coastal
Carolina Medical Center, Inc.,
Lifepoint Hospitals, Inc., and Tenet
Healthsystems, Inc.,

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiff above named, complaining of the Defendants herein, would show as follows:

1. Plaintiff is a resident and citizen of Jasper County, South Carolina, and at all times was a Medical Doctor duly licensed in the states of Georgia and South Carolina, and practicing in the specialty of ENT, and the sub-specializations of Otolaryngology and Head and Neck Oncology.
2. Defendant PHC-Jasper, Inc. (hereinafter PHC) is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Jasper County, South Carolina, which at all times relevant herein was doing business as Coastal Carolina Medical Center, located in Jasper County, South Carolina. At all times relevant herein, PHC was the wholly owned subsidiary of defendant Lifepoint Hospitals, Inc.
3. Lifepoint Hospitals, Inc. (hereinafter Lifepoint) is, upon information and belief, a corporation organized and existing under the laws of the State of Tennessee, with its

principal place of business in Brentwood, Tennessee; at all times relevant herein, Lifepoint was the owner and operator of Coastal Carolina Medical Center.

4. Coastal Carolina Medical Center, Inc. (hereinafter Coastal) is a corporation organized and existing under the laws of the state of South Carolina, with its principal place of business in Jasper County, South Carolina. At all times herein, Coastal Carolina Medical Center, Inc. was wholly owned and operated by Tenet Healthsystems, Inc.

5. Tenet Healthsystems, Inc. is, upon information and belief, a corporation organized and existing under the laws of the state of Delaware, and at all times relevant herein was the owner and operator of Coastal Carolina Medical Center, Inc.

6. This court has jurisdiction over the parties and venue is properly situated in Jasper County.

7. Heretofore, on or about December 13, 2006, Plaintiff entered into a Physician Employment Agreement with Lifepoint and/or PHC (hereinafter collectively referred to as Employer), as owner of or doing business as Coastal Carolina Medical Center. A copy of this Agreement is attached hereto as Exhibit 1 and incorporated herein. The term of Exhibit 1 was for a period of five (5) years.

8. In order to sign Exhibit 1, Plaintiff had to discontinue, close and leave an established practice in Savannah, Georgia, where he had privileges at surgical hospitals. Plaintiff was enticed to sign Exhibit 1 by the representations of employees and agents of Lifepoint that he would enjoy a long relationship with Lifepoint and Coastal Carolina Medical Center.

9. As part of the negotiations of Exhibit 1, representatives and agents of Employer represented to Plaintiff that the hospital would purchase the equipment needed by Plaintiff in the operating room, including a CO2 laser machine and a navigational system for sinus surgery. Said representatives further represented that the hospital would recruit and hire an audiologist to be part of Plaintiff's practice.

10. Further, as part of Exhibit 1, Employer agreed to conduct all billing from patients or third party payors for all services rendered by Plaintiff, "regardless of the location where any such services may be rendered by [Plaintiff]."

11. To accentuate Plaintiff's understanding that his employment would solely be with Employer, and his professional relationship would remain solely with Coastal Carolina Medical Center (as owned by Employer), paragraph 13.3 of Exhibit 1 states, in part, "no transfer, assignment or other modification affecting the terms or conditions of the contract will be effected unless extenuating circumstances are shown to exist, as determined by the South Carolina Department of Public Health, and approved by the U.S. Attorney General in accordance with applicable federal rules and regulations."

12. No such extenuating circumstances existed which would allow for the transfer, assignment or other modification of Exhibit 1.

13. Upon information and belief, at the time of the signing of Exhibit 1, and certainly before the Effective Date of Exhibit 1, March 15, 2007, Lifepoint was in active negotiations with Tenet for the purchase by Tenet of the assets of PHC, including the hospital Coastal Carolina Medical Center. Knowing that Plaintiff would have to close and terminate an established practice in Savannah in order to fulfill his obligations under Exhibit 1, there

arose a duty by Employer to disclose to Plaintiff the intent to negotiate and sell PHC and Coastal Carolina Medical Center to Tenet, or to another entity.

14. Employer failed to disclose to Plaintiff the intent to sell PHC and Coastal Carolina Medical Center to Tenet, or to another entity, but instead utilized the contract with the Plaintiff, the highly specialized services provided by the Plaintiff, and the revenue to be produced by such services, as a means to enhance the value of Coastal Carolina Medical Center to Tenet as a prospective purchaser.

15. Upon the commencement of Plaintiff's practice at Coastal Carolina Medical Center on March 15, 2007, and Plaintiff's fulfillment of all conditions and covenants attendant with Exhibit 1, Employer refused to honor its representation to purchase the equipment necessary by Plaintiff to properly practice his specialized field of medicine.

16. Upon the commencement of Plaintiff's practice at Coastal Carolina Medical Center on March 15, 2007, and Plaintiff's fulfillment of all conditions and covenants attendant with Exhibit 1, Employer refused to recruit and hire an audiologist as part of Plaintiff's practice.

17. On or about June 30, 2007, Lifepoint sold PHC and Coastal Carolina Medical Center to Defendant Tenet Healthsystems, Inc. On or about July 3, 2007, Tenet presented to the Plaintiff an Amendment to and Assignment of Physician Employment Agreement, attached hereto as Exhibit 2 and incorporated herein by reference, thereby acknowledging that the Employment Agreement, Exhibit 1, was non-assignable per its terms. Plaintiff refused to sign Exhibit 2 and has not agreed to an assignment of Exhibit 1 to Tenet or any other entity.

professional reputation, and had to incur time, expense and loss of income-producing services to move his practice to Savannah.

23. On or about May 4, 2009, Plaintiff received the letter attached hereto as Exhibit 4 and incorporated herein, claiming that Plaintiff owes Coastal Carolina Medical Center (now owned by Coastal and/or Tenet) an amount exceeding \$725,000, and further claiming that Plaintiff must cease his current practice of medicine in Savannah, Georgia. At the time of Exhibit 4, Coastal Carolina Medical Center was (and continues to be) owned by Defendants Coastal Carolina Medical Center, Inc. and/or Tenet. Plaintiff has no contractual or other relationship with either Coastal Carolina Medical Center, Inc. or Tenet.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST LIFEPOINT AND PHC)

24. The allegations of paragraphs 1-23 above are incorporated herein as fully and effectually as if set forth verbatim.

25. Employer breached their employment agreement with Plaintiff.

26. As a result of these material breaches, Plaintiff suffered substantial loss of income, loss of earning potential, loss of patient population, and loss of professional reputation, and had to incur time, expense and loss of income-producing services to move his practice to Savannah, all to his detriment and damage in an amount to be determined by the Court and Jury.

18. Rather, per his Employment Agreement with Employer, Plaintiff continued his practice of medicine at Coastal Carolina Medical Center, and at his adjacent office.

19. In breach of their contract, Exhibit 1, commencing on July 1, 2007, Employer ceased all billings for medical services performed by Plaintiff, and ceased submitting charges for Plaintiff's medical services to Medicare, Medicaid and private insurance carriers.

20. In breach of their contract, Exhibit 1, Employer repeatedly failed to provide Plaintiff with reasonable personnel staffing and support, such as billing and marketing. In November, 2007, Employer terminated Plaintiff's practice manager without Plaintiff's knowledge or consent and failed to reinstate him after Plaintiff's repeated protests. On December 31, 2007, Employer terminated Plaintiff's Billing Director without Plaintiff's knowledge or consent. For over six months, and despite Plaintiff's repeated protests and meetings, Employer failed to provide a Practice Manager, a Receptionist or Scheduler, and no billing management, and forced Plaintiff to attempt a specialized medical practice with only one employee.

21. As a result, on August 15, 2008, Plaintiff, through his attorneys, delivered to Employer a formal notice of termination for cause pursuant to Section 6.2.1 of Exhibit 1, a copy of which is attached hereto as Exhibit 3 and incorporated herein. Per the terms of Exhibit 1, Employer had thirty days within which to cure these material breaches. More than 30 days elapsed and no cure was made. At that time, on September 14, 2008, Exhibit 1 was terminated by Plaintiff for cause.

22. As a result of these material breaches by Employer, Plaintiff suffered substantial loss of income, loss of earning potential, loss of patient population, and loss of

professional reputation, and had to incur time, expense and loss of income-producing services to move his practice to Savannah.

23. On or about May 4, 2009, Plaintiff received the letter attached hereto as Exhibit 4 and incorporated herein, claiming that Plaintiff owes Coastal Carolina Medical Center (now owned by Coastal and/or Tenet) an amount exceeding \$725,000, and further claiming that Plaintiff must cease his current practice of medicine in Savannah, Georgia. At the time of Exhibit 4, Coastal Carolina Medical Center was (and continues to be) owned by Defendants Coastal Carolina Medical Center, Inc. and/or Tenet. Plaintiff has no contractual or other relationship with either Coastal Carolina Medical Center, Inc. or Tenet.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST LIFEPOINT AND PHC)

24. The allegations of paragraphs 1-23 above are incorporated herein as fully and effectually as if set forth verbatim.

25. Employer breached their employment agreement with Plaintiff.

26. As a result of these material breaches, Plaintiff suffered substantial loss of income, loss of earning potential, loss of patient population, and loss of professional reputation, and had to incur time, expense and loss of income-producing services to move his practice to Savannah, all to his detriment and damage in an amount to be determined by the Court and Jury.

FOR A SECOND CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION)

27. The allegations of paragraphs 1-26 above are incorporated herein as fully and effectually as if set forth verbatim.

28. Employer, by and through their officers and agents made certain representations to Plaintiff in the course of negotiations of Exhibit 1 concerning the long term nature of the pending employment relationship, and the intent of said defendants to purchase and supply to Plaintiff various equipment, supplies and personnel.

29. Further, because of the nature of the pending employment relationship, the upheaval that such relationship would cause to Plaintiffs then-existing practice of medicine, and the affirmative efforts by the Plaintiff to ensure that Exhibit 1 was non-assignable, there arose a duty on behalf of Employer to disclose the fact that Employer was in negotiations with Coastal and/or Tenet for the sale of the hospital, which facts were not within the knowledge of, or capable of being discovered by, Plaintiff.

30. Employer, by and through their agents and/or employees, made material misrepresentations and also intentionally failed to disclose material facts. Employer knew these misrepresentations were false and, by their failure to disclose, acted with reckless disregard for the truth or falsity. Employer intended that its representations and/or failure to disclose would be acted upon by the Plaintiff. Plaintiff relied upon the representations and/or silence of Employer, had the right to rely thereon, and was ignorant of the falsity of the representations and/or silence.

31. As a proximate result, the Plaintiff sustained the injuries and damages set forth in paragraph 26 above, and is entitled to damages, both actual and punitive, in an amount to be determined by the court and jury.

FOR A THIRD CAUSE OF ACTION
(BREACH OF GOOD FAITH AND FAIR DEALING)

32. The allegations of paragraphs 1-31 above are incorporated herein as fully and effectually as if set forth verbatim.

33. Under the circumstances presented, employer breached their duty to the Plaintiff of good faith and fair dealing.

34. As a result thereof the Plaintiff sustained the injuries and damages set forth in paragraph 26 above, and is entitled to damages, both actual and punitive, in an amount to be determined by the court and jury.

FOR A FOURTH CAUSE OF ACTION
(DECLARATORY JUDGMENT)

35. The allegations of paragraphs 1-34 above are incorporated herein as fully and effectually as if set forth verbatim.

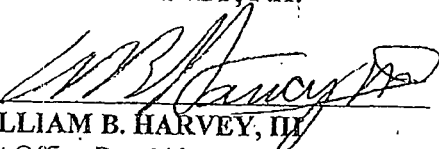
36. By virtue of the letter, Exhibit 4, a justiciable controversy exists between the Plaintiff, and the current owners of Coastal Carolina Medical Center, i.e. defendants Coastal and/or Tenet, on the following issues: (1) whether the employment agreement, Exhibit 1, was terminated for cause on or about September 14, 2008, thereby relieving the Plaintiff from any restrictions thereof; (2) whether the employment agreement, Exhibit 1, is not assignable, and therefore Plaintiff owes no duties to Coastal and/or Tenet; and (3) if

Exhibit 1 is still valid and enforceable, which is denied, whether the Covenant Not to Compete therein prevents the Plaintiff from practicing medicine in his sub-specialty at Memorial Medical Center in Savannah, Georgia.

37. Plaintiff therefore prays for a declaratory judgment that (1) the employment agreement, Exhibit 1, was terminated for cause on or about September 14, 2008, thereby relieving the Plaintiff from any restrictions thereof; (2) the employment agreement, Exhibit 1, is not assignable, and was not assigned, and therefore Plaintiff owes no duties to Coastal and/or Tenet; and (3) if Exhibit 1 is still valid and enforceable, which is denied; the Covenant Not to Compete therein does not prevent the Plaintiff from practicing medicine in his sub-specialty at Memorial Medical Center in Savannah, Georgia, under all the circumstances at issue in this case.

WHEREFORE, Plaintiff prays for judgment against Lifepoint and PHC under the first three causes of action for damages, both actual and punitive, in an amount to be determined by the Court and Jury, and for a declaratory judgment against Coastal and Tenet under the fourth cause of action for the relief set forth in paragraph 37 above, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

HARVEY & BATTEY, P.A.

By: 

WILLIAM B. HARVEY, III

Post Office Box 1107

Beaufort, South Carolina 29901-1107

843-524-3109 telephone

843-524-6973 telefax

Attorneys for Plaintiff

Beaufort, South Carolina

Dated: May 21, 2009

EXHIBIT

1

PHYSICIAN EMPLOYMENT AGREEMENT
LPH-460

Ref. No. 12/12/06

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 18 day of Dec 2006, by and between Coastal Carolina Medical Center ("Employer"), and Phillip B. Flexon, M.D., ("Physician").

RECITALS

WHEREAS, Employer is engaged in the business of operating and managing medical practices and other health care services in Jasper County, South Carolina (the "County");

WHEREAS, Physician is a licensed physician specializing in otolaryngology; and

WHEREAS, Employer desires to employ Physician, and Physician desires to be employed by Employer, to render professional physician services, in accordance with the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Physician, intending to become legally bound, agree as follows:

ARTICLE I
ENGAGEMENT

1.1 Employer engages Physician, and Physician accepts such engagement, as a physician primarily at the medical practice office located at 1010 Medical Center Drive, Hardscove, South Carolina 29927, (the "Practice"), and such other practice sites in Beaufort and Jasper counties as may be reasonably designated by Employer from time to time, and to render professional physician services to patients, in accordance with the terms and conditions of this Agreement.

ARTICLE II

March 14, 2012 TERM

2.1 Term. The Agreement term initially shall be for five (5) year(s) (the "Agreement Term"), commencing on the Effective Date, defined below, and continuing until September 30, 2011, subject to earlier termination of this Agreement pursuant to Article VI [Termination] herein. The Effective Date means the date that Physician begins providing physician services for Employer pursuant to this Agreement, which date shall be October 1, 2006. The Effective Date is contingent upon Physician having obtained provider numbers for Medicare, Medicaid and Insurance companies participating with Employer, but no later than ninety (90) days after the complete execution of this Agreement.

March 15, 2007 46

ARTICLE III
DUTIES AND SERVICES

3.1 Work Schedule. During the Agreement Term, Physician agrees to devote his/her full professional working time and attention, at a minimum of forty (40) hours per work week at the medical practice office, to the practice of medicine for the benefit of Employer under the terms of this Agreement. Employer shall establish Physician's work schedule and on-call schedule, which schedule shall be inclusive of hours providing patient care at the facilities of Employer, any and all Active Medical Staff obligations, and administrative duties. Physician's Emergency Department unassigned patient call schedule responsibility shall be dictated by the Medical Staff's Rules/Regulations of Coastal Carolina Medical Center.

3.2 Non-Physician Personnel. Employer will provide Physician with a reasonable amount of non-physician personnel including, but not limited to, nurses, technicians, secretarial staff, and other medical and non-medical personnel, to assist Physician in the performance of his/her duties. Physician shall report to, consult with, and use the input of Employer regarding the hiring and firing of medical staff who work within the Practice and the overall operations of the Practice. All final decisions regarding hiring and firing of Practice personnel shall rest with Employer.

3.3 Availability and Duties. Physician shall be responsible for such duties as assigned to him or her from time to time by Employer. Physician shall make himself available to provide otolaryngology services to, and treat patients of Employer, whether such patients are outpatients or inpatients. Physician hereby agrees to devote his/her full working time and attention, together with Physician's best endeavors and skill, for the interest, benefit and best advantage of Employer and shall provide services on behalf of Employer in a manner that shall maintain the productivity of the Practice. Physician shall provide all professional medical services in accordance with

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the policies and procedures established by Employer, and the appropriate standards of care of the community. Physician shall have the authority to refuse to treat a specific patient or to dismiss any particular patient if the patient has been abusive, disruptive or threatening or has refused to comply with Physician's orders, or for other reasons of a similar nature. In the case of any such dismissal, Physician agrees that appropriate notice by certified letter shall be sent to such patient and emergency care shall be provided by Physician to such patient for an appropriate period after such dismissal. Notwithstanding the foregoing, Physician agrees that he will not refuse to treat a patient and will not discriminate with respect to quality of care of a patient or otherwise on the basis of such patient's race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, disability or medical condition, or as otherwise provided by law. Except as otherwise stated herein, Physician specifically understands that Employer shall have the final authority over the acceptance or refusal of any person for whom professional services may be rendered and the amount of fees to be charged to such patients.

3.4 **Patient Care.** Nothing in the Agreement shall be interpreted to dictate Physician's practice of medicine, delivery of direct patient care or independent judgment in the practice of medicine. Physician shall have complete control over the diagnosis and treatment of patients and neither Employer nor any employee of Employer shall exercise any direct supervision or control over the individual treatment of the patient. Physician agrees that Physician's treatment and diagnosis of patients will be consistent with any rules and regulations promulgated by Employer dealing with the general treatment of patients.

3.5 **Performance Standards.** In performing services under this Agreement, Physician shall comply with the following Performance Standards:

- 3.5.1 promote cooperation and teamwork among other physicians and other employees and personnel of Employer;
- 3.5.2 develop standardization of otolaryngology practices and procedures;
- 3.5.3 attend all required management meetings;
- 3.5.4 assist Employer as requested in the efficient and effective day to day management of the Practice;
- 3.5.5 respond to patient and referring physician needs and concerns regarding patient diagnosis and treatment as expeditiously as reasonably possible;
- 3.5.6 fully support Employer's overall quality improvement and quality assurance initiatives;
- 3.5.7 adhere to all reasonable Policies and Procedures adopted by Employer;
- 3.5.8 adhere to such other performance standards as established by Employer from time to time.

3.6 **Location(s) for Services.** Physician shall perform his/her duties at the Practice, those hospital facilities at which Physician maintains Medical Staff privileges and such other practice locations of Employer in Beaufort and Jasper counties as may be reasonably designated by Employer from time to time. Employer shall have reasonable discretion to consolidate and relocate practices operated by Employer, including the Practice.

3.7 **Professional Fees/Outside Activities.** Physician agrees not to engage in any medical professional business activity (whether or not such business activity is pursued for gain, profit or other pecuniary advantage), without the prior written consent of Employer, other than (i) rendering services on behalf of Employer pursuant to this Agreement, (ii) maintaining an ownership interest of less than five percent (5%) of the issued and outstanding stock of a publicly-traded corporation, or (iii) teaching, writing, lecturing, or providing expert witness testimony on otolaryngology topics; provided such activities shall not interfere or conflict with the performance of Physician's duties or provision of services under this Agreement. Physician shall not enter into any other physician employment contract or otherwise engage in the practice of medicine other than for the benefit of Employer. All remuneration and accounts receivable arising from or related to Physician's provision of any medical services pursuant to this Agreement are the property of Employer, and Physician agrees to provide to Employer any such remuneration immediately after it is received by Physician. Physician agrees to take all reasonable actions requested by Employer to assist in the collection of accounts receivable for services provided by Physician. Unless otherwise agreed, all fees or remuneration arising from or related to teaching assignments, lectures, speeches, publications, or expert witness testimony by Physician on or about matters related to the practice of otolaryngology shall also be considered compensation or professional service revenues to which Employer is entitled hereunder.

3.8 **Workplace Rules.** Physician shall observe and comply with the rules, regulations, policies and procedures established by Employer with respect to the performance of Physician's duties. In the event of any inconsistency between such rules, regulations, policies and procedures and this Agreement, the provisions of this Agreement shall prevail.

3.9 **Managed Care.** Physician, at all times during the Agreement Term, shall participate in all managed care arrangements made available by or through Employer. Employer shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations and third party payors; however, Employer agrees to consult and obtain input from Physician prior to entering Agreements. Upon request of Employer, Physician shall execute such managed care agreements, applications and other documents as reasonably required. Physician shall not otherwise contract with any managed care organization or third party payer. In connection with such managed care arrangements, Employer shall negotiate such managed care arrangements with the proviso that Physician shall not be individually responsible to the managed care company for any withhold and that no hold harmless provision shall be applicable or enforceable on Physician. Employer

shall use reasonable efforts to ensure that any capitation rates, discounted fees or other risk based arrangements are consistent and competitive with those rates as accepted by other physicians practicing in the same specialty in the County.

3.10 Other Services. During the Agreement Term, Physician and Employer may mutually agree to Physician rendering additional services. Such duties may include service on hospital staff committees, peer review organizations, or other committees of Employer, and serving on national and regional committees of Employer's Affiliates (which term as used in this Agreement shall include any person, corporation, partnership, general partner or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Employer); provided that such duties shall not interfere with the professional services provided by Physician on behalf of Employer pursuant to this Agreement.

3.11 Additional Physicians. Employer and Physician agree as an essential term of this Agreement that it is the intent of the parties to develop a comprehensive medical practice. It is further understood that Employer intends to negotiate and enter into employment relationships with additional qualified physicians. Physician agrees to use his/her best efforts to forge and establish an ongoing relationship and team approach with such additional physicians for the furnishing of physician and related services to patients.

3.12 Obtaining Staff Privileges. As a condition precedent to this Agreement, the Physician shall maintain active medical staff privileges at the Hospital. This Agreement shall not be effective until the date that the Physician obtains such privileges. If the Physician has not obtained such privileges on or before October 1, 2006, this Agreement shall automatically terminate. Nothing contained herein is intended to or shall be construed to operate as an agreement or undertaking by the Hospital or the Employer to grant or confer medical staff privileges upon the Physician. For purposes of this Agreement, the date upon which the Physician obtains provisional or active medical staff privileges at the Hospital and commences his or her employment hereunder shall be referred to herein as the "Effective Date."

3.13 Professional Courtesy. Physician agrees that no patients of the medical practice will be treated and have their charges written off as Professional Courtesy. In an event a patient has financial reasons impacting their ability to pay, Physician will refer the patient to the Practice Manager to be handled consistent with Employer's procedures.

ARTICLE IV COMPENSATION

4.1 Compensation. During the Agreement Term, Employer shall pay Physician compensation as set forth in Exhibit I attached hereto (the "Compensation").

4.2 Leave. Physician shall be entitled to twenty-five (25) paid days off annually according to the terms of the policy of Employer, which shall include vacation, legal holidays, personal days, and sick days. The maximum amount of time to be used, at any point in time, is ten (10) consecutive days. In addition, Physician will be reimbursed up to \$5,000 per contract year plus no more than five (5) CME days per contract year in connection with Physician attending medical conventions and/or continuing medical education seminars, including travel, lodging and meals. Physician's leave will be earned and accrued on a monthly basis consistent with other Physician employees of Employer. All leave shall be pre-approved by Employer. Leave is to be used during the year it is awarded and cannot be carried over to the following year. Leave may not be cashed in at any time to include termination of employment.

4.3 Benefits. Employer shall provide Physician with medical benefits for Physician and Physician's beneficiaries that are comparable to the coverage available, from time to time, to the other employees of Employer. Employer will provide life, disability, and dental benefits for Physician on similar terms as the other employees of Employer. Employer's life insurance company may require Physician to satisfactorily pass a physical examination in order to issue a life insurance policy to Physician. The employee portion of the costs of all such benefits are deemed Physician Benefits as hereafter defined. In addition, Employer may elect to obtain key-man life insurance coverage on Physician, and Physician hereby agrees to submit to any required physical therefor. Physician shall be entitled to participate in Employer's retirement and other benefit plans as offered from time to time at a level commensurate with the retirement benefits offered to other employees of Employer.

4.4 Income and Employment Taxes. Physician shall be an employee of Employer for all purposes. Employer shall withhold amounts from Physician's compensation in accordance with the requirements of applicable law for federal income tax, FICA, FUTA, and amounts from Physician's compensation in accordance with the requirements of applicable law for federal employment or payroll tax purposes. It shall be Physician's responsibility to report and pay all federal taxes arising from Physician's receipt of compensation hereunder.

ARTICLE V INSURANCE

5.1 Medical Liability Insurance. As part of Physician Expenses, as defined in Exhibit I, Employer agrees to directly pay the premium for Physician's professional medical liability insurance during the Agreement Term, with minimum coverage of One Million

Dollars (\$1,000,000.00) per occurrence with a yearly maximum of Three Million Dollars (\$3,000,000.00) in the aggregate (occurrence type policy). Such professional medical liability insurance coverage may be coverage established through an insurance affiliate of Employer. Physician shall maintain on-going coverage or purchase full insurance covering medical malpractice claims made following the Effective Date that relates to services rendered by Physician to patients prior to the Effective Date and Employer shall have no responsibility therefore.

ARTICLE VI TERMINATION

6.1 Termination by Employer "For Cause". The Agreement Term (including any Renewal Term) may be terminated prior to its expiration, at the election of Employer, under any of the following circumstances:

6.1.1 Upon written notice to Physician, if Physician is in a material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation to the reasonable satisfaction of Employer within thirty (30) days after notice in writing by Employer to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or

6.1.2 Immediately upon written notice by Employer to Physician (or Physician's estate) for any of the following reasons:

- (a) Physician's death or permanent disability. The term "permanent disability" shall be defined as the failure of Physician to perform his/her duties and responsibilities hereunder for a total of one hundred twenty (120) days or more, regardless of whether such days are consecutive, during any twelve consecutive months;
- (b) Physician's license to practice medicine is suspended, revoked or canceled or a restriction or limitation by any governmental authority having jurisdiction over Physician is placed or imposed upon him so that he cannot perform the professional services for which he was engaged hereunder;
- (c) Physician is terminated or suspended from Medicare, Medicaid or any successor program;
- (d) Physician's failure to maintain unrestricted staff membership or privileges on the medical staff of Hospital;
- (e) Physician is convicted of a felony or a crime of moral turpitude;
- (f) Physician conducts himself in a manner in which Employer determines to be unethical or fraudulent, is detrimental to patient care, or impairs the reputation or operations of Employer;
- (g) Upon repeated failure by Physician to meet utilization, performance, efficiency, or quality standards established by Employer;
- (h) Upon repeated failure by Physician to conform and comply with Employer's professional requirements concerning maintenance of medical records;
- (i) Upon cancellation of Physician's coverage, or Physician's uninsurability, under the terms and conditions of the professional liability insurance provided; or
- (j) Upon the use of alcohol or a controlled substance, which materially impairs the ability of Physician to effectively perform Physician's duties and obligations under this Agreement.

6.2 Termination by Physician "For Cause". The Agreement Term (including any Renewal Term) may be terminated prior to its expiration, at the election of Physician, under any of the following circumstances:

6.2.1 Upon written notice to Employer, if Employer is in material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation within thirty (30) days after notice in writing by Physician to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or

6.2.2 Immediately upon written notice by Physician to Employer for any of the following reasons:

- (I) bankruptcy or receivership of Employer; or
- (II) revocation or suspension of Employer from the Medicare or Medicaid Programs or any successor program.

6.3 Termination "Without Cause". Employer or Physician may terminate this Agreement hereunder, without cause, at any time upon ninety (90) days prior written notice.

6.4 Obligations After Termination. Upon termination of the Agreement for any reason, Physician's Compensation shall immediately cease and Physician (or Physician's estate) shall be entitled to receive only those amounts earned or accrued on services provided by Physician up to the date of termination. Physician's rights to any on-going or continuing benefits shall be determined in accordance with the terms of the applicable benefit plan of Employer. Termination of the Agreement shall not release or discharge Employer from any obligation, debt or liability incurred prior to the date of termination of the Agreement.

6.5 Other Requirements Upon Termination. Upon termination of this Agreement for any reason: (i) the Physician's participation in any of Employer's fringe benefit plans shall immediately cease (subject to any post-termination benefits, if any, expressly stated in the then-current plans for such benefits); and (ii) the provisions of Articles VII, IX, and X hereof shall remain in full force and effect, except as otherwise specifically provided herein.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Physician represents and warrants at all times during the Agreement Term (including any renewal term) that:

- (a) Physician is duly licensed and registered and in good standing under the laws of the State of South Carolina to engage in the practice of otolaryngology; and that said license and registration have not been suspended, revoked or restricted in any manner.
- (b) Physician is qualified for membership in good standing on the medical staff of a local acute care facility.
- (c) Physician has current controlled substances registrations issued by the State of South Carolina United States Drug Enforcement Administration, which registrations have not been surrendered, suspended, revoked, expired or restricted in any manner.
- (d) Physician has disclosed and will disclose to Employer the following matters, whether occurring at any time during the past five (5) years prior to the date of this Agreement or at any time during the Agreement Term:
 - (i) any actual or threatened malpractice suit, any actual or constructive known claim (whether or not filed in court), settlement, settlement allocation, judgment, verdict or decree against Physician;
 - (ii) any actual or threatened disciplinary, peer review or professional review investigation, proceeding or action instituted against Physician by any licensure board, hospital, medical school, health care facility or entity, professional society or association, third party payor, peer review or professional review committee or body, or governmental agency;
 - (iii) any criminal complaint, indictment or criminal proceeding in which Physician is named as a defendant;
 - (iv) any actual or threatened investigation or proceeding, whether administrative, civil or criminal, relating to an allegation against Physician of filing false health care claims, violating anti-kickback laws, violating fee-splitting laws, or engaging in billing improprieties;
 - (v) any organic or mental illness or condition that impairs or is likely to impair Physician's ability to practice medicine;
 - (vi) any dependency on, or habitual use or abuse of, alcohol or controlled substances, or any participation in an alcohol or controlled substance detoxification, treatment, recovery, rehabilitation, counseling, screening or monitoring program;

- (vii) any actual or threatened allegation, or any investigation or proceeding based on any allegation, against Physician for violating professional ethics or standards, or engaging in illegal, immoral or other misconduct (of any nature or degree), relating to the practice of medicine; and
 - (viii) any denial or withdrawal of an application in any state for licensure as a physician, for medical staff privileges at any hospital or other health care entity, for board certification or recertification, for state or federal controlled substances registration, or for malpractice insurance.
- (e) Physician is board certified in otolaryngology by the *American Board of Otolaryngology*.
 - (f) Physician shall at all times render services to patients in a competent, professional and ethical manner, in accordance with prevailing standards of medical practice in the relevant community, perform professional and supervisory services in accordance with recognized standards of the medical profession, and act in a manner consistent with the Principles of Medical Ethics of the American Medical Association, and any and all applicable statutes, regulations, rules, orders and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction.
 - (g) In connection with the provision of professional services to patients of Employer, Physician shall use the equipment, instruments, pharmaceuticals and supplies furnished by or on behalf of Employer for the purposes for which they are intended and in a manner consistent with sound medical practice.
 - (h) Physician shall participate in the Medicare and Medicaid Programs, workers compensation, other federal and state reimbursement programs, and the payment plan of any commercial insurer, health maintenance organization, preferred provider organization, accountable health plan, or other health benefit program.
 - (i) Physician shall keep and maintain (or cause to be kept and maintained) appropriate records, consistent with prevailing standards of medical practice in Physician's relevant community, relating to all professional services rendered by him under this Agreement and shall prepare and attend to, in connection with such services, all reports, claims, and correspondence necessary or appropriate in the circumstances, as determined mutually by Employer and Physician, all of which records, reports, claims, and correspondence shall belong to Employer.
 - (j) Physician covenants not to use, or permit any other personnel under the supervision of Physician to use, any part of the premises of Employer for any purpose other than the performance of services hereunder.
 - (k) Physician has not at any time been excluded from participation in the Medicare and/or Medicaid programs, and Physician shall immediately notify Employer in the event Physician receives any notice whatsoever of a possible exclusion action being brought against Physician.

ARTICLE VIII DISCLOSURE OF INFORMATION

8.1 Custody of Medical Records. Physician understands and agrees that during the Agreement Term and thereafter all medical records, case records, case histories, x-ray films, or personal or regular files concerning patients of Employer or any of Employer's Affiliates, or patients consulted, interviewed or treated and cared for by Physician, shall belong to and remain the property of Employer. Upon termination of this Agreement Physician shall not be entitled to keep original records or preserve records of Employer or any of Employer's Affiliates as to any patient unless the patient shall specifically request a different disposition of his or her records, or copies thereof, and in no event shall Physician be entitled to the records, or copies thereof, of patients not treated by Physician. Employer agrees at all times, both during and after termination of this Agreement, to maintain and preserve such records in a manner consistent and in compliance with all applicable laws and regulations. If Employer provides Physician with original patient records pursuant to the terms hereof, Physician shall retain all of such records and, upon Employer's request, shall make such originals available to Employer. If any medical malpractice or other claim, audit or business need of Physician arises and involves records which are retained by Employer pursuant to the terms hereof, Employer agrees to make such original medical records available to Physician, or Physician's designated counsel or representative for inspection and copying, during regular business hours, in accordance with applicable law.

8.2 Disclosure of Information. Physician recognizes and acknowledges that all records, files, reports, protocols, policies, manuals, databases, processes, procedures, computer systems, materials and other documents pertaining to services rendered by Physician hereunder, or to the operations of Employer, belong to and shall remain the property of Employer and constitute proprietary information and trade secrets of Employer. Physician recognizes and acknowledges that the terms of this Agreement, as well as Employer's proprietary information and trade secrets as they may exist from time to time, are valuable, special, and unique assets of Employer's business. Physician shall not, during or after the Agreement Term, disclose such proprietary information of Employer or trade secrets of

Employer to any other firm, person, corporation, association or other entity for any reason or purpose whatsoever, or use such information for Physician's own benefit, without the prior written consent of Employer, unless otherwise required to disclose such information in accordance with appropriate judicial process.

8.3 **Injunction.** Physician acknowledges that the confidentiality restrictions contained in this Article VIII are a reasonable and necessary protection of the legitimate trade secrets and business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article VIII, including monetary damages and relief.

ARTICLE IX COVENANT NOT TO COMPETE

9.1 **Restrictive Covenant.** With the exception of the services and duties that Physician performs for Employer or on Employer's behalf pursuant to the terms of this Agreement, Physician agrees that during the Agreement Term and for a period of two (2) year(s) after the termination of the Agreement Term for any reason whatsoever, Physician shall not:

- March 15, 2007
- 9.1.1 Within a fifty (50) mile radius of the Practice, as determined at the time of termination, (the "Restricted Territory") engage in any medical practice, or engage in any business or perform any service, directly or indirectly, in competition with the medical services of Employer or any of Employer's Affiliates. Notwithstanding the foregoing, the restrictive covenant shall not prohibit Physician from engaging in the private practice of medicine as an independent Physician including performing ancillary services, but only those provided in Physician's practice on behalf of Employer on or before ~~October 1, 2006~~. Further, Physician will not, without Hospital's prior written consent (which it may grant, withhold or condition in its sole discretion), directly or indirectly have any financial interest in any hospital, surgery center, imaging center, MRI, outpatient therapy center, medical office, clinic or other facility that competes with Employer, within the Restricted Territory. For purposes of this Agreement, a "financial interest" includes, without limitation, any direct or indirect financial relationship, whether as an employee, independent contractor, principal, agent, joint venture partner, security holder (except for ownership of securities traded on a recognized stock exchange) creditor, landlord, consultant, officer, director or otherwise. Nothing contained in this Section shall restrict Physician from establishing staff privileges at, referring any service to, or treating any patient at any hospital of Physician's choice.
- 9.1.2 Solicit, recruit or hire any person who is or was an employee of Employer or any of Employer's Affiliates, whether for Physician's benefit or for others with whom Physician may become associated unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.2 Within the Restricted Territory, Physician further agrees that for a period of time equal to two (2) year(s) after termination of the Agreement Term for any reason whatsoever (including expiration), Physician shall not within the Restricted Territory:

- 9.2.1 Solicit, serve or accept any business from patients, insurance companies, managed care plans, employers or other customers of the business conducted by Employer, or its affiliates, for services competitive with those of Employer and the Practice or request, induce or advise patients, insurance companies, managed care plans, employers or other customers of the business as conducted by Employer to withdraw, curtail or cancel their business with Employer or assist, induce, help or join any other person or company in doing any of the above activities unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1; or
- 9.2.2 Solicit the services of any employee, consultant, or provider which renders services to, or for the benefit of, Employer or any of Employer's Affiliates for Physician's use or benefit or for any other person's or company's use or benefit, or induce or help to induce any employee, consultant or provider that renders services to, or for the benefit of, Employer or any of Employer's Affiliates to leave for other employment, without Employer's prior written consent unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.3 **No Running of Covenant During Breach.** With respect to any restrictive covenant which applies after the termination of the Agreement Term, if Physician violates such restrictive covenant and Employer brings legal action for injunctive or other relief, Employer shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such restrictive covenant. Accordingly, after the termination of the Agreement Term for any reason, for any time period that Physician is in violation of the restrictive covenants set forth in this Article IX, such time period shall not be included in calculating any such restrictive covenant time period described in this Article IX.

9.4 Duration and Geographical Limits. If it shall be determined that the duration or geographical limit of any restriction contained in this Article IX is unenforceable, it is the intention of the parties that such restrictive covenant set forth herein shall not thereby be terminated or void but shall be deemed amended to the extent required to render it valid and enforceable to the greatest extent permissible by the applicable law and public policy, such amendment shall apply only with respect to the operation of this Article IX.

9.5 Injunction. Physician acknowledges that the restrictions contained in this Article IX are a reasonable and necessary protection of the legitimate business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article IX.

ARTICLE X FEES

10.1 Fees for Services. Except as otherwise may be provided in Section 3.7, all fees, compensation, monies, and other things of value received or realized as a result of the rendering of medical services by Physician, pursuant to this Agreement, shall belong to and be paid and delivered to Employer. Remuneration received by Physician from business activities unrelated to the practice of medicine, which do not interfere or conflict with the terms of this Agreement, or with the applicable provisions of this Agreement, may be retained by Physician, so long as such activity is approved in advance by Employer, and is not performed in the capacity of serving as an employee of Employer.

10.2 Setting of Fees. Employer shall have exclusive authority to determine the fees, or a procedure for establishing the fees, to be charged patients, even though such patients may be treated by Physician in the course of Physician's employment by Employer.

10.3 Power of Attorney. Physician does hereby appoint Employer as Physician's attorney-in-fact to execute, deliver or endorse checks, applications for payment, insurance claim forms or other instruments required or convenient, as determined by Employer in its sole discretion, to fully collect, secure or realize all sums lawfully due to Employer, for services rendered by Physician under this Agreement during the Agreement Term. The power of attorney is coupled with an interest, is irrevocable and shall survive expiration or termination of this Agreement.

10.4 Billing and Collection. Physician agrees that, during the Agreement Term, Physician shall not bill to or collect from any patient or third party payor any amount for services rendered hereunder. Physician hereby irrevocably assigns and grants to Employer the right to bill and collect from patients or third party payors for all services rendered by Physician hereunder, regardless of the location where any such services may be rendered by Physician. Physician agrees to execute any and all documents deemed necessary or desirable by Employer to carry out the provision of this Section. Unless otherwise agreed by Physician, all billing and collection activities shall be conducted as part of the regular business operations of the Practice. Such procedures shall include, but not be limited to, sending bills, filing insurance claims, and making phone calls.

10.5 Accounting Reports and Review. Employer shall have available for Physician lists of fees charged for particular services for particular payors and shall update these lists on a regular basis as fees and payors change. Employer also shall provide to Physician, on a monthly basis, production reports which list the billings attributable to services provided by Physician and in the Practice, the collections in connection with the services provided by Physician and the Practice, and accounts receivable in connection with provision of said services, such reports to be provided within thirty (30) days after the applicable month to which such reports relate.

ARTICLE XI LIMITATIONS OF AUTHORITY

11.1 Physician agrees not to enter into any transactions on Employer's behalf without the express written consent of Employer, including, but not limited to, the following actions:

- (i) Pledge the credit of Employer or any of its other employees;
- (ii) Bind Employer under any contract, agreement, note, mortgage or other agreement;
- (iii) Bind, release, or discharge any debt due Employer; or
- (iv) Sell, mortgage, transfer or otherwise dispose of any assets of Employer.

11.2 Physician shall hold Employer harmless from any loss attributable to a violation of this covenant. Notwithstanding anything to the contrary in this Article XI, Physician shall advise and assist Employer in securing and retitling contracts in the name and for the account of Employer with such individuals or entities necessary for the proper and efficient functioning of Employer.

ARTICLE XI
NOTICE

12.1 All notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be effective upon delivery if delivered to the addressee in person, effective three (3) business days after mailing if mailed by certified mail, postage prepared, return receipt requested, or effective the next business day if delivered by overnight courier with charges prepaid, as follows:

If to Employer:	103 Powell Court, Suite 200 Brentwood, TN 37027 Attn: Vice President, Physician Services	
With copies to:	1000 Medical Center Dr. Hartsville, SC 29927 Attn: CEO	103 Powell Court, Suite 200 Brentwood, TN 37027 Attn: General Counsel
If to Physician:	2712 Levy Rd Hartsville, SC 29927	

or to such other address as either party shall have designated for notices to be given to him or it in accordance with this Article.

ARTICLE XII
MISCELLANEOUS

13.1 Recitals. The recitals are true and correct and are incorporated herein in their entirety.

13.2 Severability. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision of this Agreement shall be held invalid or unenforceable under any particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

13.3 Assignment. In addition the contract shall affirm that no transfer, assignment or other modification affecting the terms or conditions of the contract will be effected unless extenuating circumstances are shown to exist, as determined by the South Carolina Department of Public Health, and approved by the U.S. Attorney General in accordance with applicable federal rules and regulations.

13.4 Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the courts, state or federal, within the State of South Carolina, and the parties expressly waive the right to bring any legal action or claims in any other courts. The parties hereto hereby consent to venue in any state or federal court within the State of South Carolina having jurisdiction over the County for all purposes in connection with any action or proceeding commenced between the parties hereto in connection with or arising from this Agreement.

13.5 Arbitration. Except as to the provisions contained in Articles VIII and IX, the exclusive jurisdiction of which shall rest with a court of competent jurisdiction in the state where the hospital is located any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in the County, in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by the AHLA.

13.6 Waiver. Any waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision hereof and shall not be effective at all unless in writing. A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by either party, and such waiving party shall be free to reinstate any such term or condition, with or without notice to the other party.

13.7 Entire Agreement/Amendment. This Agreement contains the entire agreement between the parties hereto. No change, addition or amendment shall be made except by written agreement executed by all of the parties hereto.

13.8 Survival. The provisions of this Agreement, including but not limited to Articles VIII and IX, shall survive the termination of Physician's relationship with Employer and the assignment of this Agreement by Employer to any successor or assign.

13.9 Confidentiality. Except as otherwise required by law, Physician hereby agrees to hold in the strictest confidence all of the terms and conditions set forth herein; provided, however, Physician may disclose the terms hereof to his/her attorneys, accountants and other financial and legal advisors as reasonably necessary.

13.10 Expenses. Each party to this Agreement shall pay its own costs and expenses in connection with the transaction contemplated hereby.

13.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.12 Binding Effect. This Agreement shall not become effective or legally binding upon either party until signed by both Employer and Physician, and approved by Employer's Division President and Legal Counsel pursuant to a Physician Employment Certificate form which is separate here from.

13.13 Corporate Integrity Agreement. Employee represents and warrants that as of the date of this agreement: (i) it is not excluded, debarred or otherwise ineligible to participate in Medicare, Medicaid or any other federal or state healthcare programs or in any federal or state procurement or non-procurement programs; or (ii) has not been convicted of a criminal offense related to the provision of federal health care items or services, that could lead to debarment or exclusion.

Further, Employee agrees to immediately notify the other party to the contract in the event the foregoing representation and warranty is no longer completely accurate. Employee acknowledges and agrees this is a material term of the agreement and any breach or nonfulfillment of same will entitle the other party to immediately terminate this agreement.

13.14 JCAHO. Physician shall perform all services hereunder in accordance with any and all regulatory and accreditation standards applicable to Hospitals and the relevant service, including without limitation those requirements imposed by the JCAHO, the Medicare/Medicaid conditions of participation and any amendments thereto.

13.15 Non-Discrimination. Facility does not discriminate against any person on the basis of race, color, national origin, disability or age in admission, treatment, program participation, services, activities or employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS:

Cynthia J. Holland

PHYSICIAN:

Philip Flexon, M.D.

Social Security Number: 246-74-7776

EMPLOYER:

By: W. Valt Willis
W. Valt Willis
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

Division President

APPROVED AS TO FORM:

12/22/04
Legal Counsel

EXHIBIT 1

PHYSICIAN COMPENSATION

I. The following definitions shall apply in the calculation of Physician Compensation:

- A. *Net Practice Revenues* - is defined as all cash collected (minus insurance and patient refunds) for patient services provided after the Effective Date in the Practice location(s) that are generated on behalf of the Practice as a result of professional medical services personally furnished to patients by Physician and other fees or income (as meets the Medicare criteria for "incident to") generated by non-physician employees or other Practice personnel under Physician's direct supervision and control, whether such services are rendered in an inpatient or outpatient setting and whether services are rendered to HMO, PPO, Medicare, Medicaid or other patients, including, without limitation, Capitation Payments, and revenues from testing, clinical trials and other drug research studies. Provided, however, that Net Practice Revenues shall not include cash collected for the non-professional or technical fee component for any ancillary services (e.g., laboratory, radiology, diagnostic testing or outpatient surgery) or inpatient or outpatient hospital services.
- B. *Practice Operating Expenses* - is defined as all direct and indirect expenses incurred subsequent to the date hereof in the day-to-day management and operation of the Practice, including, without limitation:
1. salaries, bonuses, benefits, payroll taxes, and other direct costs of all direct Practice employees (including Physician Compensation) and other Practice personnel;
 2. allocable rent for any medical offices, furniture and equipment used by the Practice, utility expenses, management information systems, office and medical supplies;
 3. personal property and intangible taxes assessed against assets used by the Practice;
 4. utility expenses related to the medical offices used solely by the Practice, including cellular phone and pager expenses;
 5. direct office and medical supplies;
 6. premises and general liability insurance for Employer related to the Practice and;
 7. direct repairs and maintenance of the medical offices used in the Practice;
 8. professional liability insurance of employee;
 9. Physician's medical licensure fees, medical staff memberships, board certification fees and costs of membership in professional associations; and
 10. Costs of continuing medical education of Physician.
 11. Costs of contract services, including allocation for hospital services and practice management.

**AMENDMENT TO AND ASSIGNMENT OF
PHYSICIAN EMPLOYMENT AGREEMENT**

THIS AMENDMENT TO AND ASSIGNMENT OF PHYSICIAN EMPLOYMENT AGREEMENT ("Amendment") is made and entered into as of July 1, 2007 by and between Phillip D. Ploenn, MD ("Physician"), PBC-Inspire, Inc. d/b/a Coastal Carolina Medical Center ("Employer") and Coastal Carolina Physician Practices, LLC ("CCPP").

RECITALS

WHEREAS, Employer and Physician entered into a physician employment agreement with an effective date of August 1, 2006 (the "Agreement"); and

WHEREAS, on or about June 30, 2007, all of the stock in Employer was sold to Tenet Healthsystems, Inc. and Employer became a wholly owned subsidiary of Tenet Healthsystems, Inc.; and

WHEREAS, the parties desire to amend this Agreement and assign it to CCPP.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Physician, CCMC and CCPP hereby agree as follows:

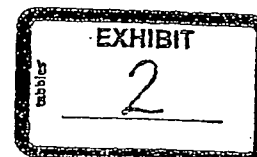
1. Section 13.3 of the Agreement is deleted in its entirety and replaced with the following:

Assignment. The rights and obligations of Employer under this Agreement may be assigned at any time by Employer to an affiliate or to a successor in interest in the event of the sale of all or substantially all of its assets or stock. The rights and obligations of Physician under this Agreement may not be assigned without the prior written consent of Employer.

2. Two new sections, 13.16 and 13.17, shall be added to the Agreement, as follows:

13.16 Compliance Obligations. Physician has received, read, understood, and shall abide by Tenet's Standards of Conduct. The parties to this agreement shall comply with Tenet's Compliance Program and Tenet's policies and procedures related to the Anti-Kickback Statute and the Stark Law. Tenet's Standards of Conduct, summary of Compliance Program, and policies and procedures are available at: <http://www.tenethospital.com/TenetHealth/OurCompany/EthicsBusinessConduct>.

LEOAL02/30433648v1



Further, the parties to this Agreement certify that they shall not violate the Anti-Kickback Statute and/or the Stark Law.

13.17 Exclusion Lists Screening. Physician shall screen all of its current and prospective owners, legal entities, officers, directors, employees, contributors, and agents ("Screened Persons") against (a) the United States Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>), and (b) the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov>) (collectively, the "Exclusion Lists") to ensure that none of the Screened Persons (y) are currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal healthcare programs or in Federal procurement or nonprocurement programs, or (z) have been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible (each, an "Ineligible Person"). If, at any time during the term of this Agreement any Screened Person becomes an Ineligible Person or proposed to be an Ineligible Person, Physician shall immediately notify Hospital of the same. Screened Persons shall not include any employee, contractor or agent who is not providing services under this Agreement.

3. The parties agree that effective July 1, 2007, the Agreement shall be assigned to CCPP, and CCPP shall assume all of the rights and obligations of Employer as of such date.

4. Except as expressly provided in this Amendment, all other terms, conditions and provisions of the Agreement shall continue in full force and effect as provided therein.

IN WITNESS WHEREOF, the parties intending to be bound hereto have caused this Amendment to be executed by persons duly authorized to bind them.

PHYSICIAN

Signature: _____

Phillip B. Flexon, MD

Date: _____

PHC-JASPER, INC. D/B/A COASTAL CAROLINA MEDICAL CENTER

Signature:

Elizabeth E. Lamkin
President

Date:

7/3/07

COASTAL CAROLINA PHYSICIAN PRACTICES, LLC

Signature:

Elizabeth E. Lamkin
President

Date:

7/3/07



RECEIVED
AUG 18 2008

5555 GLENRIDGE CONNECTOR, NE
SUITE 925, GLENRIDGE HIGHLANDS
ATLANTA, GEORGIA 30342-4728
TELEPHONE 404 236 8600
TELECOPIER 404 236 8601

direct dial. 404 236 8608
email: bmerlin@fcdmlaw.com

August 15, 2008

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
70070220000477118332
Coastal Carolina Medical Center
103 Powell Court
Suite 200
Brentwood, Tennessee 37027
Attention: Vice President, Physician Services

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
70070220000477118349
Coastal Carolina Medical Center
103 Powell Court
Suite 200
Brentwood, Tennessee 37027
Attention: General Counsel

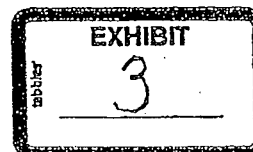
VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
70070220000477118356
Coastal Carolina Medical Center
1000 Medical Center Drive
Hardeeville, SC 29927
Attention: CEO

Re: Physician Employment Agreement dated December 18, 2006, by and
between Coastal Carolina Medical Center ("Employer"), and Phillip
B. Flexon, M.D. ("Physician") (the "Contract")

Dear Sir or Madam:

This law firm represents Phillip B. Flexon, M.D. This letter shall serve as formal notice of termination of the referenced Contract by Physician "for cause" pursuant to the terms of Section 6.2.1 of the Contract. Specifically, the Employer is in material breach, default and violation of the Contract in the following particulars:

1. Billing Malfeasance. Since July 1, 2007, the Employer and its representatives have failed and refused to submit charges for Dr. Flexon's services to Medicare, Medicaid and private insurance carriers. This has continued in spite of Dr. Flexon continuing to see patients in the office, cover the Employer's Emergency Room and perform surgeries. This failure in basic office medical management makes it impossible for Dr. Flexon to receive his bonus compensation as set forth in the Contract. This is a clear and material violation of the Contract. The lack of billing has been repeatedly brought to the attention of hospital officials including on more than one occasion its CEO. Yet despite this, nothing has happened and the bills remain unsent.



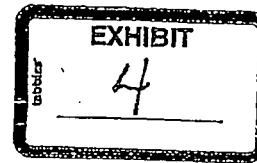
Buist · Moore · Smythe · McGee · P.A.

May 4, 2009

J. MARSHALL ALLEN
ATTORNEY AT LAW
E-Mail: mallen@buistmoore.com
DIRECT DIAL: 843-720-4627
FAX: 843-723-7398

VIA Electronic and U.S. Mail

William B. Harvey III, Esquire
Harvey & Battey, PA
P.O. Drawer 1107
Beaufort, SC 29901-1107



RE: Philip Flexon, M.D./Coastal Carolina Medical Center
BMSM File No.: 5499.0011

Dear Bill:

As I have stated in our telephone conversations, Coastal Carolina Medical Center ("CCMC") would be pursuing amounts determined payable by Dr. Flexon pursuant to the terms of his Employment Agreement with CCMC ("Agreement"). We have gathered the numbers and have now determined the amounts payable by Dr. Flexon. With this information, I would like to earnestly commence discussions with you about these payments.

The term of the Agreement is for a five (5) year period with an Effective date of March 15, 2007. Dr. Flexon improperly terminated the Agreement on September 16, 2008 and ceased as of that date to provide the full-time practice of medicine in Hardeeville (the "Community"). On about this date, Dr. Flexon began working for Memorial University Medical Center ("MUMC") in Savannah.

The three (3) repayment obligations in the Agreement are (i) the "negative EBDITA" repayment required under Exhibit 1, Section IV, (ii) the "Marketing Expense Reimbursement" repayment required under Exhibit 2 and (iii) the "Sign On Bonus" repayment required under Exhibit 3.

As seen on the enclosed Cumulative EBITDA Analysis, Dr. Flexon's EBITDA for the period March 15, 2007 to March 1, 2009 is a negative \$702,941. Pursuant to Exhibit 1, Section IV, my client demands the immediate repayment of this negative amount unless Dr. Flexon requests a deferred payment plan. Please let me know within five (5) days from you receipt of this letter if your client desires a deferred payment plan.

Dr. Flexon was paid a Marketing Expense Reimbursement of \$10,000 pursuant to Exhibit 2 of the Employment Agreement. Dr. Flexon worked full-time in the Community for 18 months

2. Staffing. The Employer has materially breached the Contract by repeatedly not providing Dr. Flexon reasonable personnel staffing and support, such as billing and marketing as required by Section 3.2 of the Contract. In November 2007, the Employer fired Dan Gemmell, Dr. Flexon's Practice Manager without Dr. Flexon's knowledge or consent and failed to reinstate him after Dr. Flexon's repeated protests. The position has not been filled to date.

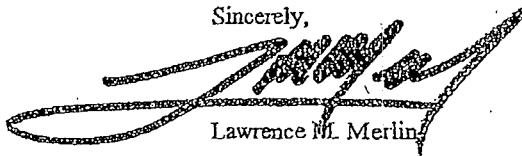
On December 31, 2007, Employer terminated Dr. Flexon's Office Billing Director, Phyllis Yingling without Dr. Flexon's knowledge or consent. Later it was learned that Ms. Yingling was specifically instructed by the Employer to stop billing Dr. Flexon's time as of July 1, 2007. The Office Billing Director position has not been filled to date.

In March 2008, Priscilla Green, Dr. Flexon's Scheduler and Receptionist resigned because of working conditions at the Employer. She has not been replaced.

The fact of the matter is for over six months and despite Dr. Flexon's repeated protests and meetings with hospital officials, my client has had no Practice Manager, no Receptionist or Scheduler, and no billing management. He is down to one employee which makes it impossible for him to see and care for his regular patient load that he has established over the last eighteen years (18) before coming to the Employer. My client's practice has been reduced to half its normal patient level.

The Contract allows the Employer thirty (30) days within which to cure these material breaches. However, I am unconvinced that certain of the breaches can in fact be cured due to the amount of time that has passed. However, I would be interested in hearing from you regarding the Employer's position on the content of this letter and its plans, if any, to remedy these defaults. I await your response.

Sincerely,



Lawrence M. Merlin

LMM/jd

cc: Phillip B. Flexon, M.D.

I:\Word\Attorneys\Merlin\1869\6602 General Business\ltr to Coastal Carolina Medical Center (08-08).doc

STATE OF GEORGIA)
)
COUNTY OF CHATHAM)

AFFIDAVIT OF PHILLIP B. FLEXON, M.D.

Personally appeared before me, the undersigned officer duly authorized under the laws of the State of Georgia to administer oaths, Phillip B. Flexon, M.D., who after being sworn deposes and says:

1. I was employed by Coastal Carolina Medical Center, and its successors and assigns (collectively referred to herein as "CCMC") from approximately March 15, 2007, until August 15, 2008. I gave my notice of termination on August 15, 2008, which after passage of the 30 day right to cure, became effective on September 15, 2008.

2. I hereby certify that all of my employment obligations with all previous employers, including but not limited to CCMC, have been properly terminated.

3. My previous contract with CCMC contained a covenant not to compete. I believe that this contract has been terminated and I am no longer bound by this covenant not to compete. However, I hereby stipulate and agree to defend, indemnify and hold harmless Memorial Health University Medical Center, Inc. ("MUMC"), its agents, employees, representatives, subsidiaries, affiliates, successors and assigns of and from any claim or litigation which may be made or instituted by CCMC against MUMC, its agents, employees, representatives, subsidiaries, affiliates, successors and assigns, arising out of the undersigned's employment or discussions of employment with MUMC.

4. I hereby certify that MUMC did not, in any way, induce me to discontinue my business relationship with any third party, including CCMC, and I initiated discussions with MUMC regarding my potential employment with MUMC.

5. I hereby certify that I will maintain professional malpractice liability insurance tail coverage which shall cover all potential claims that may be brought due to events arising at all times prior to the effective date of my employment with MUMC. Such tail coverage shall have policy limits in amounts appropriate and customary for my medical practice prior to my employment with MUMC. I understand that I shall be responsible for the premium cost associated with such tail coverage. I hereby agree to comply with and be bound by all of the terms and conditions set forth in the insurance contract under which the above coverage is provided.

6. I make this affidavit freely and voluntarily without coercion from anyone.

Phillip B. Flexon (L.S.)
Phillip B. Flexon, M.D.

Sworn to and subscribed before
me this 16 day of Sept, 2008.

Alva Aliffi
Notary Public
My Commission Expires: 7-13-2010

748945-04 ALVA ALIFFI
Notary Public, Chatham County, GA
My Commission Expires July 13, 2010



MH 48



Curtis & Elizabeth Anderson
Cancer Institute
at Memorial Health University Medical Center

February 14, 2008

Phillip B. Flexon, M.D.
2712 Levy Road
Hardeeville, SC 29927

Re: Non-Binding Letter of Intent for Employment

Dear Dr. Flexon:

I submit to you a revised non-binding letter of intent outlining the proposed terms of your employment by the Memorial Health System. The process of developing a Department of Surgical Oncology at the Anderson Cancer Institute (ACI)/Memorial Health is entering its final stages. Once this new structure is finalized, it is our intention that you would become a member of the new Department of Surgical Oncology.

The terms of this proposal are significantly different than those of previous letters of intent, reflecting a rigorous pro forma analysis of a new ENT/H&N surgical practice at the ACI, which included revenue and expense projections related to the practice of both general ENT and oncologic H&N surgery. Based on this pro forma, the current state of the ACI/MH, and the consensus opinions of ACI and MH senior leadership, we are able to offer you employment restricted to the conditions following.

We are proposing to offer you full time employment for two (2) years as a member of the faculty of the Department of Surgical Oncology, subject to approval by the Memorial Health Board of Directors. Your base salary for year one will be guaranteed at \$265,000. In addition to this base salary you will be eligible for incentive compensation in year one of \$15,000, if you meet the minimum work RVU production projections to be outlined in your employment agreement. Further, we offer a 0.5 FTE teaching stipend of \$15,000, which was recently approved by the Graduate Medical Education Committee. A greater proportion of your total compensation will be tied to your meeting a minimum work RVU requirement beyond the first year of the agreement. You will also be eligible for additional incentives that will be based on goals and objectives of the Oncology Product Line that will be developed annually between you and the Chairman, Department of Surgical Oncology. You will be eligible to participate in our benefit package for full-time faculty physicians which include health, dental, life and disability insurance, 401(K) plan, vacation (30 business days for time off and CME), and continuing education.

725928-04

FORM # 967 (05/06)
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Telephone 912.350.1652 • Facsimile 912.350.1269 • 4708
FLEXON v. PHC-JASPER
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R0903

Additionally, as a part of your employment agreement you will be offered the opportunity to participate in two extended educational programs on endoscopic head and neck oncology surgery using laser and minimally invasive thyroid surgery not to exceed two weeks per year in the aggregate.

As part of your employment, Memorial Health will provide a fully-equipped office for your medical practice. Support staff may initially be provided at the existing ACI Surgical Associates staffing control levels, followed by the Department of Surgical Oncology, as determined by ACI administration.

The terms of this non-binding letter of intent supersede all previous letters of intent, discussions or agreements between the parties with respect to the subject matter contained herein. Prior to entering into a binding, written employment contract, a party may terminate this non-binding letter of intent at any time by providing written notice to the other party.

Please acknowledge acceptance of this non-binding letter of intent by signing on the appropriate line below and returning the signed original to me. By signing below, you further acknowledge that you shall keep the terms of this letter of intent confidential. Once you have returned a signed copy of this letter, we will seek approval of the Memorial Health Board of Directors to offer you employment on the above stated terms, and, if approved, a binding written employment contract, including employment terms and conditions, will be forwarded to you for execution.

I continue to remain available at any time to discuss the details and rationale of the terms outlined in this letter. Thank you for your consideration of this offer. Best regards and

Yours sincerely,



Jeff Boyd, PhD
Director, Curtis and Elizabeth Anderson Cancer Institute
Vice President, Oncology and Research
Memorial Health University Medical Center
Professor, Departments of Obstetrics and Gynecology,
Surgery, Internal Medicine, and Basic Medical Sciences
Mercer University School of Medicine – Savannah
Assistant Dean for Research, Mercer University School of Medicine – Savannah
Distinguished Cancer Scholar, State of Georgia

725928-04

**FLEXON v. PHC-JASPER
PLAINTIFF DOCUMENT PRODUCTION -52-**

R0904

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER) CASE NO.: 2009-CP-27-0331

PHILLIP FLEXON, M.D.,)
)
 PLAINTIFF,)
)
VS.)
)
LIFEPOINT HOSPITALS, INC., ET AL,)
)
 DEFENDANT.)
_____)

MOTIONS HEARING

held before the Honorable Brooks Goldsmith
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina
on September 9, 2013, Commencing at 10:08 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: William B. Harvey, Esquire
Harvey & Battey
Post Office Box 1107
Beaufort, South Carolina 29901

FOR THE DEFENDANT: Trudy H. Robertson, Esquire
Joseph T. Belton, Esquire
Moore & VanAllen
Post Office Box 22828
Charleston, South Carolina 29413

FOR COASTAL CAROLINA MEDICAL CENTER: James D. Myrick, Esquire
Attorney at Law
Post Office Box 999
Charleston, South Carolina 29402

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CERTIFICATE OF COURT REPORTER

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EXHIBITS

[None]

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PROCEEDINGS

1
2 THE COURT: Three motions? How many motions do
3 we have here? Two of them?

4 MS. ROBERTSON: Your Honor, I think it's just
5 going to be two.

6 THE COURT: Two.

7 MS. ROBERTSON: The motions on the compelling
8 arbitration.

9 I think Mr. Harvey and I had different
10 understandings on the motion for summary judgment
11 that's going to be heard today. That's Lifepoint's
12 motion. But I am fine with deferring that to another
13 day, at Mr. Harvey's request. That's fine with me, if
14 it's suitable to the Court.

15 THE COURT: So we have Lifepoint's motion to
16 compel arbitration and stay.

17 MS. ROBERTSON: That's correct.

18 THE COURT: And then we have the 60(b)?

19 MR. MYRICK: Yes, Your Honor. That's my sort of
20 tagalong motion on arbitration.

21 THE COURT: Okay. Who is going to argue what
22 first?

23 MS. ROBERTSON: Your Honor, I think that would
24 probably be me or, again, Lifepoint's motion to compel
25 arbitration.

MIA PERRON, CVR-CM-M

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Flexon v. Lifepoint
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September 9, 2013

1 THE COURT: Lifepoint. All right.

2 MS. ROBERTSON: May it please the Court, Your
3 Honor. My name is Trudy Robertson and I'm here on
4 behalf of Lifepoint Hospitals. And my associate,
5 Joseph Belton, is also here with me today.

6 Your Honor, we are before you on Lifepoint's
7 motion to compel arbitration and stay the action. And
8 this case has a somewhat unique background, Your
9 Honor, that brings us before you today. We filed this
10 renewed motion on May the 31st of this year.

11 And, Your Honor, to understand why we have
12 renewed this motion, I think I need to spend a few
13 minutes on this background for the Court. We
14 included, Your Honor, in our reply brief, which
15 hopefully Judge Mullen's clerk did forward on to you
16 last week, have a key time line that gives you some of
17 the bulleted points that brings us forward to today.

18 This case was filed back in 2009 by Dr. Flexon.
19 And the case is, Your Honor, a dispute over his
20 position employment agreement. And Lifepoint
21 Hospitals was the then owner of Coastal Carolina
22 Medical Center, which is in Jasper County. Lifepoint
23 has since sold the stock of that to Tenet. And that
24 is Mr. Myrick's client, Coastal Carolina Medical
25 Center.

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1 But the case was filed back in 2009 and shortly
2 after that, in October of 2009, our codefendant,
3 Coastal Carolina Medical Center, filed a motion to
4 compel arbitration and stay the action. There was a
5 hearing held on that motion, codefendant's motion,
6 back in June of 2010. At that hearing, Your Honor,
7 there was an exchange between myself and Judge
8 Buckner, because I was there that day on behalf of
9 Lifepoint, with respect to our also having the
10 arbitration as an affirmative defense and us also
11 believing that if the case went to arbitration, it
12 went as to all defendants, and seeking to join in that
13 motion.

14 At that time, Judge Buckner instructed Lifepoint
15 to file its own motion, which is what we then did --
16 subsequently did following that hearing. Lifepoint
17 filed this motion, shortly thereafter, on June the
18 17th. This was back in 2010.

19 And, Your Honor, at that same time, the parties
20 signed a consent scheduling order. Included in that
21 order -- and there have been two or three more since
22 that time -- there was language with respect to
23 reserving the right to move to compel arbitration,
24 proceeding with discovery under that reservation, so
25 there would be no waiver of that position, and also

Flexon v. Lifepoint
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1 Honor, we've cited that exact verbiage in our brief
2 before you. I won't read it to you. But it's in
3 every order.

4 An amended consent schedule order is signed in
5 September. In February of 2013, a second amended
6 scheduling order is signed. Again, that language
7 proceeds forward.

8 In February of 2013, the end of February,
9 Lifepoint's motion to compel arbitration is set for a
10 hearing. What we did at that time, Your Honor, is
11 withdraw that motion without prejudice. The same
12 record was in existence, had gone up on appeal and
13 back down. As far as the record on facts on the
14 issues, there was nothing different. So we withdrew
15 that motion without prejudice, so that the hearing at
16 that time was not held.

17 Shortly thereafter, in April, April 30th, 2013,
18 Dr. Flexon, the plaintiff, is deposed. It is that
19 deposition testimony -- we get the transcript. That
20 then prompts the renewal of this motion to compel
21 arbitration, based on his testimony in that
22 deposition.

23 Since that time, Your Honor, we've had another
24 consent scheduling order where the same reservation,
25 non-waiver language has been carried forward.

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1 So why renew the motion for arbitration? It is
2 that testimony of Dr. Flexon, Your Honor, that prompts
3 this motion being heard today. His testimony
4 establishes that the employment transaction, his
5 employment agreement, involves and affects interstate
6 commerce without question. This is a case of
7 arbitration under the Federal Arbitration Act. The
8 South Carolina Arbitration Act is not at play here.
9 What we have is a very evidentiary record before Your
10 Honor from what Judge Buckner had before him with
11 respect to the facts with Dr. Flexon's employment
12 agreement and his testimony at his deposition.

13 What was stated on the record at the last
14 hearing long ago, when Coastal Carolina was having
15 their motion heard, Your Honor, it was stated, and I
16 quote -- and this was stated by Dr. Flexon's counsel:
17 [reading] in this case it is a local contract. It
18 involved employment of a Jasper County doctor to a
19 Jasper County hospital to render services to Jasper
20 County residents.

21 That was what was in the record. That is the
22 record upon which Judge Buckner made his decision and
23 the Court of Appeals made their decision. And they
24 state in their findings and in the record that they
25 looked at that issue as a local hospital, local

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1 services, and they denied the motion to compel
2 arbitration on that, as it did not involve interstate
3 commerce. They found, did not fall under the FAA.

4 We now have Dr. Flexon's deposition testimony,
5 which prompts this motion. And I quote what he stated
6 in his deposition: [reading] the practice always
7 existed in both states, before and after.

8 And he's speaking about Georgia and South
9 Carolina.

10 [Reading] It really did -- I mean, it was, you
11 know -- it -- by -- by accident, there is a river and
12 a state line but the practice always involved both
13 states.

14 And he goes on to testify that he had plenty of
15 patients coming from Georgia.

16 Your Honor, we don't have a local clinic and a
17 local hospital with just local patients. This
18 testimony shows that interstate commerce was involved
19 and is affected. If you look at the commerce-in-fact
20 test, that I'm sure Your Honor is familiar with, in
21 the case law to determine if the transaction involves
22 interstate commerce for the FFA to apply, that is met
23 here.

24 And the plaintiff, Your Honor, argues in his
25 opposition brief that Judge Buckner's decision

Flexon v. Lifepoint
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September 9, 2013

1 establishes the law of the case and that we're bound
2 by that going forward. But that doctrine is not
3 applicable where there is a substantial difference in
4 the underlying facts. There is a substantial
5 difference here that this record, that this Court, has
6 to determine that, in fact, we do have interstate
7 commerce at play and this matter should go to
8 arbitration.

9 Your Honor, I'll spend just a few minutes
10 looking at the actual employment agreement and the
11 facts as they fall under the employment agreement.
12 Dr. Flexon's contract at Section 13.5 -- and this is
13 cited back in the original motion to compel
14 arbitration. And I said the original. It's the
15 renewed one, Your Honor. That contract states:
16 [reading] any controversy or claim arising out of or
17 related to this agreement or any breach thereof shall
18 be settled by arbitration in the county in accordance
19 with the rules and procedures.

20 It goes on to state the American Health Lawyers
21 Association. All causes of action in this case fall
22 under this provision. Against Lifepoint it is alleged
23 that there is a breach of an employment agreement.
24 That falls clearly under it. That there was a
25 fraudulent misrepresentation, that the plaintiff

MIA PERRON, CVR-CM-M

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1 alleges, that was made in negotiations of the
2 agreement. There's the agreement. That there's a
3 breach of duty of good faith and fair dealing in the
4 agreement. They all fall under the arbitration
5 provision in the contract.

6 And here, Your Honor, case law directs that to
7 determine whether a transaction involves interstate
8 commerce within the FFA, FAA -- sorry -- the Court
9 must examine the agreement, the complaint, and the
10 surrounding facts. And the surrounding facts are that
11 interstate commerce is at play.

12 If we look also, Your Honor, at Article 1,
13 Section 1.1, in Dr. Flexon's physician employment
14 agreement -- and this is cited for you, as well, in
15 the motion -- is quoted: [reading] the employer
16 engages physician, and physician accepts such
17 engagement to render profession physician services to
18 patients.

19 And we know those patients, from Dr. Flexon's
20 testimony, are Georgia and South Carolina patients.
21 The agreement contemplated patients from both states.

22 And as we go to Article 3, Section 3.6 of his
23 agreement, there it says that: [reading] the
24 physician shall perform his duties at those hospital
25 facilities at which the physician maintains medical

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1 staff privileges.

2 Dr. Flexon testified in his deposition that he
3 held privileges and worked at Self Memorial, or at
4 Memorial, which is in Georgia. He also testified that
5 Lifepoint wanted him to do that. So his services were
6 in Georgia. He held privileges there, as well. And
7 that was part of what was contemplated under his
8 agreement.

9 Your Honor, in summary, South Carolina policy
10 favors arbitration. The parties here are contracted
11 for arbitration. All of the claims at issue in this
12 case fall under the arbitration provision. Dr.
13 Flexon's deposition testimony establishes we have
14 interstate commerce involved and affected. We have
15 Georgia and South Carolina patients. And the FFA --
16 FAA, Your Honor, applies and should compel arbitration
17 here. This matter should go to arbitration and this
18 matter should proceed through that venue and be
19 determined through arbitration. Thank you, Your
20 Honor.

21 THE COURT: Mr. Harvey?

22 MR. HARVEY: Your Honor, Bill Harvey,
23 representing the plaintiff in the case.

24 I have taken the liberty of bringing a copy of
25 our memorandum and all the exhibits, and I would like

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1 to point out several aspects in the exhibits. I think
2 the brief sort of speaks for itself. It's not very
3 long.

4 But there are a couple of things that really are
5 important here. First of all, Ms. Robertson correctly
6 said that the law of the case would not apply if there
7 was a substantial difference in the underlying facts.
8 There is no substantial difference in the underlying
9 facts. I would point out that there's only one
10 agreement, only one employment agreement, here. The
11 employment agreement that was addressed by the Court
12 of Appeals and a rehearing was denied by the Court of
13 Appeals, the same agreement that she's seeking to
14 enforce here, the same agreement that she quoted from
15 just now. There's only one agreement, and that
16 agreement was with her client. This is not a
17 situation of substantial difference in underlying
18 facts.

19 I would point out, Your Honor -- and these are
20 in as attachment. The first attachment to -- first
21 exhibit to our deposition is the complaint itself.
22 And the complaint itself talks about the fact that the
23 plaintiff entered into an employment agreement and at
24 the time he entered into an employment agreement, he
25 had a practice which he had to close at Memorial

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1 Medical Center in Georgia, in Savannah, Georgia.
2 Lifepoint certainly knew that. They were the ones who
3 negotiated the contract. The record is chock full of
4 e-mails and other correspondence with regard to the
5 fact that he had an employment agreement -- that he
6 had employment in Savannah. He was a Jasper County
7 resident. He lived in Levy, South Carolina, but he
8 had a Jasper -- so he's a Jasper County resident. But
9 he clearly was working --

10 I mean, no one has ever denied the fact that he
11 was working in Savannah at the time that he closed his
12 practice and moved the practice to Georgia. And the
13 bottom line is is that that is not a new fact. That
14 fact was in the complaint. It was in the
15 interrogatories that we exchanged between all the
16 parties prior to the hearing on Coastal Carolina's
17 motion to compel arbitration.

18 It was argued -- I would point out, Your Honor,
19 that in the exhibits is a complete transcript of the
20 hearing before Judge Buckner. And counsel for CCMC
21 argued -- and I'm quoting page 7 of the -- I'm just
22 reading from it: [reading] in paragraph 13 of the
23 complaint, Flexon alleges that Lifepoint knew that the
24 plaintiff would have to close --

25 This is Lifepoint. This is Ms. Robertson's

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1 client.

2 [Reading] -- would have to close and terminate
3 an established practice in Savannah in order to
4 fulfill his obligations under the employment contract.

5 That's in the complaint. In his recitation of
6 damages, which began in paragraph 26 of the complaint
7 but continues on, he repeatedly cites the time he
8 spent for loss of income-producing services to move
9 his practice from Savannah to Hardeeville. Let's see.
10 In his misrepresentation claim, which I believe is
11 against Lifepoint, he alleges that the duties arose to
12 Lifepoint because of the nature of the pending
13 employment relationship and the -- that such a
14 relationship would cause the plaintiff's then existing
15 practice of medicine, which we know from prior
16 allegations was in Savannah. This was argument before
17 Judge Buckner back in 2009.

18 Further, when we look at the contract itself,
19 the notice that is to the employer, in the employment
20 contract, which is actually in Brentwood, Tennessee --
21 that's -- Ms. Robertson's client is in Brentwood,
22 Tennessee, not South Carolina -- then we can also look
23 at the surrounding facts. Obviously, there's an awful
24 lot of facts in dispute.

25 But I would turn your attention to some of Dr.

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1 Flexon's interrogatory answers. For example, in
2 answer to the interrogatory that we filed, he said
3 that many Savannah doctors stopped referring patients
4 to Dr. Flexon after a stop-purchase agreement occurred
5 between the clients. I think the implication here is
6 that he was getting business from across state lines
7 and was relying on that business in order to have a
8 successful practice. Interrogatory number 9, which is
9 about the availability of equipment, he said that:
10 [reading] the availability of equipment became so
11 unreliable, the plaintiff, Dr. Flexon, began taking
12 his complicated cases to Memorial.

13 I'm fairly certain Memorial means Savannah
14 Memorial Hospital. And it does. So while he was
15 working for our client, he was sending his complicated
16 cases and performing those surgeries, that were billed
17 by our hospital, performing that surgery in Savannah.
18 Now, understand, Your Honor, these are the surgeries
19 that were being performed when Lifepoint was the owner
20 of the hospital. I mean, it's not like -- it's not
21 like they don't know that he -- what he's doing. He's
22 their employee.

23 And so for her to say that these are new facts
24 because Dr. Flexon testified that he was getting
25 clients -- that he had existing clients -- it's

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1 alleged in the complaint he had existing clients from
2 Savannah.

3 With those facts, Your Honor, Judge Buckner
4 denied the motion to compel arbitration and CCMC --
5 on this contract and on this set of facts and on these
6 allegations and on these interrogatories, CCMC moved
7 -- appealed that order. And the Court of Appeals --
8 I've attached a copy of the decision. In a reported
9 case, a reported case, the Court of Appeals said:
10 [reading] we agree with the trial court that the facts
11 of this case are more akin to those in Taherry --
12 that's the Taherry case -- under the facts surrounding
13 this agreement, the facts that I've just now laid out
14 to you, which are no different than what Dr. Flexon
15 testified and no different than what they're bringing
16 to this Court today.

17 Under the facts surrounding this agreement,
18 Flexon was a South Carolina resident and Coastal --
19 this is Coastal Carolina, which was then owned by
20 Lifepoint. Coastal hired him to perform medical
21 services, quote: [reading] at the medical practice
22 office located at 1010 Medical Center Drive,
23 Hardeeville, South Carolina, and such other practices
24 sites in Beaufort and Jasper County as may be
25 reasonably designated by PHC from time to time.

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1 That's in -- that's the language from the
2 agreement.

3 [Reading] We agree with the trial court's
4 finding that the agreement and the surrounding facts
5 did not implicate interstate commerce.

6 Now, our Court of Appeals has addressed that
7 issue, the very issue that she's arguing here again
8 here today. This is her agreement. She was part of
9 this appeal argument -- I would point out -- I mean,
10 the argument in front of -- in front of Judge Buckner.
11 Ms. Robertson --

12 THE COURT: Which page? Which page of the
13 transcript?

14 MR. HARVEY: This is page 21 of the transcript.

15 THE COURT: All right. Go ahead, Mr. Harvey.

16 MR. HARVEY: At the bottom, starting at line 20:
17 [reading] Your Honor, motions to compel were filed
18 previously by these two parties. They were withdrawn
19 and we entered into a consent protective order --

20 I'm sorry. That's the wrong -- I'm sorry. Page
21 17 of the transcript.

22 THE COURT: All right.

23 MR. HARVEY: Are you with me? Again, starting
24 at line 20.

25 [Reading] Judge, if I may, I'm not presenting

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1 argument. This is not our motion today but we pled
2 this as an affirmative defense, as well, and this
3 matter should be submitted to arbitration. I think it
4 goes to arbitration, and it should. We support the
5 motion. It goes to all parties. If I previous -- if
6 I have to separately move, I can do that.

7 And the Court said: [reading] I think you ought
8 to do that, because obviously the plaintiff isn't on
9 notice of that. I understand it's your position, but
10 I can't -- all I can deal with is this motion today.
11 I understand that. I think you need to file your own
12 motion. And I realize you pled. But he wasn't
13 prepared to argue except as to this motion today. It
14 might be an identical argument. And Ms. Robertson
15 said: I think likely it is. So I will make it.

16 One week after this argument and two weeks
17 before Judge Buckner ruled, Ms. Robertson made her
18 motion to compel. Now, clearly, Judge Buckner's
19 ruling only applied to the argument that was made.
20 But the argument that was made and the facts presented
21 and the agreement that was addressed and the facts
22 that attach to that agreement were no different then
23 than they are now.

24 I would point out, Your Honor, that we filed
25 this action in 2009 and here we are, the latter part

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1 of 2013, and we are nowhere near getting the case
2 resolved. We spent two years litigating this appeal
3 in the Court of Appeals. It is the law of the case.
4 The plaintiff -- I mean, the parties, Lifepoint,
5 cannot show that there are, quote, substantial
6 difference in the underlying facts. There is no
7 substantial difference in the underlying facts. So
8 only one agreement, one set of facts which were
9 alleged at the time.

10 Now, I would point out -- again, we're sort of
11 bleeding into -- you know, into CCMC's 60(b) motion.
12 But at no point in time was there any effort to take
13 even a limited deposition of Dr. Flexon before this
14 motion was heard. They presented their motion on the
15 basis of the facts that existed. We haven't denied --
16 we've never denied that Dr. Flexon at the time he
17 entered into this agreement had an established
18 practice. I mean, everything that Lifepoint
19 advertised said he had an established practice. For
20 them to say they did not know that he was doing
21 surgeries in Savannah in crazy. He was their
22 employee. He was billing through their hospital.
23 Their counsel argued that in front of Judge Buckner.

24 There are no substantial difference in facts.
25 The Court of Appeals has decided this case with

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1 finality. There was a motion for reconsideration, a
2 very extensive motion for reconsideration, filed in
3 which these same arguments were made by CCMC with
4 regard to this same agreement, and the Court of
5 Appeals denied the motion for a rehearing and a
6 remitteter was filed.

7 It would be incredibly prejudicial to give them
8 another bite at the same apple, on the same set of
9 facts, on the same agreement, that's already been
10 decided they the Court of Appeals. It would be
11 contrary to the law of the case doctrine. And I
12 submit to you that we've quoted the case that deals
13 with that in our brief.

14 We wanted a jury trial in Jasper County. We won
15 that argument. We got that ruling. The Court of
16 Appeals has decided that issue. The FAA doesn't apply
17 to this agreement. That's quoted in the Court of
18 Appeals's decision. This Court cannot now just upset
19 that ruling based upon the same facts as were alleged
20 before. It basically is having two bites at the same
21 apple that's already gone up and come down. That's
22 the law of the case doctrine. Thank you.

23 THE COURT: Thank you, Mr. Harvey.

24 Ms. Robertson?

25 MS. ROBERTSON: Yes, Your Honor. Thank you. A

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1 few points, Your Honor.

2 Lifepoint is not and was not a part of the
3 record that went up on appeal. All of what Mr. Harvey
4 has described, that occurred in that appeal, did not
5 involve Lifepoint. We did not participate in that.
6 We could not brief it. We were not a party to that
7 appeal. And he stated that in his appellate filings,
8 that Lifepoint was not a party to that appeal.

9 Lifepoint has never been heard on its motion to
10 compel until we are before Your Honor today. What
11 would be prejudicial is to have Lifepoint never be
12 heard on a motion to compel arbitration in the
13 contract. It is the same agreement and contract. But
14 what we have, that is very different, is exactly what
15 Mr. Harvey has described: discovery from Dr. Flexon
16 and his deposition testimony, which was taken and
17 which caused this motion to be renewed and now is
18 before Your Honor for the first time ever on a
19 hearing. That's exactly what has occurred with
20 respect to Lifepoint's motion.

21 Dr. Flexon's testimony does change the record
22 that was previously before this Court. You have a --

23 THE COURT: Let me interrupt you just briefly --

24 MS. ROBERTSON: Yes, sir.

25 THE COURT: And --

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1 MS. ROBERTSON: Yes, sir.

2 THE COURT: Suppose there were no new facts, as
3 you call them.

4 MS. ROBERTSON: Uh-huh.

5 THE COURT: Would that change things?

6 MS. ROBERTSON: If there were no new facts, Your
7 Honor -- we have withdrawn our motion before, without
8 prejudice, under those consent scheduling orders to
9 preserve the right to bring this motion upon discovery
10 hearing from Dr. Flexon. If there were no new facts,
11 I'm not sure we would have renewed this motion.
12 However --

13 THE COURT: Would you be bound by the order,
14 then?

15 MS. ROBERTSON: No, sir. I don't --

16 THE COURT: You wouldn't be making the motion --

17 MS. ROBERTSON: I don't think we were ever bound
18 by that order unless there is a law of a doctrine.
19 The doctrine of the law of the case would apply to us
20 if we never sought to have the motion heard. But we
21 were never bound by that ruling.

22 And we've preserved our right, in every consent
23 scheduling order, to bring the motion to compel
24 ourselves, Lifepoint. That has never not been
25 preserved. It has been clearly agreed to by the

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1 parties. And we did just what Mr. Harvey is saying
2 do: go take a limited deposition or go take a
3 deposition. Dr. Flexon was deposed and it's his
4 testimony which clearly establishes what the
5 circumstances were around his argument.

6 And, Your Honor, we're not talking -- Mr. Harvey
7 was pointing out about the idea that Dr. Flexon moved
8 his practice from Georgia to Jasper County to enter
9 into the contract. That's not the facts we're talking
10 about. What we're talking about is what happened once
11 he got there. And it clearly was not him providing
12 services to local patients at a local hospital and
13 doing nothing more. He, in his own words, said there
14 might have been a state line but that was nothing. He
15 continued to provide services to Georgia patients,
16 South Carolina patients.

17 And the agreement -- which is different --
18 pointing out the provisions, is Lifepoint expected
19 that he would continue with privileges at Memorial in
20 Georgia. And he did that. And he testified that he
21 continued to exercise those privileges in Georgia,
22 even after he was employed. So there was services
23 provided, Georgia, South Carolina, patients are coming
24 across the state line. And that's what's different.
25 It's not that he moved the practice but it's what he

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1 did and continued to do that is now in the record
2 through his very testimony. And these parties
3 contracted to arbitrate.

4 It was the expectation that this matter be
5 arbitrated if they ever had a dispute. And this
6 matter should proceed to arbitration and proceed
7 quickly so that this matter can be resolved but be
8 resolved where it was intended by the parties to be
9 resolved and where the circumstances surrounding this
10 agreement established that this matter affects
11 interstate commerce.

12 Bear with me one second, Your Honor.

13 [Whereupon, Ms. Robertson and Mr. Belton confer]

14 MS. ROBERTSON: And, Your Honor, with respect to
15 the law of the case, there is an equitable power of
16 this Court. It remains within the jurisdiction of
17 this Court to make the decision to compel arbitration
18 here, based on the facts through Dr. Flexon's
19 testimony. That is an equitable thing that this Court
20 can do, and you are allowed to do, even through that
21 doctrine. Thank you, Your Honor.

22 THE COURT: Mr. Harvey, what about it? Ms.
23 Robertson says that what was being discussed earlier
24 before Judge Buckner was the closing of the interstate
25 practice, if you will, or his practice in Georgia, or
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1 moving it, but not the fact that patients from Georgia
2 would be coming to Jasper County, that that's a
3 different factual matter that wasn't addressed --
4 wasn't raised. I'm sorry.

5 MR. HARVEY: Your Honor --

6 THE COURT: Did I understand that correctly? Is
7 that what you were saying?

8 MS. ROBERTSON: Yes, Your Honor. That was our
9 point, that it continued after and it's not just a
10 local practice. Yes, Your Honor.

11 THE COURT: Go ahead. I'm sorry.

12 MR. HARVEY: Ms. Robertson just now told this
13 Court that the agreement -- and I wrote this down --
14 the agreement contemplated patients from both states.
15 That was their agreement. They knew -- this is
16 Lifepoint -- knew that the agreement contemplated
17 patients from both states.

18 The agreement did involve patients from both
19 states. Clearly, Dr. Flexon had an existing practice.
20 He lived in Levy. He was practicing at Memorial
21 Medical Center. He continued to have patients come
22 from -- I mean, they knew that. They -- I mean, she
23 just acknowledged that. It's not a matter of whether
24 that's -- that's not a new fact. That's what I'm
25 saying.

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1 THE COURT: Was it a -- what she's arguing now,
2 though, I think is that was not something that was
3 argued before Judge Buckner or the appellate court.

4 MR. HARVEY: Judge Buckner it was argued -- I
5 think the implication here, that he was getting
6 business across state lines and was relying on that
7 business in order to have a successful practice. That
8 was in the record before Judge Buckner.

9 THE COURT: I see. And where are you there? I
10 missed it.

11 MR. HARVEY: Page 8 of the transcript, the
12 middle, line 14.

13 THE COURT: Well, I do have that highlighted.

14 MR. HARVEY: I mean, that was -- that is
15 consistent, Your Honor, with Lifepoint's knowledge
16 that there were patients from both jurisdictions.

17 Clearly, they hired him on the belief that their
18 Georgia patients would follow them to practice -- his
19 practice in Hardeeville. But even more significant
20 than that, on page 9 of the record, at the very top,
21 the argument was actually made that he was doing
22 surgeries in Savannah. So not only was he relying on
23 patients coming to him from Savannah, the argument in
24 front of Judge Buckner, the facts that were before him
25 when he ruled and the Court of Appeals affirmed, were

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1 that he was sending complicated patients and
2 performing those surgeries in Savannah. Now, again,
3 these are not new substantial facts. That is the law
4 of the case doctrine.

5 I would point out again that Ms. Robertson says,
6 we were not a party to the motion. But clearly she
7 joined in the motion. Clearly, she's argued again the
8 exact same argument that has gone up, been affirmed,
9 and come down. We're four years later and the same
10 argument is being made. There are no new facts. Dr.
11 Flexon's one piece of testimony saying that he was
12 getting patients from Savannah is nothing new. I
13 mean, there is nothing new in that statement. And the
14 law is there has to be a substantial difference in
15 facts, not just a -- not just a minute difference in
16 facts, a substantial difference in facts. And there's
17 -- just not here.

18 THE COURT: All right. Thank you, Mr. Harvey.

19 MS. ROBERTSON: Your Honor, I just -- Mr. Harvey
20 points to the prior arguments of Coastal Carolina.
21 And I believe those were arguments that you see in the
22 record. What was then asserted as what was the
23 evidence that Mr. Harvey put before the Court was the
24 record that we have a local contract, a local
25 physician, local services.

1 What this agreement contemplated was that this
2 physician provide services to his patients. What we
3 learned from Dr. Flexon, without question, from his
4 testimony, that those patients were Georgia and South
5 Carolina patients after he got to Jasper County, and
6 that he also went back to Memorial. That is
7 interstate commerce, and that is new. That is a
8 substantial difference from what was presented to this
9 Court and the record from the plaintiff previously.

10 THE COURT: And that was contemplated that it
11 was going to be that way? Or not?

12 MS. ROBERTSON: The agreement contemplated. And
13 what it said, Your Honor, at the provision -- and we
14 cited it in our brief. But it stated that the
15 employer engages physician and physician accepts such
16 engagement to render professional physician services
17 to patients. And it talks about the hospital
18 facilities, he's going to perform his duties at
19 facilities at which he maintains medical staff
20 privileges. What the agreement contemplated, that he
21 would provide services to his patients. And what was
22 in the record before was that this was a local
23 physician providing services to local patients.

24 Dr. Flexon's record, what was previously before
25 this Court, was that this was a self-contained South

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1 Carolina practice. What is substantially different
2 now -- yes, Coastal Carolina might have made arguments
3 before. But what is substantially different is the
4 fact now, through his testimony, that the patients for
5 which he is servicing are not self-contained in South
6 Carolina. They're coming from Georgia. He said, it's
7 Georgia and South Carolina. And that is a substantial
8 difference in the fact before this Court that
9 establishes and compels arbitration.

10 THE COURT: Isn't that what Tenet had told him
11 to cease doing?

12 MS. ROBERTSON: Your Honor, Lifepoint is who I'm
13 here on behalf. Mr. Myrick is here on behalf of
14 Tenet. I might let him answer questions with respect
15 to that, but --

16 THE COURT: Okay. I agree.

17 All right. Now, the next motion, 60(b).

18 MR. MYRICK: Your Honor, this is my motion. And
19 60(b) -- and really what I was doing is I looked at
20 this as sort of a Gordian knot. We've got -- what we
21 have are substantial -- and I clearly do think -- I am
22 in agreement with Ms. Robertson that we've learned a
23 lot more about this case that we couldn't learn
24 before. As you know, you waive a right to arbitration
25 if you go forward and take their positions and avail

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1 yourself to the circuit court.

2 My motion for arbitration was heard before there
3 was any agreement that there would be consensual
4 discovery taken on depositions. So, you see, I had a
5 difficult decision to make, at that early stage, about
6 whether to move for arbitration or not. But we know
7 that you waive it if you don't move for it.

8 Now there's more fulsomeness to these facts and
9 we know that there was interstate commerce. And, in
10 fact, I haven't heard Mr. Harvey object to that at all
11 in any motion, in anything he's said so far. It's now
12 a card on the table that everybody does agree to this
13 interstate commerce, which is a totally different song
14 than earlier.

15 But let me begin by saying I'm seeking
16 simplification. If I'm in your position, what I'm
17 trying to do is -- I've got a lot here I want to go
18 through and I think I can break it down into three
19 questions, with answers, that might help in that path.
20 And I think I'll give them to you to reasonably break
21 this down.

22 The first question would be does Lifepoint have
23 a right to seek arbitration. Because I think my
24 rights key off that. And I'll get to that and explain
25 that in a moment. But do they have a right to seek

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1 that arbitration.

2 And then question two, if the answer to that is
3 yes, has Lifepoint fairly proved in the record or met
4 the test that the -- the South Carolina test under the
5 Zabinski case, of commerce in fact, to determine if
6 the contract and surrounding facts affect interstate
7 commerce. That would be my second question.

8 And then if the answer to that is, yes, it does
9 affect interstate commerce, they are entitled to seek
10 arbitration, Lifepoint is, then the third question
11 would be so if that is true -- if they have a right to
12 seek it, and there is interstate commerce clearly
13 proven by the facts, the third question would be how
14 does that affect CCMC, which is my client. We
15 purchased the stock from Lifepoint. That question is
16 does CCMC, who remains the employer, do they also have
17 a right to participate in this arbitration.

18 So let me go back through and tell you how I
19 think those questions line up, yes or no to the
20 question of does Lifepoint have a right to seek
21 arbitration. The points I've heard made on the no
22 category would be it's closed or it's somehow waived.
23 But that would be contra to all the language that was
24 incorporated into those consent orders, that were
25 agreed to, that they preserved a right to seek

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1 arbitration. Not whether they get arbitration, but
2 their right to seek it. And while my situation was
3 different, because we didn't have that agreement by
4 the time I was called upon to make a decision about
5 whether to move for arbitration, it was established
6 that that right was preserved to go forward and seek
7 arbitration. So if, in fact, Lifepoint did preserve
8 their right to seek arbitration and they do have that
9 independent right, I think that's where we go next, if
10 you find yes to that question.

11 And you'll remember the second question was has,
12 then, Lifepoint, under its burden under the Zabinski
13 case, proved to the Court's satisfaction interstate
14 commerce activity. And I think this is so different
15 than the earlier point, I want to pause here and make
16 mention. In my brief you'll find quoted from Mr.
17 Harvey's presentation earlier when the idea was, no,
18 this is a local practice, local in Hardeeville, it did
19 not involve interstate commerce, and he said:
20 [reading] now, in this case in dealing with the
21 employment agreement, it is a local contract. It does
22 not involve -- I mean, it involved employment of a
23 Jasper County doctor to a Jasper County hospital to
24 render services to Jasper County residents. I mean,
25 in point of fact, that's what we're talking about.

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1 And now that it's gone up on appeal, but during
2 the same time Lifepoint has preserved their right to
3 seek arbitration as a benefit of that discovery that
4 they secured unto themselves under that point, I think
5 we're indirectly the beneficiary. I'll get to that.
6 But now really it's not in dispute that it affects
7 interstate commerce. That's no longer an issue. One,
8 Dr. Flexon said this in his deposition at page 269,
9 lines 20 through 24.

10 I'll give you that again if you want to jot it
11 down. It's his deposition, page 269, lines 20 to 24.
12 He said: [reading] my practice has always existed in
13 both states, before and after. By accident, there's a
14 river and a state line but the practice always
15 involved both states.

16 That's in Lifepoint's arbitration motion Exhibit
17 A.

18 The second fact that's new under this preserved
19 discovery, Flexon says this: [reading] I had a
20 substantial group of patients from Beaufort County and
21 Savannah that would come to that office if it were
22 managed well. The trick was to keep my established
23 practice from Savannah.

24 Different now than the fact that Your Honor
25 keyed off on, different than closing the Savannah

1 practice, letting those patients go. Here what we've
2 learned is that there was an importation of those
3 clients, an ongoing servicing of those clients, that
4 didn't come through in the interrogatories but came
5 through in his deposition.

6 The third fact. This is what Flexon says
7 himself: [reading] remember, I was -- and also at
8 Eric Deaton's --

9 Now, Eric Deaton was the CEO of Lifepoint
10 Hospital when Flexon was there. He was the boss man
11 at Lifepoint.

12 He says: [reading] remember, I was -- and also
13 at Eric Deaton's, you know, suggestion and insistence,
14 I was on the hospital staff at Memorial Hospital in
15 Savannah, Georgia, so I often had to make rounds at
16 two hospitals.

17 That's his deposition, page 179, lines 15
18 through 19. I, as CCMC's counsel, would not have had
19 access to that. Lifepoint had it, but their motion
20 wasn't before the Court at that time. They were
21 preserving that and going forward.

22 So let's focus for a moment on the facts that
23 you brought up about, well, what facts really are new.
24 Do we really have any facts? I suggest that those
25 three --

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1 Did you need to --

2 THE CLERK OF COURT: I'll be right back.

3 MR. MYRICK: Okay.

4 THE COURT: We'll be at ease a minute.

5 [Off the record momentarily]

6 THE COURT: Mr. Myrick.

7 MR. MYRICK: So we were talking just a moment
8 ago about your concerns, have the facts really
9 changed. And I think that what we've learned -- let's
10 break them down into three points. The first one is
11 the Court, the lower Court, was asked to address
12 whether closing the practice in Savannah was
13 interstate commerce. And I think that's right.
14 That's what they were talking about there in terms of
15 closing a practice. The difference here now that we
16 know is we're not talking about closing a practice.
17 Really, on the other hand, we're talking about keeping
18 a practice alive but bringing it -- importing across
19 state lines. We know that now. We didn't know that
20 then. That was not a fact that was being argued at
21 that point. It was about whether a practice closing
22 in Savannah would qualify as interstate commerce.

23 The second thing: Mr. Harvey mentioned, well,
24 the Court already knew about that. This issue was
25 already before the Court, because they were talking

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1 about stopping referrals from physicians in Savannah,
2 that that was a part of this process. But what the
3 doctor was saying in that was that we may had to stop
4 referrals from physicians in Georgia. We don't know
5 whether those were South Carolina patients or not.
6 But that's materially different than undertaking as
7 the intent of the employment contract servicing people
8 from Savannah and Jasper County, when the
9 countervailing concern that was written in the --
10 given to the Court was just pure Jasper County, pure
11 local. We know now that wasn't the case. It's much
12 broader than just stopping some referrals from
13 Georgia. It's much broader than that. It's
14 maintaining an active practice, harvesting clients, in
15 large part from his prior practice. Not just from
16 other physicians, but his own practice.

17 And then the third point: Mr. Harvey says they
18 already thought about this because he was saying that
19 he was taking some patients to Savannah. But
20 remember, that came up in the context of Mr. Harvey
21 arguing that that was what Dr. Flexon was forced to
22 do, that he had to take patients in Savannah because
23 they failed under the contract. It didn't come up in
24 the contract -- in the context that he had ongoing
25 staff privileges and kept ongoing staff privileges at

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1 the Savannah Memorial Hospital. Which is what we
2 learned in his deposition, that he was doing rounds at
3 the hospital in Savannah as opposed to doing it
4 because the contract in South Carolina had failed and
5 he was left with that only as a remedy because he
6 didn't have the equipment.

7 So what I see from all these facts is that there
8 is a much more fulsome picture and facts in all these
9 situations -- under this situation. And it's going to
10 be your decision, obviously. But if all those things
11 were the case, you could say, no, it doesn't affect
12 interstate commerce. But I think that based on what
13 we've learned now, the instinct, the gut, the reaction
14 from the new information, it's, yeah, clearly it
15 involved interstate commerce, it wasn't a purely local
16 practice. In fact, in the truth, the fact is it
17 always involved bringing people in from Georgia, it
18 always involved rounds in Savannah.

19 So if you conclude under that question that it
20 did involve interstate commerce, let's come to the
21 CCMC part. And this is the part that's tougher for
22 me. If that is the case, how does that affect CCMC.
23 And I think, candidly, you have -- do we then
24 participate in that arbitration? If Lifepoint gets an
25 arbitration, do we then participate in that? And I

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1 would suggest we do, and I'll tell you why. I think
2 we get it, but for a different reason than I initially
3 thought. I don't think we would have it for the
4 initial reason. I understand that it went up to the
5 Court of Appeals and came back down on those issues.
6 I get that completely. Because there had to be a
7 question about with arbitration, if you don't file it,
8 you can waive it. And we didn't have those
9 protections.

10 But now if you look at this and you are trying
11 to make a determination under 60(b)(5), where it says
12 this. It says: [reading] mistakes, inadvertence,
13 excusable neglect, newly discovered evidence or fraud.

14 I don't think fraud applies. Let me say that.

15 [reading] -- on motion and upon such terms are
16 just. The Court may relieve a party or his legal
17 representative from final judgment order of
18 proceedings for the following reasons --

19 And I think parts of 3 apply.

20 [reading] -- one, mistake, inadvertence,
21 surprise or excusable neglect; two, newly discovered
22 evidence which by due diligence could not have been
23 discovered in time to move for a new trial under
24 59(b) --

25 And often these pop up in terms of new trial.

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1 But here -- and I think that it could have been that
2 Mr. Harvey didn't understand the fulsomeness of the
3 participation in Georgia, either.

4 And then, five: [reading] the judgment has been
5 satisfied, released or discharged for a prior judgment
6 upon which on its face has been reversed or otherwise
7 vacated. Four: [reading] it is no longer equitable
8 that the judgment should have respective application.

9 If what we've learned is that Lifepoint has an
10 independent right to seek arbitration, they have
11 pursued that now. There are facts that show that
12 there is interstate commerce. It would be utterly
13 inequitable to force me, having filed against possibly
14 waiving arbitration, to learn that the true facts are
15 that there is interstate commerce and we would be
16 entitled to it. It would be utterly inequitable for
17 me not to be able to participate in that arbitration
18 when we know now, based on Dr. Flexon's own testimony,
19 that it is an arbitrable controversy, a paragraph for
20 which he signed in his employment agreement saying
21 that these matters would be arbitrated.

22 So I would suggest to you these reasons. One,
23 we're talking about the single and same employment
24 agreement for CCMC as for Lifepoint. It's the same
25 document that would be deemed considered. Two, it's

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1 the same complaint and the same surrounding true facts
2 as we now know -- we now know them, reviewed under the
3 Zabinski standard, which shows it to be arbitrable.

4 The possibility of contradictory results: if you have
5 one going forward in arbitration and one going forward
6 in circuit court, that doesn't work. It should be all
7 resolved in one thing. It should all be handled
8 together.

9 It becomes a part of practical consideration --
10 and I think you have discretion to look at the
11 complaint -- there are three causes of action. The
12 first cause of action is breach of contract. Clearly,
13 that would involve both of us. If Lifepoint is
14 entitled to it, we should be able to, too. The
15 second: for fraudulent misrepresentation. And it's
16 alleged as to the employer, which is shown in the
17 document as suggesting both Ms. Robertson's client and
18 mine. And then the third cause of action is for
19 breach of good faith and fair dealing. And, again,
20 that's alleged as to both.

21 So in summary I would say to you, just to
22 conclude, that if this matter is arbitrable, it would
23 be inequitable to allow arbitration as to only one
24 defendant and not to the other, for new reasons:
25 because of the complaint, which has three causes of

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1 action as to both; because of the identical contract;
2 because of the identical facts surrounding the dispute
3 -- it's the same set of facts that applies to both
4 controversies here -- and because we now have an
5 expanded evidentiary record which contradicts earlier
6 statements that this was just a local Jasper County
7 practice.

8 THE COURT: All right. Thank you, Mr. Myrick.
9 Mr. Harvey?

10 MR. HARVEY: Your Honor, I can't think of
11 anything more inequitable than allowing -- than even
12 the thought of CCMC having another bite of the exact
13 record with the exact same facts as already gone up
14 and come down.

15 I would point out, Your Honor, that in their
16 motion for rehearing -- and, again, what we're dealing
17 with here is the exact same argument that was made
18 before Judge Buckner and was made before the South
19 Carolina Court of Appeals. In their motion for
20 rehearing -- and I would point to you in their
21 petition for rehearing, it's Exhibit J to the
22 submission that CCMC made to the Court of Appeals. On
23 page 5, I quote: [reading] both performing surgery in
24 Georgia and accepting referrals from Georgia
25 physicians, in furtherance of Flexon's employment in

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1 South Carolina, implicate interstate commerce.

2 The importation -- to use Mr. Myrick's language,
3 the importation of patients from Georgia into South
4 Carolina is precisely what was argued in front of
5 Judge Buckner and in front of the Court of Appeals
6 back in 2009. I would point out, Your Honor, that
7 based upon those representations and the statement --
8 again, the statement that they learned at the
9 deposition that Dr. Flexon had staff privileges,
10 remaining staff privileges, at Memorial Medical Center
11 is ludicrous. Dr. Flexon was their employee. He had
12 to sign every document under the sun stating exactly
13 where all his staff privileges were. We alleged in
14 the complaint that he did surgery at Memorial.
15 Clearly had staff privileges there. The fact that --
16 their statement that they, quote, learned at the
17 deposition that he still had privileges in Savannah is
18 ludicrous.

19 60(b) applies to newly-discovered evidence.
20 Again, I know that counsel said we're not dealing with
21 fraud. But in the Supreme Court case, the Raby
22 Construction case, which they have cited, dealing with
23 60(b), it says: [reading] intrinsic fraud, on the
24 other hand, is fraud that misleads the Court in
25 determining issues and induces the Court to find for

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1 the party perpetrating the fraud.

2 And then at the next page, at page 20, which is
3 358 S.C. at 20, it says: [reading] relief is granted
4 for extrinsic fraud but not intrinsic fraud on the
5 theory that the latter deceptions should be discovered
6 during the litigation itself, and to permit such
7 relief undermines the stability of all judgments.

8 Counsel never -- I mean, with all this knowledge
9 that they say -- I mean, Ms. Robertson has argued that
10 the agreement itself contemplated patients' activities
11 in both states. I mean, she said that just now. I
12 wrote it down. With that knowledge, clearly they
13 could have taken a limited deposition if a deposition
14 was necessary to establish the facts. I didn't claim
15 waiver. I didn't claim that their interrogatories and
16 request for production constituted any waiver. I'm
17 not claiming waiver now. What I'm claiming is is that
18 these are exactly the same issues, exactly the same
19 issues, as we heard in front of Judge Buckner and
20 which were argued at length and on a motion for
21 rehearing and a request for an Ombak [phonetic]
22 reconsideration, which were denied by the Court of
23 Appeals. They said that they -- that having reviewed
24 the record, we find -- the remitteter -- not the
25 remitteter. The order says: [reading] we're unable

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1 to discover any material fact or principle law that
2 has been either overlooked or disregarded.

3 And based upon the argument that was made, which
4 included all of the facts that are argued now, the
5 Court of Appeals held that: [reading] we agree with
6 the trial court's finding that the agreement and
7 surrounding facts did not implicate interstate
8 commerce; therefore, the FAA did not apply to this
9 agreement. And it cites the Thornton case where it
10 says: [reading] our Courts consistently look to the
11 essential character of the contract when applying the
12 FAA.

13 That's the law of the case, Your Honor. The law
14 of the case is that FAA does not apply to this
15 agreement, because the contract -- they looked at the
16 essential character of the contract, which the
17 essential character -- which Ms. Robertson would seek
18 to argue contemplated patients from both states. And
19 with those facts and with that contemplation, which
20 was fully argued before the Court of Appeals. I mean,
21 it's the same agreement, the same set of facts, the
22 same allegations, the same understanding. And with
23 all that in place -- and Ms. Robertson acknowledging
24 at the hearing that her argument is exactly the same
25 as CCMC's, in front of Judge Buckner, the Court of
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1 Appeals made that finding.

2 Now, Your Honor, I'm not here today to argue
3 whether or not interstate commerce was implicated.
4 Our appellate court has already decided that. And I
5 don't believe it is within the equitable jurisdiction,
6 based upon what we have in front of you today, for
7 this Court to get sideways with what -- with the very
8 ruling that the Court of Appeals has already decided,
9 which, again, they're seeking to argue again today.
10 That's our position on both motions, Your Honor. It's
11 just -- I can't fathom how you could make a ruling
12 that wouldn't fly directly in the fact of what the
13 Court of Appeals has already decided, because these
14 facts have already been argued to both courts, which
15 ruled in my favor.

16 THE COURT: Thank you, Mr. Harvey.

17 Mr. Myrick?

18 MR. MYRICK: Yes, just quickly.

19 Let's go exactly to where he points in the
20 record, and that's on page 5 of Exhibit J. And that's
21 in the motion for rehearing.

22 THE COURT: I had my finger on it a minute ago.

23 MR. MYRICK: Okay. It's --

24 THE COURT: Here it is. Here we go. I'm with
25 you.

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1 MR. MYRICK: I just want to make a quick mention
2 of this. There are two points. One, he said -- he
3 talks about referrals again. And then the second one,
4 he talks about performing surgery in Georgia. And you
5 can do this at your leisure. You don't need to do
6 this right now, but when you're comfortable. Take a
7 look at that in context. And what that brief says is
8 exactly what was said here today in this way. If you
9 look about -- when it talks about referrals, that was
10 the tail end of a comment or a piece of information
11 that we had received from Flexon. And then we make
12 our own conclusion that if that were true, if that
13 were true that he was receiving referrals across state
14 lines in support of his practice at CCMC, we thought
15 it was true at that time. But we couldn't quote him
16 on that. We couldn't present that separate piece of
17 it that his testimony later presented because we were
18 so early in the stages of discovery for it. That has
19 come to full fulmination. There's proof of that now
20 in the record. It's not just something that we had to
21 say if we could conclude that, then he would have been
22 practicing interstate. We now know he was practicing
23 interstate. I think that's an important distinction.

24 The second point to make is in that same
25 paragraph, you'll see where he talks about performing

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1 surgery in Georgia and you'll see where he's talking
2 about that -- that he's having to do that not as a
3 part of the pattern of his practice. That's not what
4 they've said so far in the evidentiary record.
5 They're saying as a result of failures in South
6 Carolina, I had no recourse but to go across state
7 line because you weren't giving me the equipment. And
8 I'm quoting here: [reading] the availability of
9 equipment became so unreliable that plaintiff started
10 taking his -- should be his, it says him --
11 complicated cases to Memorial.

12 That's different. That's as a result of a
13 breach, that's not as part of carrying out the
14 contract itself. It's not part of the -- one aspect
15 you're talking about, what do you do to try to deal
16 with that. On the other hand, you talk about whether
17 it's part of a pattern.

18 We've learned that it crosses interstate lines,
19 so I think that my prior arguments attend. I don't
20 think there's any reason to take more time. I think
21 that's the analysis, through those three questions.
22 And if you achieve -- if you do conclude it's
23 arbitrable, that you do think there's interstate
24 commerce, that there are in fact new facts that is
25 depicted in the record as a result of that deposition,

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1 and that it would be unfair not to allow CCMC to
2 participate in arbitration now that those facts have
3 come to light, then I think in that case it would be
4 proper and appropriate to grant the motion. Thank
5 you, Your Honor.

6 THE COURT: Thank you, Mr. Myrick.

7 MS. ROBERTSON: Your Honor, would you indulge me
8 for just about two seconds?

9 THE COURT: Two seconds.

10 MS. ROBERTSON: Mr. Harvey has said on a number
11 of times now, and in his response to Mr. Myrick about
12 Ms. Robertson's acknowledgment that this agreement
13 contemplated that Dr. Flexon would provide services in
14 Georgia and South Carolina. Let me be very clear on
15 what any intention was with a statement like that or a
16 reference to the agreement. My point is this. The
17 agreement states very clearly the employer engages
18 physician, physician accepts engagement, to render
19 professional physician services to patients.

20 That is the contemplation of the agreement.
21 And what we know now is that contemplation meant
22 to Georgia and South Carolina patients, because
23 Dr. Flexon has testified that he continued servicing
24 both patients from Georgia and South Carolina. His
25 patients were from both states. So that -- I just

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1 wanted to be clear, the language of the agreement and
2 what we know it to be from the facts of Dr. Flexon.
3 Thank you, Your Honor.

4 THE COURT: All right. As to the motion to
5 compel of Lifepoint: I find there's no substantial
6 difference in the facts as argued -- the facts of this
7 case as argued by the plaintiff today and as set forth
8 in plaintiff's briefs. The motion to compel therefore
9 is denied.

10 As to the 60(b)(5) motion, the 60(b) motion of
11 CMCC [phonetic], deny that on the grounds that the --
12 there are no new facts that could not have been proven
13 at the time that the -- their prior motion was heard.
14 Looking at the statements made to Judge Buckner in the
15 transcript on page 8 and page 9, those allegations I
16 find -- as I said a minute ago, I find are not
17 substantially different than the allegations being
18 made today by Lifepoint and those -- as to CCMC, those
19 could have been proven at the time of the motion
20 hearing and therefore 60(b) does not afford them
21 relief.

22 Mr. Harvey, would you prepare an order
23 consistent --

24 MR. HARVEY: I will, Your Honor --

25 THE COURT: -- consistent with these rulings?

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1 MR. HARVEY: -- and I'll circulate it to
2 opposing counsel before I give it to you.

3 THE COURT: If you would. Thank you.

4 MS. ROBERTSON: Your Honor, could I just ask for
5 a clarification?

6 Is it your ruling that we are bound by their
7 finding, or you are separately determining that there
8 is no new substantial --

9 THE COURT: No new substantial.

10 MS. ROBERTSON: Separately, independently on our
11 motion?

12 THE COURT: Right. That's right.

13 MS. ROBERTSON: And, therefore, no facts
14 establishing interstate commerce?

15 THE COURT: Right.

16 MS. ROBERTSON: Okay. Thank you.

17 THE COURT: No new facts.

18 MR. HARVEY: Your Honor, I don't know what
19 counsel's intention is with regard to the order, but
20 given where we are in the case -- this is actually --
21 this case has been -- is on a jury docket in Jasper
22 County because it is -- because it is old. And we are
23 probably going to be submitting a new scheduling
24 order. However, I have been seeking, literally, since
25 2009; since the argument in front of Judge Buckner --

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1 and I can quote the page and verse from the argument
2 in front of Judge Buckner -- documents from Lifepoint
3 with regard to the communications and the knowledge
4 that Lifepoint had of the pending sale of the hospital
5 -- the very allegations that are in the complaint --
6 and that is that Lifepoint negotiated this contract
7 with my client knowing that the hospital was going to
8 be sold. Those are the core allegations of the
9 complaint.

10 In Mr. Deaton's deposition -- Mr. Deaton was the
11 CEO of Lifepoint Hospital and negotiated this contract
12 with the plaintiff -- he testified that in the fall of
13 2006 -- my client's contract was signed in December of
14 2006. He testified that in the fall of 2006, he knew
15 that the hospital was going to be sold. That was his
16 testimony at page 121 of his deposition: [reading] is
17 it your testimony that you didn't have any knowledge
18 of the COM [phonetic] dispute between Lifepoint and
19 Tenet prior to your arrival. I knew that there was
20 opposition to Tenet to the hospital being built in
21 Hardeeville.

22 Let's see.

23 [Whereupon, Mr. Harvey reviews documents]

24 THE COURT: Where are we headed with all this?

25 I'm --

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1 MR. HARVEY: What I'm trying --

2 THE COURT: -- behind on this.

3 MR. HARVEY: I am trying to get documents. I
4 have been seeking -- I requested, in my original
5 request for production, documents from Lifepoint
6 dealing with the e-mails and other correspondence
7 between Lifepoint and Tenet about the sale of the
8 hospital. When it occurred, what knowledge Lifepoint
9 had. Mr. Deaton said he knew about it three months
10 before my -- they have -- they argued in front of
11 Judge Buckner -- it's in the record that you have in
12 front of you. They argued in front of Judge Buckner
13 that it was confidential. We had already entered into
14 a confidentiality provision, an order, protecting the
15 confidentiality. They're now claiming that it's
16 unburdensome and unduly over broad for me to request
17 documents pertaining to the knowledge of Lifepoint of
18 the sale of the hospital to Tenet, which is exactly
19 the issues in controversy.

20 I have been -- I mean, we had conversations
21 trying to limit those -- that scope and we still have
22 no agreement. I need to get those documents in order
23 to complete the discovery. We have --

24 THE COURT: Is there a motion pending on this?

25 MR. HARVEY: There is not a motion pending. I

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1 can file a motion to compel and we can hear it. But
2 I'm trying to move the case forward.

3 We talked about raising this this morning with
4 Judge Mullen last week. She said why don't you bring
5 that up in the -- you know, after this motion, the
6 motion to compel arbitration, is decided and we figure
7 out what forum we're in. That was sort of how we left
8 it. Now that we know we're going forward in the
9 circuit court, I can make a motion to compel but I
10 submit to you I have essentially made it, I mean,
11 insofar as Lifepoint is concerned. I mean, again,
12 we've had ad nauseam discussions about where -- how
13 can I get this information. And there is no motion to
14 compel, no formal motion, and I would acknowledge
15 that.

16 I will make the motion to compel, if necessary,
17 but I'm trying to move it forward and would just seek
18 the help of the Court in dealing with that.

19 THE COURT: Ms. Robertson?

20 MS. ROBERTSON: Your Honor, there is no motion
21 pending. But we responded to discovery requests back
22 in 2009. This case has taken various paths. Mr.
23 Harvey has sporadically raised the issue of, well, I
24 want more documents, I want this. We have had
25 conversations each time he has raised that issue, and

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1 I have told him --

2 THE COURT: I'm going to save you some time.
3 I'm not going to jump in the middle of this without a
4 motion pending.

5 MS. ROBERTSON: Thank you, Your Honor.

6 MR. HARVEY: All right.

7 MS. ROBERTSON: And I think counsel can work
8 this out, in any event. But thank you, because there
9 is no motion pending.

10 MR. HARVEY: I'll make the motion to compel this
11 afternoon.

12 THE COURT: Okay.

13 MR. HARVEY: Thank you.

14 THE COURT: Okay. Thank you much. Court is
15 adjourned.

16 MR. HARVEY: Thank you.

17 MS. ROBERTSON: Thank you, Your Honor.

18 [HEARING CONCLUDES AT 11:24 A.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Brooks Goldsmith, on Monday, September 9, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 13th day of December, 2013.

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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PHYSICIAN EMPLOYMENT AGREEMENT
LPH-460

Ref. No. 12/12/06

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 18 day of Dec 2006, by and between Coastal Carolina Medical Center ("Employer"), and Phillip B. Flexen, M.D., ("Physician").

RECITALS

WHEREAS, Employer is engaged in the business of operating and managing medical practices and other health care services in Jasper County, South Carolina (the "County");

WHEREAS, Physician is a licensed physician specializing in otolaryngology; and

WHEREAS, Employer desires to employ Physician, and Physician desires to be employed by Employer, to render professional physician services, in accordance with the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Physician, intending to become legally bound, agree as follows:

ARTICLE I
ENGAGEMENT

1.1 Employer engages Physician, and Physician accepts such engagement, as a physician primarily at the medical practice office located at 1010 Medical Center Drive, Hardeeville, South Carolina 29927, (the "Practice"), and such other practice sites in Beaufort and Jasper counties as may be reasonably designated by Employer from time to time, and to render professional physician services to patients, in accordance with the terms and conditions of this Agreement.

ARTICLE II
TERM

2.1 Term. The Agreement term initially shall be for five (5) year(s) (the "Agreement Term"), commencing on the Effective Date, defined below, and continuing until September 30, 2011, subject to earlier termination of this Agreement pursuant to Article VI [Termination] herein. The Effective Date means the date that Physician begins providing physician services for Employer pursuant to this Agreement, which date shall be October 1, 2006. The Effective Date is contingent upon Physician having obtained provider numbers for Medicare, Medicaid and insurance companies participating with Employer, but no later than ninety (90) days after the complete execution of this Agreement.

March 15, 2007 J6

ARTICLE III
DUTIES AND SERVICES

3.1 Work Schedule. During the Agreement Term, Physician agrees to devote his/her full professional working time and attention, at a minimum of forty (40) hours per work week at the medical practice office, to the practice of medicine for the benefit of Employer under the terms of this Agreement. Employer shall establish Physician's work schedule and on-call schedule, which schedule shall be inclusive of hours providing patient care at the facilities of Employer, any and all Active Medical Staff obligations, and administrative duties. Physician's Emergency Department unassigned patient call schedule responsibility shall be dictated by the Medical Staff's Rules/Regulations of Coastal Carolina Medical Center.

3.2 Non-Physician Personnel. Employer will provide Physician with a reasonable amount of non-physician personnel including, but not limited to, nurses, technicians, secretarial staff, and other medical and non-medical personnel, to assist Physician in the performance of his/her duties. Physician shall report to, consult with, and use the input of Employer regarding the hiring and firing of medical staff who work within the Practice and the overall operations of the Practice. All final decisions regarding hiring and firing of Practice personnel shall rest with Employer.

3.3 Availability and Duties. Physician shall be responsible for such duties as assigned to him or her from time to time by Employer. Physician shall make himself available to provide otolaryngology services to, and treat patients of Employer, whether such patients are outpatients or inpatients. Physician hereby agrees to devote his/her full working time and attention, together with Physician's best endeavors and skill, for the interest, benefit and best advantage of Employer and shall provide services on behalf of Employer in a manner that shall maintain the productivity of the Practice. Physician shall provide all professional medical services in accordance with

the policies and procedures established by Employer, and the appropriate standards of care of the community. Physician shall have the authority to refuse to treat a specific patient or to dismiss any particular patient if the patient has been abusive, disruptive or threatening or has refused to comply with Physician's orders, or for other reasons of a similar nature. In the case of any such dismissal, Physician agrees that appropriate notice by certified letter shall be sent to such patient and emergency care shall be provided by Physician to such patient for an appropriate period after such dismissal. Notwithstanding the foregoing, Physician agrees that he will not refuse to treat a patient and will not discriminate with respect to quality of care of a patient or otherwise on the basis of such patient's race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, disability or medical condition, or as otherwise provided by law. Except as otherwise stated herein, Physician specifically understands that Employer shall have the final authority over the acceptance or refusal of any person for whom professional services may be rendered and the amount of fees to be charged to such patients.

3.4 Patient Care. Nothing in the Agreement shall be interpreted to dictate Physician's practice of medicine, delivery of direct patient care or independent judgment in the practice of medicine. Physician shall have complete control over the diagnosis and treatment of patients and neither Employer nor any employee of Employer shall exercise any direct supervision or control over the individual treatment of the patient. Physician agrees that Physician's treatment and diagnosis of patients will be consistent with any rules and regulations promulgated by Employer dealing with the general treatment of patients.

3.5 Performance Standards. In performing services under this Agreement, Physician shall comply with the following Performance Standards:

- 3.5.1 promote cooperation and teamwork among other physicians and other employees and personnel of Employer;
- 3.5.2 develop standardization of otolaryngology practices and procedures;
- 3.5.3 attend all required management meetings;
- 3.5.4 assist Employer as requested in the efficient and effective day to day management of the Practice;
- 3.5.5 respond to patient and referring physician needs and concerns regarding patient diagnosis and treatment as expeditiously as reasonably possible;
- 3.5.6 fully support Employer's overall quality improvement and quality assurance initiatives;
- 3.5.7 adhere to all reasonable Policies and Procedures adopted by Employer;
- 3.5.8 adhere to such other performance standards as established by Employer from time to time.

3.6 Location(s) for Services. Physician shall perform his/her duties at the Practice, those hospital facilities at which Physician maintains Medical Staff privileges and such other practice locations of Employer in Benafort and Jasper counties as may be reasonably designated by Employer from time to time. Employer shall have reasonable discretion to consolidate and relocate practices operated by Employer, including the Practice.

3.7 Professional Fees/Outside Activities. Physician agrees not to engage in any medical professional business activity (whether or not such business activity is pursued for gain, profit or other pecuniary advantage), without the prior written consent of Employer, other than (i) rendering services on behalf of Employer pursuant to this Agreement, (ii) maintaining an ownership interest of less than five percent (5%) of the issued and outstanding stock of a publicly-traded corporation, or (iii) teaching, writing, lecturing, or providing expert witness testimony on otolaryngology topics; provided such activities shall not interfere or conflict with the performance of Physician's duties or provision of services under this Agreement. Physician shall not enter into any other physician employment contract or otherwise engage in the practice of medicine other than for the benefit of Employer. All remuneration and accounts receivable arising from or related to Physician's provision of any medical services pursuant to this Agreement are the property of Employer, and Physician agrees to provide to Employer any such remuneration immediately after it is received by Physician. Physician agrees to take all reasonable actions requested by Employer to assist in the collection of accounts receivable for services provided by Physician. Unless otherwise agreed, all fees or remuneration arising from or related to teaching assignments, lectures, speeches, publications, or expert witness testimony by Physician on or about matters related to the practice of otolaryngology shall also be considered compensation or professional service revenues to which Employer is entitled hereunder.

3.8 Workplace Rules. Physician shall observe and comply with the rules, regulations, policies and procedures established by Employer with respect to the performance of Physician's duties. In the event of any inconsistency between such rules, regulations, policies and procedures and this Agreement, the provisions of this Agreement shall prevail.

3.9 Managed Care. Physician, at all times during the Agreement Term, shall participate in all managed care arrangements made available by or through Employer. Employer shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations and third party payors; however, Employer agrees to consult and obtain input from Physician prior to entering Agreements. Upon request of Employer, Physician shall execute such managed care agreements, applications and other documents as reasonably required. Physician shall not otherwise contract with any managed care organization or third party payor. In connection with such managed care arrangements, Employer shall negotiate such managed care arrangements with the proviso that Physician shall not be individually responsible to the managed care company for any withhold and that no hold harmless provision shall be applicable or enforceable on Physician. Employer

shall use reasonable efforts to ensure that any capitation rates, discounted fees or other risk based arrangements are consistent and competitive with those rates as accepted by other physicians practicing in the same specialty in the County.

3.10 Other Services. During the Agreement Term, Physician and Employer may mutually agree to Physician rendering additional services. Such duties may include service on hospital staff committees, peer review organizations, or other committees of Employer, and serving on national and regional committees of Employer's Affiliates (which term as used in this Agreement shall include any person, corporation, partnership, general partner or other entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with Employer); provided that such duties shall not interfere with the professional services provided by Physician on behalf of Employer pursuant to this Agreement.

3.11 Additional Physicians. Employer and Physician agree as an essential term of this Agreement that it is the intent of the parties to develop a comprehensive medical practice. It is further understood that Employer intends to negotiate and enter into employment relationships with additional qualified physicians. Physician agrees to use his/her best efforts to forge and establish an ongoing relationship and team approach with such additional physicians for the furnishing of physician and related services to patients.

3.12 Obtaining Staff Privileges. As a condition precedent to this Agreement, the Physician shall maintain active medical staff privileges at the Hospital. This Agreement shall not be effective until the date that the Physician obtains such privileges. If the Physician has not obtained such privileges on or before October 1, 2006, this Agreement shall automatically terminate. Nothing contained herein is intended to or shall be construed to operate as an agreement or undertaking by the Hospital or the Employer to grant or confer medical staff privileges upon the Physician. For purposes of this Agreement, the date upon which the Physician obtains provisional or active medical staff privileges at the Hospital and commences his or her employment hereunder shall be referred to herein as the "Effective Date."

3.13 Professional Courtesy. Physician agrees that no patients of the medical practice will be treated and have their charges written off a Professional Courtesy. In an event a patient has financial reasons impacting their ability to pay, Physician will refer the patient to the Practice Manager to be handled consistent with Employer's procedures.

ARTICLE IV COMPENSATION

4.1 Compensation. During the Agreement Term, Employer shall pay Physician compensation as set forth in Exhibit I attached hereto (the "Compensation").

4.2 Leave. Physician shall be entitled to twenty-five (25) paid days off annually according to the terms of the policy of Employer, which shall include vacation, legal holidays, personal days, and sick days. The maximum amount of time to be used, at any point in time, is ten (10) consecutive days. In addition, Physician will be reimbursed up to \$5,000 per contract year plus no more than five (5) CME days per contract year in connection with Physician attending medical conventions and/or continuing medical education seminars, including travel, lodging and meals. Physician's leave will be earned and accrued on a monthly basis consistent with other Physician employees of Employer. All leave shall be pre-approved by Employer. Leave is to be used during the year it is awarded and cannot be carried over to the following year. Leave may not be cashed in at any time to include termination of employment.

4.3 Benefits. Employer shall provide Physician with medical benefits for Physician and Physician's beneficiaries that are comparable to the coverage available, from time to time, to the other employees of Employer. Employer will provide life, disability, and dental benefits for Physician on similar terms as the other employees of Employer. Employer's life insurance company may require Physician to satisfactorily pass a physical examination in order to issue a life insurance policy to Physician. The employee portion of the costs of all such benefits are deemed Physician Benefits as hereafter defined. In addition, Employer may elect to obtain key-man life insurance coverage on Physician, and Physician hereby agrees to submit to any required physical therefor. Physician shall be entitled to participate in Employer's retirement and other benefit plans as offered from time to time at a level commensurate with the retirement benefits offered to other employees of Employer.

4.4 Income and Employment Taxes. Physician shall be an employee of Employer for all purposes. Employer shall withhold amounts from Physician's compensation in accordance with the requirements of applicable law for federal income tax, FICA, FUTA, and amounts from Physician's compensation in accordance with the requirements of applicable law for local other employment or payroll tax purposes. It shall be Physician's responsibility to report and pay all federal taxes arising from Physician's receipt of compensation hereunder.

ARTICLE V INSURANCE

5.1 Medical Liability Insurance. As part of Physician Expenses, as defined in Exhibit I, Employer agrees to directly pay the premium for Physician's professional medical liability insurance during the Agreement Term, with minimum coverage of One Million

Dollars (\$1,000,000.00) per occurrence with a yearly maximum of Three Million Dollars (\$3,000,000.00) in the aggregate (occurrence type policy). Such professional medical liability insurance coverage may be coverage established through an insurance affiliate of Employer. Physician shall maintain on-going coverage or purchase tail insurance covering medical malpractice claims made following the Effective Date that relates to services rendered by Physician to patients prior to the Effective Date and Employer shall have no responsibility therefore.

ARTICLE VI TERMINATION

6.1 Termination by Employer "For Cause". The Agreement Term (including any Renewal Term) may be terminated prior to its expiration, at the election of Employer, under any of the following circumstances:

- 6.1.1 Upon written notice to Physician, if Physician is in a material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation to the reasonable satisfaction of Employer within thirty (30) days after notice in writing by Employer to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or
- 6.1.2 Immediately upon written notice by Employer to Physician (or Physician's estate) for any of the following reasons:
 - (a) Physician's death or permanent disability. The term "permanent disability" shall be defined as the failure of Physician to perform his/her duties and responsibilities hereunder for a total of one hundred twenty (120) days or more, regardless of whether such days are consecutive, during any twelve consecutive months;
 - (b) Physician's license to practice medicine is suspended, revoked or canceled or a restriction or limitation by any governmental authority having jurisdiction over Physician is placed or imposed upon him so that he cannot perform the professional services for which he was engaged hereunder;
 - (c) Physician is terminated or suspended from Medicare, Medicaid or any successor program;
 - (d) Physician's failure to maintain unrestricted staff membership or privileges on the medical staff of Hospital;
 - (e) Physician is convicted of a felony or a crime of moral turpitude;
 - (f) Physician conducts himself in a manner in which Employer determines to be unethical or fraudulent, is detrimental to patient care, or impairs the reputation or operations of Employer;
 - (g) Upon repeated failure by Physician to meet utilization, performance, efficiency, or quality standards established by Employer;
 - (h) Upon repeated failure by Physician to conform and comply with Employer's professional requirements concerning maintenance of medical records;
 - (i) Upon cancellation of Physician's coverage, or Physician's uninsurability, under the terms and conditions of the professional liability insurance provided; or
 - (j) Upon the use of alcohol or a controlled substance, which materially impairs the ability of Physician to effectively perform Physician's duties and obligations under this Agreement.

6.2 Termination by Physician "For Cause". The Agreement Term (including any renewal Term) may be terminated prior to its expiration, at the election of Physician, under any of the following circumstances:

- 6.2.1 Upon written notice to Employer, if Employer is in material breach, default or violation of any provision of this Agreement and fails to cure such material breach, default or violation within thirty (30) days after notice in writing by Physician to do so or within said thirty (30) days to commence such cure and thereafter diligently to prosecute such cure to completion; or
- 6.2.2 Immediately upon written notice by Physician to Employer for any of the following reasons:

- (i) bankruptcy or receivership of Employer, or
- (ii) revocation or suspension of Employer from the Medicare or Medicaid Programs or any successor program.

6.3 **Termination "Without Cause".** Employer or Physician may terminate this Agreement hereunder, without cause, at any time upon ninety (90) days prior written notice.

6.4 **Obligations After Termination.** Upon termination of the Agreement for any reason, Physician's Compensation shall immediately cease and Physician (or Physician's estate) shall be entitled to receive only those amounts earned or accrued on services provided by Physician up to the date of termination. Physician's rights to any on-going or continuing benefits shall be determined in accordance with the terms of the applicable benefit plan of Employer. Termination of the Agreement shall not release or discharge Employer from any obligation, debt or liability incurred prior to the date of termination of the Agreement.

6.5 **Other Requirements Upon Termination.** Upon termination of this Agreement for any reason: (i) the Physician's participation in any of Employer's fringe benefit plans shall immediately cease (subject to any post-termination benefits, if any, expressly stated in the then-current plans for such benefits); and (ii) the provisions of Articles VIII, IX, and X hereof shall remain in full force and effect, except as otherwise specifically provided herein.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Physician represents and warrants at all times during the Agreement Term (including any renewal term) that:

- (a) Physician is duly licensed and registered and in good standing under the laws of the State of South Carolina to engage in the practice of otolaryngology, and that said license and registration have not been suspended, revoked or restricted in any manner.
- (b) Physician is qualified for membership in good standing on the medical staff of a local acute care facility.
- (c) Physician has current controlled substances registrations issued by the State of South Carolina United States Drug Enforcement Administration, which registrations have not been surrendered, suspended, revoked, expired or restricted in any manner.
- (d) Physician has disclosed and will disclose to Employer the following matters, whether occurring at any time during the past five (5) years prior to the date of this Agreement or at any time during the Agreement Term:
 - (i) any actual or threatened malpractice suit, any actual or constructive known claim (whether or not filed in court), settlement, settlement allocation, judgment, verdict or decree against Physician;
 - (ii) any actual or threatened disciplinary, peer review or professional review investigation, proceeding or action instituted against Physician by any licensure board, hospital, medical school, health care facility or entity, professional society or association, third party payor, peer review or professional review committee or body, or governmental agency;
 - (iii) any criminal complaint, indictment or criminal proceeding in which Physician is named as a defendant;
 - (iv) any actual or threatened investigation or proceeding, whether administrative, civil or criminal, relating to an allegation against Physician of filing false health care claims, violating anti-kickback laws, violating fee-splitting laws, or engaging in billing improprieties;
 - (v) any organic or mental illness or condition that impairs or is likely to impair Physician's ability to practice medicine;
 - (vi) any dependency on, or habitual use or abuse of, alcohol or controlled substances, or any participation in any alcohol or controlled substance detoxification, treatment, recovery, rehabilitation, counseling, screening or monitoring program;

- (vii) any actual or threatened allegation, or any investigation or proceeding based on any allegation, against Physician for violating professional ethics or standards, or engaging in illegal, immoral or other misconduct (of any nature or degree), relating to the practice of medicine; and
 - (viii) any denial or withdrawal of an application in any state for licensure as a physician, for medical staff privileges at any hospital or other health care entity, for board certification or recertification, for state or federal controlled substances registration, or for malpractice insurance.
- (c) Physician is board certified in otolaryngology by the *American Board of Otolaryngology*.
- (f) Physician shall at all times render services to patients in a competent, professional and ethical manner, in accordance with prevailing standards of medical practice in the relevant community, perform professional and supervisory services in accordance with recognized standards of the medical profession, and act in a manner consistent with the Principles of Medical Ethics of the American Medical Association, and any and all applicable statutes, regulations, rules, orders and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction.
- (g) In connection with the provision of professional services to patients of Employer, Physician shall use the equipment, instruments, pharmaceuticals and supplies furnished by or on behalf of Employer for the purposes for which they are intended and in a manner consistent with sound medical practice.
- (h) Physician shall participate in the Medicare and Medicaid Programs, workers compensation, other federal and state reimbursement programs, and the payment plan of any commercial insurer, health maintenance organization, preferred provider organization, accountable health plan, or other health benefit program.
- (i) Physician shall keep and maintain (or cause to be kept and maintained) appropriate records, consistent with prevailing standards of medical practice in Physician's relevant community, relating to all professional services rendered by him under this Agreement and shall prepare and attend to, in connection with such services, all reports, claims, and correspondence necessary or appropriate in the circumstances, as determined mutually by Employer and Physician, all of which records, reports, claims, and correspondence shall belong to Employer.
- (j) Physician covenants not to use, or permit any other personnel under the supervision of Physician to use, any part of the premises of Employer for any purpose other than the performance of services hereunder.
- (k) Physician has not at any time been excluded from participation in the Medicare and/or Medicaid programs, and Physician shall immediately notify Employer in the event Physician receives any notice whatsoever of a possible exclusion action being brought against Physician.

ARTICLE VIII DISCLOSURE OF INFORMATION

8.1 Custody of Medical Records. Physician understands and agrees that during the Agreement Term and thereafter all medical records, case records, case histories, x-ray files, or personnel or regular files concerning patients of Employer or any of Employer's Affiliates, or patients consulted, interviewed or treated and cared for by Physician, shall belong to and remain the property of Employer. Upon termination of this Agreement Physician shall not be entitled to keep original records or preserve records of Employer or any of Employer's Affiliates as to any patient unless the patient shall specifically request a different disposition of his or her records, or copies thereof, and in no event shall Physician be entitled to the records, or copies thereof, of patients not treated by Physician. Employer agrees at all times, both during and after termination of this Agreement, to maintain and preserve such records in a manner consistent and in compliance with all applicable laws and regulations. If Employer provides Physician with original patient records pursuant to the terms hereof, Physician shall retain all of such records and, upon Employer's request, shall make such originals available to Employer. If any medical malpractice or other claim, audit or business need of Physician arises and involves records which are retained by Employer pursuant to the terms hereof, Employer agrees to make such original medical records available to Physician, or Physician's designated counsel or representative for inspection and copying, during regular business hours, in accordance with applicable law.

8.2 Disclosure of Information. Physician recognizes and acknowledges that all records, files, reports, protocols, policies, manuals, databases, processes, procedures, computer systems, materials and other documents pertaining to services rendered by Physician hereunder, or to the operations of Employer, belong to and shall remain the property of Employer and constitute proprietary information and trade secrets of Employer. Physician recognizes and acknowledges that the terms of this Agreement, as well as Employer's proprietary information and trade secrets as they may exist from time to time, are valuable, special, and unique assets of Employer's business. Physician shall not, during or after the Agreement Term, disclose such proprietary information of Employer or trade secrets of

Employer to any other firm, person, corporation, association or other entity for any reason or purpose whatsoever, or use such information for Physician's own benefit, without the prior written consent of Employer, unless otherwise required to disclose such information in accordance with appropriate judicial process.

8.3 Injunction. Physician acknowledges that the confidentiality restrictions contained in this Article VIII are a reasonable and necessary protection of the legitimate trade secrets and business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article VIII, including monetary damages and relief.

ARTICLE IX COVENANT NOT TO COMPETE

9.1 Restrictive Covenant. With the exception of the services and duties that Physician performs for Employer or on Employer's behalf pursuant to the terms of this Agreement, Physician agrees that during the Agreement Term and for a period of two (2) year(s) after the termination of the Agreement Term for any reason whatsoever, Physician shall not:

9.1.1 Within a fifty (50) mile radius of the Practice, as determined at the time of termination, (the "Restricted Territory") engage in any medical practice, or engage in any business or perform any service, directly or indirectly, in competition with the medical services of Employer or any of Employer's Affiliates. Notwithstanding the foregoing, the restrictive covenant shall not prohibit Physician from engaging in the private practice of medicine as an independent Physician including performing ancillary services, but only those provided in Physician's practice on behalf of Employer on or before ~~October 4, 2006~~ ^{March 15, 2007}. Further, Physician will not, without Hospital's prior written consent (which it may grant, withhold or condition in its sole discretion), directly or indirectly have any financial interest in any hospital, surgery center, imaging center, MRI, outpatient therapy center, medical office, clinic or other facility that competes with Employer, within the Restricted Territory. For purposes of this Agreement, a "financial interest" includes, without limitation, any direct or indirect financial relationship, whether as an employee, independent contractor, principal, agent, joint venture partner, security holder (except for ownership of securities traded on a recognized stock exchange) creditor, landlord, consultant, officer, director or otherwise. Nothing contained in this Section shall restrict Physician from establishing staff privileges at, referring any service to, or treating any patient at any hospital of Physician's choice.

9.1.2 Solicit, recruit or hire any person who is or was an employee of Employer or any of Employer's Affiliates, whether for Physician's benefit or for others with whom Physician may become associated unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.2 Within the Restricted Territory, Physician further agrees that for a period of time equal to two (2) year(s) after termination of the Agreement Term for any reason whatsoever (including expiration), Physician shall not within the Restricted Territory:

9.2.1 Solicit, serve or accept any business from patients, insurance companies, managed care plans, employers or other customers of the business conducted by Employer, or its affiliates, for services competitive with those of Employer and the Practice or request, induce or advise patients, insurance companies, managed care plans, employers or other customers of the business as conducted by Employer to withdraw, curtail or cancel their business with Employer or assist, induce, help or join any other person or company in doing any of the above activities unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1; or

9.2.2 Solicit the services of any employee, consultant, or provider which renders services to, or for the benefit of, Employer or any of Employer's Affiliates for Physician's use or benefit or for any other person's or company's use or benefit, or induce or help to induce any employee, consultant or provider that renders services to, or for the benefit of, Employer or any of Employer's Affiliates to leave for other employment, without Employer's prior written consent unless Physician engages in the private practice of medicine as an independent physician defined in Section 9.1.1.

9.3 No Running of Covenant During Breach. With respect to any restrictive covenant which applies after the termination of the Agreement Term, if Physician violates such restrictive covenant and Employer brings legal action for injunctive or other relief, Employer shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such restrictive covenant. Accordingly, after the termination of the Agreement Term for any reason, for any time period that Physician is in violation of the restrictive covenants set forth in this Article IX, such time period shall not be included in calculating any such restrictive covenant time period described in this Article IX.

9.4 Duration and Geographical Limits. If it shall be determined that the duration or geographical limit of any restriction contained in this Article IX is unenforceable, it is the intention of the parties that such restrictive covenant set forth herein shall not thereby be terminated or void but shall be deemed amended to the extent required to render it valid and enforceable to the greatest extent permissible by the applicable law and public policy, such amendment shall apply only with respect to the operation of this Article IX.

9.5 Injunction. Physician acknowledges that the restrictions contained in this Article IX are a reasonable and necessary protection of the legitimate business interests of Employer. In the event of any violation of these restrictions, Employer shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy, and shall be entitled to be reimbursed by Physician for any attorneys' fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein contained shall be construed as prohibiting Employer from pursuing any other legal or equitable remedies available to Employer due to a violation of the restrictions set forth in this Article IX.

ARTICLE X

FEES

10.1 Fees for Services. Except as otherwise may be provided in Section 3.7, all fees, compensation, monies, and other things of value received or realized as a result of the rendering of medical services by Physician, pursuant to this Agreement, shall belong to and be paid and delivered to Employer. Remuneration received by Physician from business activities unrelated to the practice of medicine, which do not interfere or conflict with the terms of this Agreement, or with the applicable provisions of this Agreement, may be retained by Physician, so long as such activity is approved in advance by Employer, and is not performed in the capacity of serving as an employee of Employer.

10.2 Setting of Fees. Employer shall have exclusive authority to determine the fees, or a procedure for establishing the fees, to be charged patients, even though such patients may be treated by Physician in the course of Physician's employment by Employer.

10.3 Power of Attorney. Physician does hereby appoint Employer as Physician's attorney-in-fact to execute, deliver or endorse checks, applications for payment, insurance claim forms or other instruments required or convenient, as determined by Employer in its sole discretion, to fully collect, secure or realize all sums lawfully due to Employer, for services rendered by Physician under this Agreement during the Agreement Term. The power of attorney is coupled with an interest, is irrevocable and shall survive expiration or termination of this Agreement.

10.4 Billing and Collection. Physician agrees that, during the Agreement Term, Physician shall not bill to or collect from any patient or third party payor any amount for services rendered hereunder. Physician hereby irrevocably assigns and grants to Employer the right to bill and collect from patients or third party payors for all services rendered by Physician hereunder, regardless of the location where any such services may be rendered by Physician. Physician agrees to execute any and all documents deemed necessary or desirable by Employer to carry out the provision of this Section. Unless otherwise agreed by Physician, all billing and collection activities shall be conducted as part of the regular business operations of the Practice. Such procedures shall include, but not be limited to, sending bills, filing insurance claims, and making phone calls.

10.5 Accounting Reports and Review. Employer shall have available for Physician lists of fees charged for particular services for particular payors and shall update these lists on a regular basis as fees and payors change. Employer also shall provide to Physician, on a monthly basis, production reports which list the billings attributable to services provided by Physician and in the Practice, the collections in connection with the services provided by Physician and the Practice, and accounts receivable in connection with provision of said services, such reports to be provided within thirty (30) days after the applicable month to which such reports relate.

ARTICLE XI

LIMITATIONS OF AUTHORITY

11.1 Physician agrees not to enter into any transactions on Employer's behalf without the express written consent of Employer, including, but not limited to, the following actions:

- (i) Pledge the credit of Employer or any of its other employees;
- (ii) Bind Employer under any contract, agreement, note, mortgage or other agreement;
- (iii) Bind, release, or discharge any debt due Employer; or
- (iv) Sell, mortgage, transfer or otherwise dispose of any assets of Employer.

11.2 Physician shall hold Employer harmless from any loss attributable to a violation of this covenant. Notwithstanding anything to the contrary in this Article XI, Physician shall advise and assist Employer in securing and retaining contracts in the name and for the account of Employer with such individuals or entities necessary for the proper and efficient functioning of Employer.

ARTICLE XII
NOTICE

12.1 All notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be effective upon delivery if delivered to the addressee in person, effective three (3) business days after mailing if mailed by certified mail, postage prepared, return receipt requested, or effective the next business day if delivered by overnight courier with charges prepaid, as follows:

If to Employer: 103 Powell Court, Suite 200
Brentwood, TN 37027
Attn: Vice President, Physician Services

With copies to:	1000 Medical Center Dr.	103 Powell Court, Suite 200
	Hardesville, SC 29927	Brentwood, TN 37027
	Attn: CEO	Attn: General Counsel

If to Physician: 2712 Levy Rd
Hardesville, SC 29927

or to such other address as either party shall have designated for notices to be given to him or it in accordance with this Article.

ARTICLE XIII
MISCELLANEOUS

13.1 **Recitals.** The recitals are true and correct and are incorporated herein in their entirety.

13.2 **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision of this Agreement shall be held invalid or unenforceable under any particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

13.3 **Assignment.** In addition the contract shall affirm that no transfer, assignment or other modification affecting the terms or conditions of the contract will be effected unless extenuating circumstances are shown to exist, as determined by the South Carolina Department of Public Health, and approved by the U.S. Attorney General in accordance with applicable federal rules and regulations.

13.4 **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the courts, state or federal, within the State of South Carolina, and the parties expressly waive the right to bring any legal action or claims in any other courts. The parties hereto hereby consent to venue in any state or federal court within the State of South Carolina having jurisdiction over the County for all purposes in connection with any action or proceeding commenced between the parties hereto in connection with or arising from this Agreement.

13.5 **Arbitration.** Except as to the provisions contained in Articles VIII and IX, the exclusive jurisdiction of which shall rest with a court of competent jurisdiction in the state where the hospital is located any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by arbitration in the County, in accordance with the rules and procedures of alternative dispute resolution and arbitration established by the Alternative Dispute Resolution Service of the American Health Lawyers Association ("AHLA"), and judgment upon any award rendered may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted before a single AHLA arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by the AHLA.

13.6 **Waiver.** Any waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision hereof and shall not be effective at all unless in writing. A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by either party, and such waiving party shall be free to reinstate any such term or condition, with or without notice to the other party.

13.7 **Entire Agreement/Amendment.** This Agreement contains the entire agreement between the parties hereto. No change, addition or amendment shall be made except by written agreement executed by all of the parties hereto.

13.8 Survival. The provisions of this Agreement, including but not limited to Articles VIII and IX, shall survive the termination of Physician's relationship with Employer and the assignment of this Agreement by Employer to any successor or assign.

13.9 Confidentiality. Except as otherwise required by law, Physician hereby agrees to hold in the strictest confidence all of the terms and conditions set forth herein; provided, however, Physician may disclose the terms hereof to his/her attorneys, accountants and other financial and legal advisers as reasonably necessary.

13.10 Expenses. Each party in this Agreement shall pay its own costs and expenses in connection with the transaction contemplated hereby.

13.11 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.12 Binding Effect. This Agreement shall not become effective or legally binding upon either party until signed by both Employer and Physician, and approved by Employer's Division President and Legal Counsel pursuant to a Physician Employment Certificate form which is separate here from.

13.13 Corporate Integrity Agreement. Employee represents and warrants that as of the date of this agreement: (i) it is not excluded, debarred or otherwise ineligible to participate in Medicare, Medicaid or any other federal or state healthcare programs or in any federal or state procurement or non-procurement programs; or (ii) has not been convicted of a criminal offense related to the provision of federal health care items or services, that could lead to debarment or exclusion.

Further, Employee agrees to immediately notify the other party to the contract in the event the foregoing representation and warranty is no longer completely accurate. Employee acknowledges and agrees this is a material term of the agreement and any breach or nonfulfillment of same will entitle the other party to immediately terminate this agreement.

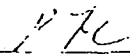
13.14 JCAHO. Physician shall perform all services hereunder in accordance with any and all regulatory and accreditation standards applicable to Hospitals and the relevant service, including without limitation those requirements imposed by the JCAHO, the Medicare/Medicaid conditions of participation and any amendments thereto.

13.15 Non-Discrimination. Facility does not discriminate against any person on the basis of race, color, national origin, disability or age in admission, treatment, program participation, services, activities or employment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS:

PHYSICIAN:

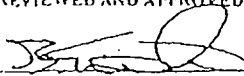
 Phillip Flexon, M.D.

Social Security Number: 216-74-7776

EMPLOYER:

By: 
W. Vail Willis
Vice President, Physician Services

REVIEWED AND APPROVED:


Chief Executive Officer

Division President

APPROVED AS TO FORM:

12/22/04
Legal Counsel

8/28/2006

EXHIBIT I

PHYSICIAN COMPENSATION

I. *The following definitions shall apply in the calculation of Physician Compensation:*

- A. *Net Practice Revenues* is defined as all cash collected (minus insurance and patient refunds) for patient services provided after the Effective Date in the Practice location(s) that are generated on behalf of the Practice as a result of professional medical services personally furnished to patients by Physician and other fees or income (as meets the Medicare criteria for "incident to") generated by non-physician employees or other Practice personnel under Physician's direct supervision and control, whether such services are rendered in an inpatient or outpatient setting and whether services are rendered to HMO, PPO, Medicare, Medicaid or other patients, including, without limitation, Capitation Payments, and revenues from testing, clinical trials and other drug research studies. Provided, however, that Net Practice Revenues shall not include cash collected for the non-professional or technical fee component for any ancillary services (e.g., laboratory, radiology, diagnostic testing or outpatient surgery) or inpatient or outpatient hospital services.
- B. *Practice Operating Expenses* is defined as all direct and indirect expenses incurred subsequent to the date hereof in the day-to-day management and operation of the Practice, including, without limitation:
1. salaries, bonuses, benefits, payroll taxes, and other direct costs of all direct Practice employees (including Physician Compensation) and other Practice personnel;
 2. allocable rent for any medical offices, furniture and equipment used by the Practice, utility expense, management information systems, office and medical supplies;
 3. personal property and intangible taxes assessed against assets used by the Practice;
 4. utility expenses related to the medical offices used solely by the Practice, including cellular phone and pager expenses;
 5. direct office and medical supplies;
 6. premises and general liability insurance for Employer related to the Practice and;
 7. direct repairs and maintenance of the medical offices used in the Practice;
 8. professional liability insurance of employee;
 9. Physician's medical licensure fees, medical staff memberships, board certification fees and costs of membership in professional associations; and
 10. Costs of continuing medical education of Physician.
 11. Costs of contract services, including allocation for hospital services and practice management.

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- C. **EBDITA -- [Earnings Before Depreciation, Interest, Taxes and Amortization]** Net Practice Revenues less Practice Operating Expenses including Physician Compensation equals EBDITA.

II. **Bonus:**

- A. **Productivity Bonus** - Physician will be entitled to an annual productivity bonus equal to 95% of positive EBDITA. In the event the contract is terminated for any reason, Employer will calculate Physician's Productivity Bonus based on year-to-date EBDITA as of the last day of Employment.
- B. **Bonus Draws** - During the term of the Agreement, on a Quarterly basis, Physician will be eligible to take a "Bonus Draw" against Seventy-Five percent (75%) of year-to-date earned Annual Bonus (any prior "Bonus Draws" will be included as a year-to-date expense) less applicable benefits and payroll taxes. At the end of each contract year, reconciliation will occur based on actual EBDITA, excluding any "Bonus Draws". In the event Physician has earned a bonus greater than Employer has paid during the year (in the form of a "Bonus Draw"), Employer will pay Physician within sixty (60) days from the end of the contract year less applicable benefits and payroll taxes. In the event Employer has paid Physician during the year (in the form of a "Bonus Draw") greater than the bonus actually earned (i.e., Excess Payment) based on the year-end EBDITA, Physician will reimburse Employer the Excess Payment within sixty (60) days of the contract year. In the event payment is not made by Physician or Employer the parties agree to execute a Promissory Note with an interest rate at Prime Plus 2%.

- III. **Base Compensation. (Year 1 and Year 2).** During Year 1 and Year 2 ^{March 15, 2007} ~~(October 1, 2006 until March 14, 2007)~~ ^{September 30, 2008}, Employer will provide Physician a base compensation equal to Twenty Five Thousand Dollars (\$25,000) per month. Physician compensation will be paid consistent with the timeframe of other Physician employees of Employer.

IV. **Community Obligation:**

- A. At the end of Year 2, Physician's financial records shall be prepared by a representative of Employer to determine Physician's cumulative Year-End EBDITA for both Year 1 and Year 2. Physician's re-payment of any negative EBDITA shall be due and payable immediately unless Physician requests a deferred payment plan. If the payment plan is to extend longer than six (6) months, Physician's obligations shall be evidenced by a promissory note from Physician to Employer. Such note shall bear interest at the fixed rate of prime plus two percent (2%), with interest accruing from the end of Year 2. Physician shall cooperate fully with Employer's efforts to obtain repayment.
- B. Notwithstanding the provisions of Paragraph A, Section III, of this Exhibit, in recognition of the fact that Physician is initiating a start-up, initial practice and to induce Physician to remain in the Community beyond Year 2, Employer agrees that it will forgive and cancel one thirty-sixth (1/36th) of the Physician's debt to Employer for each full calendar month Physician remains in the full-time practice of medicine in Hardeeville, South Carolina, as either an employed physician or independent physician, after the end of Year 2, and (a) maintains Active Medical Staff Membership and privileges in good standing at Coastal Carolina Medical Center, and (b) remains available for unassigned emergency room coverage for patients of Coastal Carolina Medical Center's emergency room.

V. *Physician Compensation (Years 3-5):*

- A. *Base Compensation.* Physician shall receive as base compensation draw payable consistent with the timeframe of other Physician employees of Employer in the amount of (\$75,000) per quarter (i.e. \$25,000/month), subject to quarterly adjustments as more particularly described below, as well as the year-end reconciliation described herein. The adjustment shall be performed quarterly, based on year-to-date (YTD) EBITDA.

Beginning the pay period following completion of the previous quarter, base compensation draw shall be reduced one dollar for every dollar that year-to-date EBITDA was below the Target Amount.

Target Amount – As used herein, the Target Amount for each Quarter Year-To-Date shall be as follows:

	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
QTR 1	(\$6,250)	(\$6,250)	(\$6,250)
QTR 2	(\$12,500)	(\$12,500)	(\$12,500)
QTR 3	(\$18,750)	(\$18,750)	(\$18,750)
QTR 4	(\$25,000)	(\$25,000)	(\$25,000)

Example: QTR 1 YTD EBITDA = (\$500)
QTR 1 Target Amount = \$0

In this example, the Target Amount was missed by \$500. The adjustment, beginning the first pay period in Quarter 2 would be a reduction in Quarterly compensation of \$500, for a total Quarterly compensation beginning Quarter 2 of \$74,500. At the end of the second and third Quarters, the same calculation would be performed based on YTD EBITDA and the Target Amount for that Quarter.

At the end of the fourth Quarter, a reconciliation will occur based on actual YTD EBITDA for the year, and the calculation described above will be performed using a Target Amount of (\$25,000) for Year 3, (\$25,000) for Year 4, and (\$25,000) for Year 5. The parties shall use their best efforts to complete the reconciliation within thirty (30) days of the end of the contract year. In no event shall the Employer incur an EBITDA loss for Physician's practice. Any payment due either to Physician or to Employer pursuant to the reconciliation shall be made within thirty (30) days after the reconciliation is completed. In the event payment is not made within 30 days, the payment balance will immediately begin accruing interest at the prime rate (effective from the last day of the reconciliation period) plus 2%. It is agreed that each contract year will be treated as separate years with respect to the Loss Limit Allowance and any repayments will not be carried over to the next contract year.

Physician agrees that in the event the Agreement is terminated and his/her contract YTD EBITDA is below the Loss Limit Allowance, Physician will repay the difference to Employer within sixty (60) days of their last day of Employment.

- VI. *Force Majeure.* Either party shall be excused for failures and delays in performance of its respective obligation under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion, or inability due to any of the aforementioned causes to obtain necessary labor, materials, or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other

party, provided that failure to give such notice shall not in any way limit the operation of this provision.

PHYSICIAN:

Phillip B. Flexon, M.D.
Phillip B. Flexon, M.D.

EMPLOYER:

S. J. [Signature]
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

[Signature]
Division President

APPROVED AS TO FORM:

[Signature] 12/22/04
Legal Counsel

8/28/2006

EXHIBIT 2
MARKETING EXPENSE REIMBURSEMENT

This Addendum is attached to, made a part of and executed simultaneously with that certain Physician Employment Agreement between the undersigned, dated the 18 day Dec, 2006.

1. Hospital shall pay for the expenses of (i) placing local newspaper advertisements announcing the Physician's new business location, (ii) printing and mailing announcement cards, and (iii) placing listings in local telephone directories. Such amounts shall be limited to a total maximum of \$10,000.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community for five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement, Physician shall immediately, upon demand, pay to Employer the unamortized amount of the total sums reimbursed to Physician pursuant to this Exhibit II. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums paid reimbursed hereunder by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term (i.e. five (5) consecutive years from the Effective Date as defined in Exhibit I, Section III, Physician Employment Agreement). The denominator of said fraction shall be equal to sixty (60) months.

PHYSICIAN:

4/16/11
Phillip B. Flexon, M.D.

EMPLOYER:

[Signature]
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

[Signature]
Division President

APPROVED AS TO FORM:

UK 12/22/06
Legal Counsel

10/17/2006

EXHIBIT 3
SIGN ON BONUS

1. In order to induce Physician to relocate his place of employment to Hardeeville, South Carolina, Hospital shall pay Physician the sum of \$25,000. Sign on Bonus shall be paid fifty percent upon Employment Agreement being fully executed and fifty percent when Physician starts employment.

2. In the event Physician fails to maintain a full-time practice of medicine in the Community for five (5) consecutive years from the Effective Date as defined in Exhibit 1, Section III, Physician Employment Agreement, Physician shall immediately, upon demand, pay to Employer the unamortized amount of the total sums reimbursed to Physician pursuant to this Exhibit II. The unamortized amount becoming due and payable shall be calculated by multiplying the total sums paid reimbursed hereunder by a fraction. The numerator of said fraction shall be equal to the sum of the whole and partial calendar months measured from the date Physician ceased to maintain a full-time private practice in the Community as required hereunder through the end of the term (i.e. five (5) consecutive years from the Effective Date as defined in Exhibit 1, Section III, Physician Employment Agreement). The denominator of said fraction shall be equal to sixty (60) months.

PHYSICIAN:

P. H. Flexon
Phillip B. Flexon, M.D.

EMPLOYER:

W. Van der Valk
Vice President, Physician Services

REVIEWED AND APPROVED:

[Signature]
Chief Executive Officer

[Signature]
Division President

APPROVED AS TO FORM:

[Signature]
Legal Counsel

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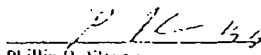
10.17.2006

EXHIBIT 4
FORGIVENESS OF DEBT DUE TO DEATH OR PERMANENT DISABILITY

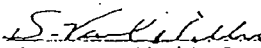
This Addendum is attached to, made a part of and executed simultaneously with that certain Recruiting Agreement between the undersigned, dated the 18 day of Dec 20 06

1. In the event of Physician's death or "Permanent Disability", Physician will be released from any and all obligations and liabilities under the Agreement. For purposes of this paragraph, "Permanent Disability" shall mean a disability that is reasonably certain to prohibit the physician from practicing medicine for the remainder of Physician's natural life as a result of a physical or mental impairment. Such determination shall be made by a physician selected by Employer, but reasonably acceptable to Physician.

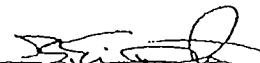
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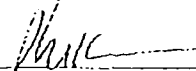

Phillip B. Flexon

EMPLOYER:

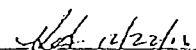

Vice President, Physician Services

REVIEWED AND APPROVED:


Chief Executive Officer


Division President

APPROVED AS TO FORM:


Legal Counsel

10/17/2006

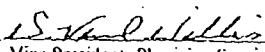
EXHIBIT 5
EXCEPTION TO RESTRICTIVE COVENANT 9.1.1

Physician's existing ownership in the Medical Office Building located at The Georgia Institute Building,
4700 Waters Avenue, Savannah, Georgia 31405.

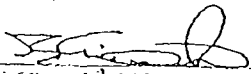
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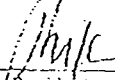

Phillip B. Flexon, M.D.

EMPLOYER:

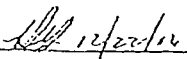

Vice President, Physician Services

REVIEWED AND APPROVED:


Chief Executive Officer


Division President

APPROVED AS TO FORM:


Legal Counsel

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2009-CP-27-331

Phillip Flexon, M.D.,
Plaintiff,

v.

PHC-Jasper, Inc., d/b/a Coastal
Carolina Medical Center, Coastal
Carolina Medical Center, Inc.,
Lifepoint Hospitals, Inc., and Tenet
Healthsystems, Inc.,
Defendants.

ANSWERS TO
INTERROGATORIES OF
DEFENDANT
COASTAL CAROLINA
MEDICAL CENTER, INC.

TO: JAMES D. MYRICK, ESQUIRE, COUNSEL FOR DEFENDANT COASTAL
CAROLINA MEDICAL CENTER, INC.:

The Plaintiff would answer the Interrogatories of Defendant Coastal Carolina Medical
Center, Inc., as follows:

INTERROGATORY NUMBER 1. Give the names and addresses of persons
known to you or your counsel to be witnesses concerning the facts of the case and indicate
whether or not written or recorded statements have been taken from such witnesses and
indicate who has possession of such statements.

ANSWER:

Philip Flexon, M.D., Hardeeville, SC

Courtney Flexon, Hardeeville, SC

Patty Brady, Savannah GA—Plaintiff's nurse

Priscilla Green, Hardeeville, SC—former receptionist for Plaintiff

Eric Deaton, address unknown—former CEO of Hospital

Teresa Urquart, address unknown-former CFO of Hospital

Dan Gemmell, Savannah, GA-former practice manager for Plaintiff

Phyllis Yingling, Bluffton, SC-Apple A Day Billing

Steve Rapp, Charleston, SC, former sales representative of Stryker

Brian Holtsclaw, Bluffton, SC-manager of equipment at Hospital

George Warner, M.D.-Hilton Head Island-former neurologist at Hospital

Employees who worked on billing at Hospital

Scott Mabry, Houston, TX-Director of Operations, Impel Medical Management, Inc.

Elizabeth Lamkin-CEO of Hospital

Vail Willis, Brentwood, TN-VP physician services of LifePoint

Timothy Vaughn-Lifepoint

Robert Klein-Lifepoint

Holly Tyler-Accountant at Hospital

Angie Swearingon-CFO of Hospital

Mary Jane Zabinski, address unknown

Plaintiff is in possession of statements from Patty Brady and Phyllis Yingling.

INTERROGATORY NUMBER 2. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory #1 above.

INTERROGATORY NUMBER 3. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to the claim or defense in the case.

ANSWER: See Responses to Requests for Production

INTERROGATORY NUMBER 4. Set forth an itemized statement of all damages claimed to have been sustained by the Plaintiff in connection with the incident alleged in your Complaint.

ANSWER: From his gross charges at Memorial Medical Center for the 6 months prior to commencing at Coastal, Plaintiff believes he should have been paid \$416,000 per year at Coastal if the Defendants had met their contractual and represented obligations. Currently at his practice in Savannah, Plaintiff makes a base salary of \$265,000 per year which will continue for the future. Plaintiff claims as damages the difference in these salary amounts until he retires. Plaintiff lost 6 weeks of salary moving his practice to Coastal, and 6 weeks of salary moving his practice from Coastal to Savannah. He also has moving costs from moving back to Savannah of approximately \$7,000. Total lost past and future income, plus out of pocket expenses, \$1,834,000. There are equipment costs that will be calculated and provided with supplemental responses. Additionally, Plaintiff claims damages for the harm to his reputation, as well as emotional stress.

INTERROGATORY NUMBER 5. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

ANSWER: Plaintiff has not yet retained an expert witness for use at trial, but reserves the right to supplement these answers if and when an expert is retained.

INTERROGATORY NUMBER 6. For the past ten (10) years, state the names and addresses of each of the employers of the Plaintiff, including current employer, or, if self-employed, the business address or addresses along with the dates of commencement and termination for each such source of employment.

ANSWER: Memorial Health University Hospital, 4700 Waters Ave., Savannah, GA 31405

INTERROGATORY NUMBER 7. Identify any and all actions you undertook to promote your practice at Coastal Carolina Medical Center. Please include dates and a list of documentary evidence supporting your assertions.

ANSWER: According to the Contract, Lifepoint/Coastal was responsible for marketing the practice for the first two years. As Coastal Carolina ENT was being set up, Coastal/Lifepoint bought a yellow pages ad, printed brochures, placed ads in local newspapers, and set up lunches with local doctors who might refer patients to the Plaintiff. However, an average of 60% of Plaintiff's patients are self referred, not sent by another physician. Any momentum Plaintiff had started to build from mid-March 2007 fell off dramatically after the sale of the hospital to Tenet was announced in June. Many of Plaintiff's patients refused to come at all, and those who did had to cross a picket line of protesters the first few weeks. Several patients brought newspaper clippings or references to the book that exposed Tenet's history of malpractice and malfeasance. In addition, many Savannah doctors stopped referring patients to Plaintiff because of Tenet's horrible reputation. Since the hospital made all the arrangements for marketing, they would have the records.

INTERROGATORY NUMBER 8. When did you begin negotiations to return to Savannah? Who initiated these conversations? Please list documents evidencing these negotiations.

ANSWER: Plaintiff began considering his options shortly after Tenet took over and things began to fall apart. Plaintiff's contract was with LifePoint, and Plaintiff had carefully researched and satisfied himself that LifePoint was a good company to align himself with. As evidence of this, Plaintiff's contract had a strict "no-assignment" provision. Never would Plaintiff have signed with Tenet because of its very poor reputation. Plaintiff did not sign Tenet's assignment document. Plaintiff had invested substantially in establishing a new

practice (he was the first ENT in Jasper County) and Plaintiff desperately wanted it to work. July 24, 2007 was when Plaintiff's patients first had to cross a picket line, and this was a turning point. After Plaintiff received a deaf ear with his questions to Tenet about what they were going to do to improve their reputation, and the reputation of Plaintiff's practice, Plaintiff came to the conclusion that the corporate culture of Tenet was not going to change. When Tenet brought in Impel, Plaintiff thought for awhile that most of the billing and management issues could be solved by them and things might work out. He then learned in February 2008 about the billings for his services which had gone unsubmitted from July 7, 2007 through December 31, 2007 being placed in boxes without his knowledge. In May, 2008, Plaintiff learned that Impel wasn't coming, which was a huge disappointment. Plaintiff started negotiations with Memorial in earnest during the summer of 2008.

INTERROGATORY NUMBER 9. Did CCMC ever refuse to rent a CO2 laser for your surgical use during your time at Coastal Carolina Medical Center? If yes, please state:

- a. The manner and date you requested the laser;
- b. The date and reason given for refusal; and
- c. The name of the party who refused your request.

ANSWER: Yes, as well as sinus navigation equipment.

- a. verbal
- b. Date of refusal, summer of 2007
- c. Brian Holzclaw, Mark Kolbush and others. In June of 2007 Plaintiff was told by Mark Kilbush that the equipment they were supposed to supply the OR for Plaintiff would take half their capital budget and they were not going to do that. Whenever Plaintiff would request a CO2 laser for a surgical procedure, Coastal would "rent" one, but Plaintiff later learned they were using the equipment reps to do a free demonstration and give the hospital a "loaner." Once the reps learned what was going on, they and their "loaners" became increasingly unavailable. Plaintiff would try to schedule a surgery and they would tell him they could not get the equipment (this happened multiple

times). The availability of equipment became so unreliable that Plaintiff started taking him complicated cases to Memorial.

INTERROGATORY NUMBER 10. Please list what documents you contend make up your employment agreement with Coastal Carolina Medical Center.

ANSWER: The contract plus selected correspondence and date exchanged before the contract was signed, most notably the documents where Eric Deaton notes in his own writing that a CO2 laser and sinus navigational equipment would be necessary.

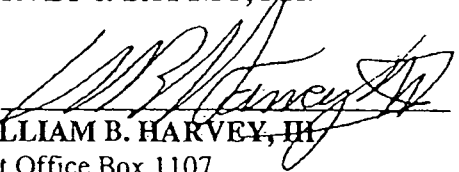
INTERROGATORY NUMBER 11. What do you contend your EBIDTA was at the time of your termination?

- a. Who prepared that calculation?
- b. On what data is it based?

ANSWER: Plaintiff believes that any attempt to calculate EBIDTA from his practice at Coastal after the sale to Tenet is farcical. From July 1, 2007, unbeknown to the Plaintiff, no billing for his services was done for almost 7 months. Phyllis Yingling had been fired without Plaintiff's knowledge. Several unmarked boxes of paper billing data were dumped at Plaintiff's office without his knowledge, and no one knew they were there for months. Even after Teresa Urquhart was made aware of these records, it took months for the hospital to start billing. Many of the bills were time sensitive, and had to be submitted to the insurance companies within 90 or 120 days of service. Because insurance claims were not submitted, patients were charged additional deductibles if they had another doctor visit or procedure during that calendar year because the first procedure had never been billed or applied to their insurance. This caused patient discontent with Plaintiff's office and accentuated the bad reputation of Tenet.

The Plaintiff reserves the right to amend/supplement these Answers to Interrogatories,
as appropriate, up to and including at time of trial.

HARVEY & BATTEY, P.A.

By: 

WILLIAM B. HARVEY, III

Post Office Box 1107

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Dated: April 29, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Case No. 2009-CP-27-0331

Phillip Flexon, M.D. Respondent,

v.

PHC-Jasper, Inc., d/b/a Coastal Carolina
Medical Center, Coastal Carolina Medical
Center, Inc., Lifepoint Hospitals, Inc., and
Tenet Healthsystems, Inc., ... Defendants,

Of Whom Lifepoint Hospitals, Inc., is Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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March 24th, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Brooks P. Goldsmith, Circuit Court Judge

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SC Court of Appeals

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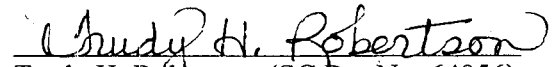
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Tenet Healthsystems, Inc., ...Defendants,

Of Whom Lifepoint Hospitals, Inc., is.....Appellant.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing *Record on Appeal* by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

March 26, 2014



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