

STATE OF WISCONSIN

CIRCUIT COURT

EAU CLAIRE COUNTY

CHIPPEWA VALLEY ORTHOPEDICS &
SPORTS MEDICINE CLINIC, S.C.
1200 OakLeaf Way, Suite A
Altoona, WI 54720,
a Wisconsin Service Corporation,

Plaintiff,

v.

HOSPITAL SISTERS HEALTH SYSTEM,
4936 Laverna Rd.
Springfield, IL, 62707,
a foreign non-stock corporation

SACRED HEART HOSPITAL OF
THE HOSPITAL SISTERS OF THE
THIRD ORDER OF ST. FRANCIS,
900 W. Clairemont Ave.
Eau Claire, WI 54701,
a Wisconsin non-stock corporation,

and

ST. JOSEPH'S HOSPITAL OF
THE HOSPITAL SISTERS OF THE
THIRD ORDER OF ST. FRANCIS,
2661 Co Hwy I
Chippewa Falls, WI 54729,
a Wisconsin non-stock corporation,

Defendants.

Case No.:
Case Classification:
30303 Other - Contracts
30701 Declaratory Judgment
30704 Other Injunction or Restraining
Order

SUMMONS

THE STATE OF WISCONSIN

TO EACH PARTY NAMED ABOVE AS A DEFENDANT:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Clerk of Court for Eau Claire County, whose address is Government Center, 2nd Floor, 721 Oxford Ave., Suite 220, Eau Claire, WI, 54703, and to FREDRIKSON & BYRON, P.A., Plaintiff's attorneys, whose address is 60 South Sixth Street, Suite 1500, Minneapolis, MN 55402-4400. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated February 9, 2024

FREDRIKSON & BYRON, P.A.

By: Electronically Signed By: James B. Woywod
James B. Woywod
WI State Bar ID No. 1094263
Fredrikson & Byron, P.A.
44 East Mifflin Street, Suite 1000
Madison, WI 53703
608-453-4260
jwoywod@fredlaw.com

Nicole M. Moen*

MN State Bar ID No. 0329435

*WI Application for Admission *Pro Hac Vice* is forthcoming

Fredrikson & Byron, P.A.

60 South Sixth Street, Suite 1500

Minneapolis, MN 55402-4400

612-492-7000

nmoen@fredlaw.com

Attorneys for Plaintiff

CHIPPEWA VALLEY ORTHOPEDICS &
SPORTS MEDICINE CLINIC, S.C.,
1200 OakLeaf Way, Suite A
Altoona, WI 54720,
a Wisconsin service corporation,

Plaintiff,

v.

HOSPITAL SISTERS HEALTH SYSTEM,
4936 Laverna Rd.
Springfield, IL, 62707,
a foreign non-stock corporation,

SACRED HEART HOSPITAL OF
THE HOSPITAL SISTERS OF THE
THIRD ORDER OF ST. FRANCIS,
900 W. Clairemont Ave.
Eau Claire, WI 54701,
a Wisconsin non-stock corporation,

and

ST. JOSEPH'S HOSPITAL OF
THE HOSPITAL SISTERS OF THE
THIRD ORDER OF ST. FRANCIS,
2661 Co Hwy I
Chippewa Falls, WI 54729,
a Wisconsin non-stock corporation,

Defendants.

COMPLAINT

NOW COMES, the Plaintiff Chippewa Valley Orthopedics & Sports Medicine Clinic, by and through their attorneys, Fredrikson & Byron, P.A., and as and for their complaint against the above-named Defendants allege as follows:

PARTIES

1. Plaintiff Chippewa Valley Orthopedics & Sports Medicine Clinic, S.C. is a Wisconsin service corporation whose principal place of business is 1200 OakLeaf Way, Suite A, Altoona, WI 54720.

2. Plaintiff employs physicians specializing in orthopedics, neurosurgery, podiatry, and interventional pain management who are duly licensed to practice medicine in Wisconsin.

3. Defendant Hospital Sisters Health System (“HSHS”) is an Illinois non-profit healthcare system, registered in Wisconsin as a foreign non-stock corporation, whose principal place of business is 4936 Laverna Road, Springfield, IL, 62707.

4. Defendant Sacred Heart Hospital of the Hospital Sisters of the Third Order of St. Francis (“Sacred Heart”) is an acute care hospital, registered in Wisconsin as a non-stock corporation, whose principal place of business is 900 W. Clairemont Avenue, Eau Claire, WI 54701.

5. Defendant St. Joseph’s Hospital of the Hospital Sisters of the Third Order of St. Francis (“St. Joseph’s”) is an acute care hospital, registered in Wisconsin as a non-stock corporation, whose principal place of business is 2661 Co Hwy I, Chippewa Falls, Wisconsin 54729.

6. Defendant HSHS owns and operates Defendants Sacred Heart and St. Joseph’s (collectively, the “Hospitals”).

JURISDICTION AND VENUE

7. This Court has jurisdiction to hear this case pursuant to Wis. Stat. § 801.05(1)(d) and 806.04(1)-(2).

8. Venue in this County is proper pursuant to Wis. Stat. § 801.50(2)(a) because the

claims described herein arose in this County and 801.50(2)(c) because Defendant does substantial business in the County.

FACTUAL BACKGROUND

The Call Agreement

9. On or about June 1, 2023, Plaintiff and Defendant Hospitals entered into the Call Coverage Services Agreement (“Agreement”), in which the Hospitals granted Plaintiff, “the exclusive right to provide call services as more fully described in Exhibit 1.1 attached hereto (the ‘Services’).” See **Exhibit A**, June 1, 2023 Call Coverage Services Agreement, at 1. The services were to commence on June 5, 2023.

10. According to Exhibit 1.1 to the Agreement, Plaintiff agreed to provide “emergency department orthopedic call coverage in accordance with Levels III and Level IV Trauma designation requirements for [Defendants] Sacred Heart and St. Joseph’s, respectively.” Agreement, Exhibit 1.1, Services.

11. The Agreement also provides that, “the [Defendant] Hospitals shall compensate [Plaintiff] as described in Exhibit 2.1.” Agreement, at 1. According to Exhibit 2.1 to the Agreement, the Hospitals agreed to “collectively pay [Plaintiff] \$2,000.00 per 24-hour shift of call coverage for orthopedics (pro-rated for any partial shifts).” Agreement, Exhibit 2.1, Compensation.

12. The Practice Site provision of the Agreement provides that the Defendant Hospitals, “shall provide the space, staff, and equipment that they reasonably determine necessary for the provision of Services.” Agreement at 4.

13. The Agreement provides that the “initial term of this Agreement shall be for a period of two (2) years commencing on the Start Date (“Initial Term”) unless terminated earlier as

provided in this Agreement.” Agreement, at 4-5.

14. The Agreement’s Early Termination provision provides that it “may be terminated by either Party without cause or penalty by delivering written notice of termination to the other Party at least one hundred eighty (180) days prior to such termination.” *See* Agreement at 5.

15. The Agreement has other Termination provisions, including termination by agreement, immediate termination due to issues related to physician licensure and conduct, termination with cause, termination due to change of law, termination due to inability to execute a professional services agreement, and termination of the professional services agreement. *See* Agreement at 5.

The Closing of the Hospitals and Termination of the Agreement

16. On January 22, 2024, Defendant HSHS sent Plaintiff a letter informing Plaintiff that it is ceasing healthcare operations in western Wisconsin and would be closing the Defendant Hospitals “on ***or before*** April 21, 2024 (Closure Date).” (Emphasis added.) Defendant HSHS stated that the letter served “as notice of termination of the Agreement due to the closures effective as of the Closure Date” and that “[t]he Agreement remains in effect until the Closure Date.”

17. Defendant HSHS did not cite any specific provision under which it was terminating the Agreement, therefore the Early Termination provision is applicable. As a result, Defendant HSHS provided ***at most 90 days***’ written notice¹ of the termination of the Agreement, even though the Agreement’s Early Termination provision requires Defendant HSHS to give Plaintiffs ***at least 180 days***’ written notice of the termination of the Agreement.

18. On January 22, 2024, Defendant HSHS also announced publicly that it would be

¹ According to the January 22, 2024 letter, the notice might actually be less than 90 days because Defendant HSHS stated that the Closure Date might actually be before April 21, 2024.

closing the Defendant Hospitals, effective April 21, 2024.

19. On information and belief, Defendants have already started winding down the operations of the Defendant Hospitals, including taking down signage at the Defendant Hospitals, terminating some employees, and informing other employees that their last day is no later than March 22, 2024.

20. In addition, Defendants have already started cancelling procedures at the Defendant Hospitals. Prior to January 24, 2024, Plaintiff's surgeons had approximately eighteen to nineteen cases at various stages of authorization for surgeries to be performed at Defendant Sacred Heart. On or about January 24, 2024, Defendant HSHS informed Plaintiff that all of the cases after February 1, 2024, would be cancelled. Defendant HSHS informed Plaintiff that if one of Plaintiff's surgeons felt that cancelling the case presented a significant clinical issue for the patient, the surgeon could appeal to the Chief Medical Officer for an exception.

21. Notwithstanding that statement, all but four of those cases currently remain cancelled, meaning that a suitable alternative location for these patients has not been located because: (1) there is no high-acuity facility like Defendant Sacred Heart available as required by the patient's clinical needs, (2) the patient's insurance requires that they receive treatment at Defendant Hospitals, and/or (3) there is not enough capacity, in terms of number of beds or operating rooms, in the market to process these cases in a timely manner or in such away the patient finds convenient or acceptable. Further, Plaintiff does not contract with the other nearby hospitals in the Chippewa Valley, Mayo Clinic Health System-Chippewa Valley and Marshfield Clinic Chippewa Falls Center-Family Medicine. As a result, Chippewa Valley Orthopedics' surgeons may have to refer their patients to other providers, or they will have to go through a lengthy process to obtain privileges and credentials at the other hospitals that can take sixty (60) to ninety (90)

days or more, assuming no unexpected delays. If other suitable providers cannot be found or Plaintiff's surgeons cannot obtain privileges and credentials at other locations in a timely manner, then the patients will have to forgo surgical intervention.

22. Defendant HSHS did not stop at cancelling surgeries. On or about January 25, 2024, Defendant HSHS informed Plaintiff and other clinical organizations that certain advanced imaging studies that had been referred to Defendant Hospitals would need to be rescheduled. Prior to January 25, 2024, Plaintiff's physicians had approximately thirty-nine (39) advanced imaging studies to reschedule. Certain studies, specifically those that require a 3 Tesla Magnetic Resonance Imaging Arthrogram ("3T MR Arthrogram"), can only be performed at one other location in the community, Mayo Clinic Health System-Chippewa Valley, which likely already has its imaging modalities booked out far in the future, thus delaying and decreasing the likelihood of completion of the studies.

23. Defendants' actions represent a threat of irreparable harm to Plaintiff, Plaintiff's surgeons, their patients, and the community. For example, the 180-day notice requirement of the Agreement exists to mitigate the very problem that Defendants have caused: interruption in the continuity of care between Plaintiff's surgeons and their patients, and an inability to locate suitable alternative locations for those patients to receive surgery. This damages Plaintiff's surgeons' ability to adequately care for their patients, and therefore the health of the patients that they care for. In addition, the Agreement obligates Plaintiff to continue provide services at Defendant Hospital until the termination of the Agreement. The Agreement also requires that Defendants shall provide the space, staff, and equipment that they reasonably determine necessary for the provision of the services. By cancelling the procedures and terminating staff members, Defendants are not providing the space, staff, and equipment, that is reasonably necessary for the provision of

services.

24. In order to prevent irreparable harm, Defendant must provide Plaintiff with the entirety of the 180-day notice before terminating the contract. Not only that, but Defendant must also return and maintain operations to at least the same level as existed before January 24, 2024. The wind down of operations at Defendant hospitals should only begin after the passage of at least 180 days from delivery of a proper written notice of termination, which can only occur after the operations at Defendant Hospitals are returned to at least the same level as existed before January 24, 2024.

CLAIM I

BREACH OF CONTRACT

25. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

26. Defendants breached the Agreement by purporting to provide Plaintiff with no more than 90 days of notice, and possibly less, prior to termination of the Agreement, when the Agreement requires at least 180 days of notice.

27. Defendant Hospitals are obligated under the Agreement to provide the space, staff and equipment reasonably necessary for Plaintiff to fulfill its obligation to provide services at Defendant Hospitals. Defendants breached this obligation under the Agreement by winding down the operations at the Hospitals, cancelling nearly all scheduled procedures, and terminating staff members prior to the expiration of the notice period required under the Agreement.

28. As a direct and proximate result of Defendants' breach of contract, and unless restrained by this Court, Plaintiff has been and will continue to be irreparably harmed by Defendants' breach of contract, because Defendants have cancelled surgical procedures at

Defendant Hospitals, terminated staff members, and Plaintiff has not been able to find other suitable locations for the procedures because (1) there is no high-acuity facility like Defendant Sacred Heart available as required by the patient's clinical needs, (2) the patient's insurance requires that they receive treatment at Defendant Hospitals, and/or (3) there is not enough capacity, in terms of number of beds or operating rooms, in the market to process these cases in a timely manner or in such away the patient finds convenient or acceptable.

29. As a direct and proximate result of Defendants' breach of contract, Plaintiff is entitled to injunctive relief enjoining Defendants, and their successors, agents, assigns, and employees, and all persons in active concert or participation with them who receive notice from the Court's order, from terminating the Agreement without the full notice period of at least 180-days, giving Plaintiff a notice of termination until Defendant Hospitals are in full compliance with the Agreement, cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days, and winding down operations or cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days.

30. Further, the Court should order that the notice period of at least 180-days cannot begin until Defendant Hospitals are in full compliance with the Agreement, meaning that they return and maintain operations at Defendant Hospitals to at least the same level as existed before January 24, 2024.

31. As a result of Defendants' breach of the Agreement, Plaintiff has suffered damages in an amount to be determined at trial.

CLAIM II

TORTIOUS INTERFERENCE WITH CONTRACT

32. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

33. Plaintiff has valid and enforceable agreements with its patients, to which Defendants are not parties, whereby Plaintiff agreed to provide surgeries at Defendant Sacred Heart.

34. At all times referenced in this Complaint, Defendants knew that Plaintiff had agreements to provide these surgeries to its patients at Defendant Sacred Heart.

35. Defendants intentionally interfered with Plaintiff's agreements by failing to provide Plaintiff with the space, staff, and equipment it needs to provide surgical procedures for its patients by announcing the closure of Defendant Sacred Heart, terminating the Agreement, terminating staff members, and subsequently cancelling nearly all surgeries at Sacred Heart.

36. Plaintiff also has valid and enforceable agreements to perform advanced imaging studies that had been referred to Defendant Hospitals. Certain imaging studies, specifically those that require an imaging modality known as a 3 Tesla Magnetic Resonance Imaging Arthrogram ("3T MR Arthrogram"), can only be performed at one other location in the community, Mayo Clinic Health System-Chippewa Valley, which likely already has its imaging modalities booked out far in the future, thus delaying and decreasing the likelihood of completion of the studies.

37. At all times referenced in this Complaint, Defendants knew that Plaintiff had agreements to perform advanced imaging studies that would need to be referred to Defendant Hospitals.

38. Defendant intentionally interfered with Plaintiff's agreements by rescheduling advanced imaging studies that had been referred to Defendant Hospitals and putting some at risk of never being completed.

39. Defendants' interference was, and continues to be, without justification.

40. As a direct and proximate result of Defendants' interference, and unless restrained by this Court, Plaintiff has been and will continue to be irreparably harmed by Defendants' tortious interference, because it cannot provide its patients with the agreed upon surgical procedures and may not be able to perform certain advanced imaging studies.

41. As a direct and proximate result of Defendants' tortious interference, Plaintiff is entitled to injunctive relief enjoining Defendants, and their successors, agents, assigns, and employees, and all persons in active concert or participation with them who receive notice from the Court's order, from terminating the Agreement without the full notice period of at least 180-days, giving Plaintiff a notice of termination until Defendant Hospitals are in full compliance with the Agreement, cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days, and winding down operations or cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days.

42. As a result of Defendants' tortious interference, Plaintiff has suffered damages in an amount to be determined at trial.

CLAIM III

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

43. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

44. Plaintiff had prospective contractual relationships with patients that require surgery provided by Plaintiff's surgeons at Defendant Hospitals.

45. At all times referenced in this Complaint, Defendants knew that Plaintiff had these prospective contractual relationships with patients that require surgery by Plaintiff's surgeons at

Defendant Hospitals, due to the Agreement.

46. Defendants intentionally interfered with Plaintiff's prospective contractual relationships by failing to provide Plaintiff with the space, staff, and equipment it needs to provide surgical procedures for its prospective patients by announcing the closure of Defendant Hospitals, terminating the Agreement, terminating staff, and subsequently cancelling nearly all surgeries at Defendant Hospitals.

47. Plaintiff had prospective contractual relationships to perform advanced imaging studies that would need to be referred to Defendant Hospitals. Certain imaging studies, specifically those that require an imaging modality known as a 3 Tesla Magnetic Resonance Imaging Arthrogram ("3T MR Arthrogram"), can only be performed at one other location in the community, Mayo Clinic Health System-Chippewa Valley, which likely already has its imaging modalities booked out far in the future, thus delaying and decreasing the likelihood of completion of the studies.

48. At all times referenced in this Complaint, Defendants knew that Plaintiff had prospective contractual relationships to perform advanced imaging studies that would need to be referred to Defendant Hospitals.

49. Defendant intentionally interfered with Plaintiff's prospective contractual relationships to perform advanced imaging studies by rescheduling previous advanced imaging studies and putting them at risk of never being completed.

50. Defendants' interference was, and continues to be, without justification.

51. As a direct and proximate result of Defendants' interference, and unless restrained by this Court, Plaintiff has been and will continue to be irreparably harmed by Defendants' tortious

interference, because it cannot provide its patients with the agreed upon surgical procedures and may not be able to perform certain advanced imaging studies.

52. As a direct and proximate result of Defendants' tortious interference, Plaintiff is entitled to injunctive relief enjoining Defendants, and their successors, agents, assigns, and employees, and all persons in active concert or participation with them who receive notice from the Court's order, from terminating the Agreement without the full notice period of at least 180-days, giving Plaintiff a notice of termination until Defendant Hospitals are in full compliance with the Agreement, cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days, and winding down operations or cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days.

53. As a result of Defendants' tortious interference, Plaintiff has suffered damages in an amount to be determined at trial.

CLAIM IV

TEMPORARY INJUNCTIVE RELIEF

54. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

55. The Court has authority under Wis. Stat. § 813.02(1)(a) to grant temporary injunctive relief:

when it appears from a party's pleading that the party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual...

56. Defendants have already begun the process of winding down the operations of Defendant Hospitals, including terminating employees, taking down signage, and cancelling

surgeries, all in violation of the Agreement. Further, Defendants plan to permanently shut down Defendant Hospitals on or before April 21, 2024.

57. Temporary injunctive relief is necessary to protect Plaintiff from the irreparable harm caused by Defendants' actions in winding down the operations of Defendant Hospitals.

58. Unless this Court issues and orders a temporary injunction, and as a direct and proximate result of Defendants' actions, including its breach of contract and tortious interference, Plaintiff has been and will continue to be irreparably harmed by Defendants' actions.

59. As a direct and proximate result of Defendants' actions, Plaintiff is entitled to a temporary injunction enjoining Defendants, and their successors, agents, assigns, and employees, and all persons in active concert or participation with them who receive notice from the Court's order, from terminating the Agreement without the full notice period of at least 180-days, giving Plaintiff a notice of termination until Defendant Hospitals are in full compliance with the Agreement, cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days, and winding down operations or cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days.

60. Further, the Court should order that the notice period of at least 180-days cannot begin until Defendant Hospitals are in full compliance with the Agreement, meaning that they return and maintain operations at Defendant Hospitals to at least the same level as existed before January 24, 2024.

CLAIM V

DECLARATION THAT DEFENDANTS VIOLATED THE EARLY TERMINATION AND PRACTICE SITE PROVISIONS OF THE AGREEMENT

61. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

62. Plaintiff seeks a declaration that Defendants are obligated under the Early Termination provision of the Agreement to provide Plaintiff with 180 days' notice of termination of the Agreement if they are terminating the Agreement pursuant to that provision.

63. Plaintiff seeks a declaration that Defendants breached the Agreement when it informed Plaintiff it would terminate the Agreement with 90 days' or less of notice, when the Early Termination provision of the Agreement requires 180 days' notice.

64. Plaintiff seeks a declaration that Defendant Hospitals are obligated under the Practice Site provision of the Agreement to provide the space, staff and equipment reasonably necessary for Plaintiff to fulfill its obligation to provide services at Defendant Hospitals.

65. Plaintiff further seeks a declaration that Defendants breached the obligation to provide space, staff, and equipment reasonably necessary for Plaintiff to fulfill its obligation to provide services at Defendant Hospitals by winding down the operations at the Hospitals, cancelling nearly all scheduled procedures, and terminating staff members prior to the expiration of the notice period required under the Agreement.

66. Pursuant to Wis. Stat. § 806.04(2), any person interested under a written contract may have determined any question of construction or validity arising from the contract and obtain a declaration of rights, status or other legal relations under.

67. Plaintiff is an interested person in the Agreement as a party to the Agreement.

68. Plaintiff therefore seeks a declaration that Defendants breached the Agreement both when they informed Plaintiff they would terminate the Agreement with 90 days' or less notice and when they began to wind down the operations of the Defendant Hospitals.

WHEREFORE, the Plaintiffs pray for the following relief:

A. For an injunction enjoining Defendants from terminating the Agreement without the full notice period of at least 180-days, giving Plaintiff a notice of termination until Defendant Hospitals are in full compliance with the Agreement, cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days, and winding down operations or cancelling procedures at Defendant Hospitals until the end of the notice period of at least 180-days.

B. For an order that the notice period of at least 180-days cannot begin until Defendant Hospitals are in full compliance with the Agreement, meaning that they return and maintain operations at Defendant Hospitals to at least the same level as existed before January 24, 2024.

C. For a declaration that Defendants are obligated under the Early Termination provision of the Agreement to provide Plaintiff with 180 days' notice of termination of the Agreement if they are terminating the Agreement pursuant to that provision.

D. For a declaration that Defendants breached the Agreement when it informed Plaintiff it would terminate the Agreement with 90 days' or less of notice, when the Early Termination provision of the Agreement requires 180 days' notice.

E. For a declaration that Defendant Hospitals are obligated under the Practice Site provision of the Agreement to provide the space, staff and equipment reasonably necessary for Plaintiff to fulfill its obligation to provide services at Defendant Hospitals.

F. For a declaration that Defendants breached the obligation to provide space, staff, and equipment reasonably necessary for Plaintiff to fulfill its obligation to provide services at Defendant Hospitals by winding down the operations at the Hospitals, cancelling nearly all scheduled procedures, and terminating staff members prior to the expiration of the notice period required under the Agreement.

G. For an award of compensatory damages with interest in favor of Plaintiffs against Defendants.

H. For Plaintiff's costs and disbursements of this action.

I. For such other and further relief as the Court deems necessary or appropriate.

Dated this 9th day of February, 2024.

y: Electronically Signed By: James B. Woywod

James B. Woywod
WI State Bar ID No. 1094263
Fredrikson & Byron, P.A.
44 East Mifflin Street, Suite 1000
Madison, WI 53703
608-453-4260
jwoywod@fredlaw.com

Nicole M. Moen*
MN State Bar ID No. 0329435
*WI Application for Admission *Pro Hac Vice* is
forthcoming
Fredrikson & Byron, P.A.
60 South Sixth Street, Suite 1500
Minneapolis, MN 55402-4400
612-492-7000
nmoen@fredlaw.com

Attorneys for Plaintiff

CALL COVERAGE SERVICES AGREEMENT

THIS CALL COVERAGE SERVICES AGREEMENT (“Agreement”) is entered into by and between **SACRED HEART HOSPITAL OF THE HOSPITAL SISTERS OF THE THIRD ORDER OF ST. FRANCIS (“Sacred Heart”), ST. JOSEPH’S HOSPITAL OF THE HOSPITAL SISTERS OF THE THIRD ORDER OF ST. FRANCIS (“St. Joseph’s”)**(Sacred Heart and St. Joseph’s are each individually, a **“Hospital”** and collectively, the **“Hospitals”**) and **CHIPPEWA VALLEY ORTHOPEDICS & SPORTS MEDICINE CLINIC, S.C. (“Group”)**(individually, each a **“Party”**, or collectively, the **“Parties”**). This Agreement shall be effective as of the date the last of the Parties executes this Agreement (**“Effective Date”**).

RECITALS:

WHEREAS, Sacred Heart is an acute care hospital located in Eau Claire, WI that provides quality health care services throughout Sacred Heart’s service area;

WHEREAS, St. Joseph’s is an acute care hospital located in Chippewa Falls, WI that provides quality health care services throughout St. Joseph’s service area;

WHEREAS, Group employs physicians specializing in orthopedics who are duly licensed to practice medicine in Wisconsin and have the training, education and experience necessary to provide the health care services as contemplated herein;

WHEREAS, the Hospitals have a legitimate and demonstrable need for qualified physicians to provide physician on-call coverage for orthopedics, which will further their mission, purposes, and objectives for providing health care to their service areas; and

WHEREAS, the Hospitals and Group desire to enter into this Agreement to set forth the terms and conditions under which Group will provide call coverage for the Hospitals.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. OBLIGATIONS OF GROUP

- 1.1 Call Coverage.** Hospitals hereby grant Group the exclusive right to provide call coverage services as more fully described in Exhibit 1.1 attached hereto (the **“Services”**). Group shall provide Services through its employed physicians or contract with other non-employed physicians acceptable to the Hospitals (each a **“Physician”** and collectively the **“Physicians”**). The Services will be performed pursuant to the schedule in Exhibit 1.1 or as otherwise mutually agreeable by the Parties from time to time, and at such practice sites as set forth in Exhibit 1.1 or as mutually agreed upon by the Parties. Services shall commence on June 5, 2023 unless another date is mutually agreed to by the Parties (the **“Start Date”**).



1.1.1 Group shall ensure that all Physicians furnishing Services under this Agreement execute and return to the Hospitals an Election to Participate Form in the form attached to this Agreement as Exhibit 1.1-1.

1.2 **Insurance.** The Hospitals shall not provide Group or the Physicians with professional malpractice insurance covering Group or the Physicians. Group shall procure such insurance covering itself and each Physician with minimum limits in the amount required by each Hospital's medical staff bylaws and applicable law, currently One Million Dollars (\$1,000,000) per incident and Three Million Dollars (\$3,000,000) in the annual aggregate. Such insurance shall cover the Physicians while the Physicians are providing Services. Upon the termination of this Agreement, regardless of the reason, and until the expiration of statutes of limitation applicable to professional liability claims resulting from any of the Services, if the insurance procured as provided above is other than occurrence-based, then Group shall procure continuing professional liability insurance of not less than the amount required under applicable law, currently One Million Dollars (\$1,000,000) per incident and Three Million Dollars (\$3,000,000) in the annual aggregate for each Physician. Group will immediately notify the Hospitals in writing of any material modification or cancellation in such insurance. This Section 1.2 shall survive the termination of this Agreement.

1.3 **Qualifications.** Group represents and affirms that each Physician possesses the training, skills, and experience necessary to fulfill the duties and responsibilities of the Physicians under this Agreement. Group shall ensure that each Physician:

- 1.3-1 Holds and maintains a current, valid, and unrestricted license to practice medicine in the State of Wisconsin;
- 1.3-2 Holds and maintains current, valid, and unrestricted federal and state registrations to prescribe and dispense controlled substances;
- 1.3-3 Maintains membership and privileges on each Hospital's medical staff and complies with and abides by the bylaws, rules and regulations, and the policies and procedures of, each Hospital's medical staff;
- 1.3-4 Holds and maintains board certification in orthopedics (unless waived in writing by the Hospitals, for which the waiver must not be unreasonably withheld);
- 1.3-5 Satisfies the background check requirements under Section 1.4; and
- 1.3-6 Satisfies all other requirements of the Hospitals for individuals providing care on their premises (in accordance with each Hospital's policies and procedures), including but not limited to all vaccination requirements.

Group shall immediately notify the Hospitals upon becoming aware of: (i) any facts or circumstances which cause or may cause a Physician to fail to satisfy any or all of the above qualifications (“**Qualifications**”); and/or (ii) the commencement of any action by a licensing or regulatory body that may lead to a Physician failing to satisfy any or all of the Qualifications. Upon a Physician’s failure to satisfy any or all of the Qualifications, Group shall immediately remove such Physician from performing Services, and upon each Hospital’s request, provide a replacement Physician acceptable to the Hospitals. Group shall promptly furnish proof of each Physician’s satisfaction of the Qualifications upon each Hospital’s request in a form acceptable to the Hospitals.

- 1.4 **Caregiver Background Check.** Group shall require all Physicians to cooperate with the Hospitals, to the extent necessary, in complying with all caregiver background check requirements under Wisconsin law. Group shall not allow any Physician to perform Services who is barred from providing services under Wis. Admin. Code DHS 12. Group shall notify the Hospitals if any Physician has been convicted of an offense affecting caregiver eligibility under Wis. Admin. Code DHS 12 or who has committed misconduct as defined under Wis. Admin. Code DHS 12. The Hospitals may exclude any Physician from furnishing Services until they have received the Physician’s completed Background Information Disclosure Form and requested background information check data. Group shall update the Hospitals from time to time so as to ensure that all information and Background Information Disclosure forms are current and accurate.
- 1.5 **Medical and Other Records.** Group shall ensure that each Physician furnishing Services under this Agreement maintains, and each Physician furnishing Services shall maintain, complete and accurate records in compliance with applicable laws, regulations and standards, applicable payor requirements, and each Hospital’s policies and procedures. All medical records, including without limitation, case histories, films, patient files or personal files concerning patients of the Hospitals or patients consulted, interviewed, treated or cared for by a Physician while providing Services under this Agreement (collectively, “**Medical Records**”) belong to and remain the property of the respective Hospital. Upon termination of this Agreement, Group shall return to the Hospitals any such Medical Records. This Section shall survive the termination of this Agreement.
- 1.6 **Patient Revenue.** Except as otherwise agreed upon in any other applicable arrangements between the Parties, Group shall have the exclusive right to bill and collect its charges for the professional services of its Physicians.

II. COMPENSATION; BILLING AND COLLECTION

- 2.1 Compensation.** The Hospitals shall compensate Group as described in Exhibit 2.1. The Hospitals shall not compensate Group for services that are intended to benefit any person or entity other than the Hospitals or their patients. Unless specified in Exhibit 2.1, the Services and each Hospital's obligation to pay the compensation shall commence on the Start Date. Group shall have sole responsibility for compensating Physicians for the Services under this Agreement.
- 2.2 Billing and Collection.** Group shall bill any fees or charges for the professional component of Services rendered by Physicians, including those Services covered by the Medicare program. Group shall be responsible for collection of such amounts owed by patients and/or payors. The Hospitals shall be solely responsible for billing and collecting for the technical component of Services, all facility fees and all ancillary services rendered by the Hospitals. Group and each Physician shall cooperate with the Hospitals in billing and collecting for Services.
- 2.3 Consent of Prevea.** Pursuant to its obligations under one or more agreements between Hospitals and Prevea Clinic, Inc. ("Prevea"), Hospitals have informed Group that Hospitals may require the written approval of Prevea or Prevea Health Services, Inc. to execute a professional services agreement ("PSA") with Group. On or prior to June 26, 2023 Hospitals shall provide Group with either of the following in form and substance satisfactory to Group: (i) a written opinion from Hospital's legal counsel that the written consent of Prevea or Prevea Health Services, Inc. is not required for the Hospitals to execute a PSA with Group; or (ii) the written consent of Prevea or Prevea Health Services, Inc. to the execution and delivery of a professional services agreement between Hospitals and Group. Should Hospitals fail to provide the opinion or consent as required by the preceding sentence, Group may terminate this Agreement on or after June 26, 2023 upon ninety (90) days written notice of termination to Hospitals.
- 2.4 Negotiation of PSA.** For the purposes of administrative simplification and providing patients with a single source for clinical records and related billing and collection inquiries, Group and Hospitals agree that it is in the best interests of patients, Hospitals, and Group to enter into a PSA not later than August 31, 2023 unless a later date is otherwise agreed upon by the Parties (the "**PSA Execution Date**"). Should the Group and Hospitals fail to execute a PSA by the PSA Execution Date, Group will have certain termination rights expressly defined in Section 3.2-6 below.
- 2.5 Practice Site.** The Hospitals shall provide the space, staff and equipment that they reasonably determine necessary for the provision of Services.

III. TERM AND TERMINATION

- 3.1 Term.** The initial term of this Agreement shall be for a period of two (2) years commencing on the Start Date ("**Initial Term**"), unless terminated earlier as

provided in this Agreement. Thereafter, this Agreement shall automatically renew for additional one (1) year terms (each a “**Renewal Term**”), until terminated in accordance with this Agreement. The term of this Agreement shall include the Initial Term and any and all Renewal Terms thereafter (“**Term**”).

3.2 Termination. In addition to the termination rights found elsewhere in this Agreement, this Agreement may be terminated as follows:

3.2-1 Termination by Agreement. This Agreement may be terminated by mutual written agreement of the Parties.

3.2-2 Early Termination. This Agreement may be terminated by either Party without cause or penalty by delivering written notice of termination to the other Party at least one hundred eighty (180) days prior to such termination.

3.2-3 Immediate Termination. The Hospitals may immediately terminate this Agreement by providing written notice to Group, upon the occurrence of any one of the following events:

- i. Limitation, suspension or termination of a Physician’s medical staff privileges at either Hospital for any reason;
- ii. Limitation, suspension or revocation of a Physician’s license to practice medicine in the State of Wisconsin;
- iii. Limitation, suspension or revocation of a Physician’s federal or state registration to prescribe or dispense controlled substances;
- iv. The failure of a Physician to satisfy any of the other Qualifications;
- v. Failure by Group or a Physician to comply with all applicable federal, state, or local laws and regulations;
- vi. Conviction of a Physician for the commission of a felony or a crime involving fraud or dishonesty;
- vii. Engagement of a Physician in any conduct that jeopardizes or threatens to jeopardize the health or safety of patients;
- viii. Engagement of a Physician in any grave misconduct, gross incompetence or gross malfeasance, or a material violation of the professional canons of ethics by a Physician;
- ix. Failure of Group or a Physician to qualify for insurance as detailed in this Agreement; or
- x. Cessation of any of the representations or warranties in Section 5.4 to be true;

Provided, however if Group promptly removes such Physician from providing Services under this Agreement and further provides a satisfactory replacement Physician that satisfies the requirements of this Agreement, then Hospitals shall not have the right to terminate this Agreement under this Section 3.2-3.

- 3.2-4 Termination With Cause. If either Party commits a material breach of any of the provisions of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days written notice to the breaching Party; provided, however, that the breaching Party shall have the right to cure such breach as follows: (i) if the breach is capable of cure within a thirty (30) day period, or the breach is otherwise a material violation of law, the breaching Party shall have thirty (30) days to cure after receiving written notice of such breach; or (ii) if the nature of the breach is such that it cannot be cured within a thirty (30) day period, and the breach is not a material violation of law, the breaching Party shall have a reasonable time to cure, not to exceed sixty (60) days, provided that the breaching Party must commence efforts to cure within the thirty (30) day period after receiving written notice of the breach and diligently pursue such efforts to completion of cure. If the breach is cured in such thirty (30) day period, this Agreement shall continue in full force and effect. The Parties, however, are only entitled to a notice of breach and opportunity to cure described in this Section once. Any breach by either Party which occurs after the first notice under this Section shall be grounds for immediate termination by the non-breaching Party. Any breach by a Physician shall be attributable to Group.
- 3.2-5 Termination Due to Change of Law. Notwithstanding anything in this Agreement to the contrary, if on the advice of legal counsel: (i) a Party determines that this Agreement may be interpreted to violate any present or future Law (as defined in Section 5.2); (ii) either Hospital determines that a Law precludes it (as a result of this Agreement) from billing Medicare or another Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7b(f)) for its services; or (iii) either Hospital determines that this Agreement jeopardizes its tax-exempt status or the tax-exempt status of any of its bonds; the Party making such determination may terminate this Agreement upon thirty (30) days advance written notice of the intent to terminate and the basis for the determination to the other Party. The Parties shall use good faith efforts during such thirty (30) day period to avoid termination by amending this Agreement in such a manner so that it complies with applicable Law, does not preclude either Hospital from billing a Federal Health Care Program or does not jeopardize either Hospital's tax-exempt status or the tax-exempt status of its bonds, as applicable.
- 3.2-6 Termination Due to Inability to Execute PSA. Notwithstanding any provision to the contrary, Group may terminate this Agreement with ninety (90) days' notice if Group and the Hospitals have failed to execute a PSA by the PSA Execution Date. Should Group choose to exercise its right to terminate this Agreement pursuant to this provision, Group shall notify Hospitals of its intentions to terminate the Agreement in writing, provided however that Group's right to terminate this Agreement under this Section 3.2-6 shall expire thirty (30) days after the PSA Execution Date.

3.2-7 Termination of PSA. If a PSA is executed and delivered as required by Section 2.4 of this Agreement, this Agreement shall terminate contemporaneously upon the effective date of termination of the PSA, unless otherwise mutually agreed upon by the Parties.

3.3 Effect of Termination. Upon termination of this Agreement, neither Party shall have any further obligations under this Agreement, except for obligations accruing and becoming payable prior to termination or that are expressly made to or by their nature extend beyond termination. If this Agreement terminates during the initial twelve (12) months following the Start Date or in any other twelve (12) month period of this Agreement, and applicable law prohibits the Parties from entering into a new agreement with each other for the same or substantially the same services until the conclusion of such twelve (12) month period, the Parties shall not enter into a new agreement with each other for the same or substantially the same Services until the expiration of such twelve (12) month period.

IV. CONFIDENTIALITY/PRIVACY

4.1 Confidential/Proprietary Information. During the Term of this Agreement, each Party will acquire valuable proprietary data and other confidential information with respect to the other Party's activities. The Parties agree that such proprietary data and other confidential information may include, but is not necessarily limited to, the following: business and financial methods and practices, pricing and marketing techniques, file or database materials, computer programs and data on suppliers, as well as similar information relating to current or future affiliates. The Parties acknowledge that Group and its Physicians will occupy a position of trust and confidence with respect to each Hospital's affairs and services. The Parties acknowledge that the restrictions set forth in this Section 4.1 are reasonable and necessary for the protection, goodwill and business of each Party, and that a Party will suffer irreparable injury if the other Party engages in the conduct prohibited hereby. Each Party will also ensure that any of its employees or other agents gaining access to the other Party's proprietary information shall abide by the terms of this Section 4.1. Each Party represents that its experience and abilities are such that observance of these terms will not cause it any undue hardship or unreasonably interfere with its ability to operate. Each Party acknowledges that remedies at law are inadequate to remedy a breach of this Section and each Party shall be entitled to an injunction to enjoin any breach of this Section, in addition to any other remedies that may be available at law, in equity or under contract. This Section shall survive the termination of this Agreement for two (2) years from the termination of this Agreement.

4.1-1 Restriction on Unauthorized Disclosure. Neither Party will, without the express written consent of the other Party, directly or indirectly communicate or divulge, or use for its own benefit or the benefit of any other person, firm, association or corporation, any of the other Party's proprietary data or other confidential information, which was

communicated to or otherwise learned by a Party in the course of the relationship covered by this Agreement, unless such information was or becomes publicly available through no fault of the receiving Party, previously known by the third party to whom it is disclosed, or acquired in good faith from a third party not under a known duty of confidentiality to the other Party. Each Party may, however, disclose the proprietary data or other confidential information of the other Party to the extent that disclosure is required: (i) in the course of carrying out Services pursuant to this Agreement; (ii) by a court or governmental agency of competent jurisdiction or applicable law; (iii) to their legal and financial advisors provided that such advisors are bound by confidentiality provisions at least as stringent as those provided herein.

- 4.2 **HIPAA.** Each Party shall comply with the Standards for Privacy of Individually Identifiable Health Information and all other regulations promulgated under Section 264 of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other state or federal health information privacy and security laws (collectively, “Privacy Laws”) in effect as of the Effective Date or as amended from time to time. Upon request, the Parties shall amend this Agreement to conform with any new or revised Privacy Laws in order to ensure that the Parties are at all times in conformance with all Privacy Laws.

V. COMPLIANCE/ STANDARDS

- 5.1 **Ethical and Religious Directives.** The Parties acknowledge that the Hospitals are operated in accordance with the *Ethical and Religious Directives for Catholic Healthcare Services* as promulgated, from time to time, by the United States Conference of Catholic Bishops, Washington, D.C., of the Roman Catholic Church (the “Ethical and Religious Directives”), and that the principles and beliefs of the Roman Catholic Church are a matter of conscience to the Hospitals. Neither this Agreement nor any part of this Agreement shall be construed to require the Hospitals to violate the Ethical and Religious Directives in their operations and all parts of this Agreement must be interpreted in a manner that is consistent with the Ethical and Religious Directives. Group shall ensure that the Physicians provide all Services in accordance with the Ethical and Religious Directives.
- 5.2 **Compliance with Laws, Regulations, and Accreditation.** The Parties believe and intend that this Agreement complies with all relevant federal and state laws as well as relevant regulations and accreditation standards, including but not limited to, Federal Health Care Program (as defined under 42 U.S.C. § 1320a-7b(f) fraud and abuse laws (including the Anti-Kickback Statute) and the Stark Law, and all of the rules and regulations promulgated pursuant to, and all of the cases or opinions interpreting, such statutes and laws (collectively, “Laws”).
- 5.3 **System Responsibility Program.** The Hospitals have in place a System Responsibility Program (the “Program”) which has as its goal to ensure that the

Hospitals comply with Laws. The Program focuses on risk management, the prevention of misconduct and the promotion of good corporate citizenship, including the commitment to uphold a high standard of ethical and legal business practices. Group acknowledges each Hospital's commitment to the Program and agrees to conduct all activities which occur pursuant to this Agreement in accordance with the underlying philosophy of the Program. Group shall ensure that all Physicians abide by the Program in the performance of Services.

- 5.4 Exclusion from State or Federal Health Care Programs.** Each Party represents and warrants to the other Party that it and its respective employees, agents and representatives (which with respect to Group, includes the Physicians), are not: excluded from participation in any Federal Health Care Program; debarred; suspended or otherwise excluded from participating in any other federal or state procurement or non-procurement program or activity; or, designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury. Each Party further represents and warrants to the other Party that to its knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Each Party shall notify the other Party in writing upon the commencement of any such exclusion or investigation immediately upon receiving first notice of such exclusion or investigation. Each Party may terminate this Agreement immediately upon learning of any such exclusion of the other Party or its respective employees, agents and representatives. A Party subject to any investigation that may lead to exclusion shall keep the other Party informed of the status of any such investigation.
- 5.5 No Inducement to Refer.** Neither Party, nor any of the employees or agents of a Party, shall be obligated or required to refer any patients to the other Party or its affiliates, to obtain or receive any medical diagnosis, care or treatment from the other Party or its affiliates, or to purchase any health care related services or products from the other Party or its affiliates. Neither Party is entering into this Agreement with any expectation that unlawful patient referrals will occur between the Parties or that other business will be generated between the Parties.

VI. STATUS OF THE PARTIES

- 6.1 Relationship of the Parties - Independent Contractors.** Except as set forth in this Agreement, no action taken by either Party, or its officers, employees or agents pursuant to this Agreement, shall be deemed to create any partnership, joint venture, association or syndicate between the Parties, nor shall any such action be deemed to confer upon either Party any express or implied right or authority to assume, or create any obligation or responsibility on behalf of, or in the name of, the other Party. The Parties are independent entities, contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. The Hospitals shall not be responsible for the payment of any federal, state or local taxes arising under or in connection with this Agreement, including, without limitation, the payment of actual and estimated tax liabilities, and Group shall indemnify and

hold harmless the Hospitals from any loss, cost, or liability arising out of Group's failure to pay such taxes. Group and its Physicians shall not be entitled to any employee benefits offered by the Hospitals to their employees.

VII. GENERAL PROVISIONS

- 7.1 **Amendments.** This Agreement may be amended only by an instrument in writing signed by the Parties.
- 7.2 **Assignment.** Neither Party may assign this Agreement or the rights or obligations under this Agreement without the specific written consent of the other Party, except that this Agreement may be assigned by the Hospitals without the prior approval of Group to an Affiliate. For purposes of this Section, "**Affiliate**" shall mean any successor entity of the Hospitals, or any entity controlled directly or indirectly by the Hospitals or Hospital Sisters Health System.
- 7.3 **Books and Records.** If this Agreement is a contract within the purview of Section 1861(v)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated at 42 C.F.R. Part 420 in implementation thereof, the Parties shall make available, to and upon request of the Comptroller General of the United States ("**Comptroller General**"), the Secretary of the Department of Health and Human Services ("**Secretary**") and their duly authorized representatives, for four (4) years after the latest furnishing of services pursuant to this Agreement, access to the books, documents and records and such other information as may be required by the Comptroller General or Secretary to verify the nature and extent of the costs of services provided by each Party, respectively. If either Party, upon the approval of the other Party, carries out the duties of this Agreement through a subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, such Party shall ensure that the subcontract also contains an clause to permit access by the Secretary, Comptroller General and their representatives to the subcontract and the related organization's books and records.
- 7.4 **Counterparts; Facsimile and pdf Signatures.** This Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute this Agreement. Signatures transmitted by facsimile or in Portable Document Format (pdf) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.
- 7.5 **Entire Agreement.** This Agreement, including all Exhibits, supersedes all previous contracts or agreements between the Parties for the same Services, and constitutes the entire Agreement between the Parties for such Services. Neither Party shall be entitled to benefits other than those specifically enumerated in this Agreement.

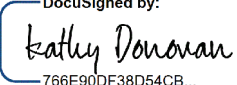
- 7.6 **Force Majeure.** Each Party will be excused for failures, delays and suspension of performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, terrorism, bio-terrorism, riot or insurrection, law or regulation, strike, flood, earthquake, water shortage, fire, explosion, pandemic or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities (“**Force Majeure Event**”). This provision will not, however, release such Party from using its best efforts to avoid or remove such cause and such Party will continue performance hereunder with the utmost dispatch whenever such causes are removed. If a Force Majeure Event occurs, either Party may propose an amendment to this Agreement within thirty (30) days, or a time that is reasonable given the circumstances. The proposed amendment can either be accepted by the other Party, or if the proposed amendment is not accepted, the Party that proposed the amendment will have the right to terminate this Agreement.
- 7.7 **Governing Law.** This Agreement shall be construed and governed by the laws of the State of Wisconsin. Unless otherwise required by law, the Parties shall submit to the jurisdiction of the courts within Eau Claire County, Wisconsin.
- 7.8 **Indemnification.** Each Party agrees to indemnify and hold the other harmless from any and all claims, suits, damages, fines, penalties, judgments, liabilities and expenses (including reasonable attorney’s fees and court costs) arising from (i) any negligent or willful act or omission of the Party, its agents, or employees; (ii) any breach of this Agreement by the Party, its agents, or employees; or (iii) any violation of a law by the Party, its agents, or employees. Notwithstanding anything to the contrary in this Agreement, a Party’s obligations with respect to indemnification for acts described in this Section shall not apply to the extent that such application would nullify any existing insurance coverage of such Party or as to that portion of any claim of loss in which an insurer is obligated to defend or satisfy. This Section shall survive the termination of this Agreement.
- 7.9 **Interpretation.** The Parties acknowledge that (i) each Party has reviewed the terms and provisions of this Agreement; (ii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement; and (iii) the terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement. References to Exhibits or Sections in this Agreement shall be references to such Exhibits or Sections of this Agreement unless otherwise noted. The headings and subheadings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- 7.10 **Master List.** This Agreement shall be included in each Hospital’s master contracts database (the “**Master List**”). The Hospitals shall maintain and update its Master list and make it available for review upon request by the Secretary.

- 7.11 **Nondiscrimination.** Neither Group nor any Physician shall discriminate against any worker, employee, or applicant, or any member of the public, because of race, creed, color, religion, age, sex, handicap, national origin or other classification protected under applicable federal, state or local laws or regulations.
- 7.12 **Notice.** Notices or communications herein required or permitted shall be given to each respective Party by registered or certified mail, by overnight courier service (e.g. UPS), by hand delivery, or by electronic mail, at the address listed under the Party's signature to this Agreement unless such Party shall designate a new address by written notice. The notice shall be deemed to be received as follows: in the case of actual delivery, on the date of its receipt by the Party entitled to it; in the case of overnight courier service, on the next business day following mailing; in the case of certified or registered mail, three (3) days after the date of its mailing; and in the case of electronic mail, the date the notice was sent.
- 7.13 **Professional Judgment.** The Hospitals shall not unreasonably exercise control, direct, or interfere with any Physician's exercise and execution of his or her professional judgment in a manner that adversely affects the Physician's ability to provide quality care to patients. Nothing contained in this Agreement shall be construed as allowing or authorizing the Hospitals to engage in the practice of medicine, either directly or through its agents or employees. It is the intent of the Parties that any actions performed pursuant to this Agreement which constitute acts of medicine are not acts of, or by, the Hospitals.
- 7.14 **Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to any person or circumstances, other than those to which it is held invalid or unenforceable, shall not be affected thereby and all other terms shall be valid and enforceable to the fullest extent permitted by law.
- 7.15 **Third Party Rights.** Except as otherwise expressly stated in this Agreement, the Parties do not intend to create any enforceable rights in any third party under this Agreement and there are no third-party beneficiaries to this Agreement.
- 7.16 **Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as nor be construed to be a waiver of any subsequent breach of this Agreement.

VIII. EXECUTION

WHEREOF, a duly authorized officer and representative of each Party has executed this Agreement on the dates as indicated below.

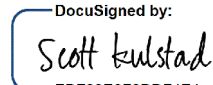
HOSPITALS:

By:  DocuSigned by:
766E90DF38D54CB...
Kathy Donovan
SVP/System Chief Operations Officer
Sacred Heart Hospital of the Hospital
Sisters of the Third Order of St. Francis;
St. Joseph Hospital of the Hospital
Sisters of the Third Order of St. Francis

Date: 6/2/2023 | 14:22:00 EDT

Address for notices:
Sacred Heart Hospital
900 W. Clairemont Ave.
Eau Claire, WI 54701
Attn: President & CEO

GROUP:

By:  DocuSigned by:
EDF33E8F8DDF4E4...
Name: Scott Kulstad
Title: CEO
Chippewa Valley Orthopedics & Sports
Medicine Clinic, S.C.

Date: 6/1/2023 | 14:28:04 EDT

Address for notices:
CHIPPEWA VALLEY
ORTHOPEDICS & SPORTS
MEDICINE, S.C.
1200 OakLeaf Way, Suite A
Altoona, WI 54720

Attn: CHIEF EXECUTIVE OFFICER

EXHIBIT 1.1

SERVICES

All the duties and responsibilities of the Physicians will be performed in a manner that reflects and models the values of the Hospitals. Group shall ensure that Physicians provide the following:

I. Services

- 1.1 **Call Coverage.** Group agrees to provide, subject to the terms of this Agreement, emergency department orthopedic call coverage in accordance with Levels III and Level IV Trauma designation requirements for Sacred Heart and St. Joseph's, respectively. The Physician on call shall be available by phone or mobile device and shall timely respond back to the call/text so that the requesting physician or care team member knows that the Physician has received the call/message. The Physician on call shall arrive at the Hospitals, if required, within the time specified in each Hospital's medical staff bylaws, rules or regulations, or policies, or thirty (30) minutes, whichever is sooner, when requested by a medical team member (e.g., another physician, nurse, APP, Midwife, or other health care provider, etc.). Failure to arrive at the Hospitals, if required, in a timely manner shall be deemed a material breach of this Agreement. Group agrees that Group's Physicians will see all patients, without regard to financial status, reporting to the applicable Hospital Emergency Department requiring urgent or emergent orthopedic medical care. All trauma patients will be treated at the applicable Emergency Department under applicable Hospital trauma protocols. All non-emergent patients from primary and secondary service areas will be seen according to standard protocols.
- 1.2 **Schedule.** Group will provide to each Hospital's Medical Staff Services Office a general and trauma surgical call coverage schedule at least thirty (30) days in advance for the following ninety (90) days (e.g., on March 1 the schedule for April, May and June will be published by Group), identifying Group's Physicians who will be on-call for all days assigned to Group and any other physicians that may not be part of the Group. Any changes to the published call coverage schedule will be communicated to each Hospital's Medical Staff Services Office as soon as the change is made. Each Hospital will work with Group to arrange for supplemental locum tenens call coverage when necessary.

II. General Responsibilities

- 2.1 **Quality Assurance/Education.** Group shall ensure that each Physician, during the Term, participates in each Hospital's general medical staff education programs as may be reasonably required from time to time and as required by each Hospital's medical staff bylaws or as necessary to ensure Hospital's compliance with accrediting requirements. Group and Hospitals further agree to negotiate in good faith towards the development of a Co-Management agreement, the goals and

objectives for which shall be to improve clinical quality, safety, equity, and efficiency for the Hospitals.

- 2.2 **Standards.** Group shall ensure that the Physicians provide Services to each Hospital's patients and order ancillary services and outpatient treatment only when consistent with the standards of medical practice and all applicable state and federal laws. Group shall ensure that each Physician, and each Physician shall, provide and perform all Services in accordance with prevailing national and state professional standards at the time such Services are rendered, the policies and procedures of any third party payors, including without limitation, the Medicare and Medicaid programs, the requirements of all governmental bodies, the requirements of The Joint Commission or other accrediting bodies, the Ethical and Religious Directives, all applicable laws, rules and regulations, and the ethics and principles of the American Medical Association. The Physicians shall not engage in any conduct that would jeopardize the health, safety, or privacy of patients. Each Physician shall provide Services in accordance with the mission and philosophy of each Hospital. Furthermore, without limiting any other provision of the Agreement, each Physician shall provide and perform Services to all patients of the Hospitals and shall not discriminate on the basis of race, color, ethnicity, gender, religion, national origin, age, handicap, insurance coverage, payor status, and/or ability to pay. Each Physician may be called upon to provide reasonable charitable care to those unable to pay, consistent with each Hospital's current practice, mission, and philosophy. Each Physician shall respect the freedom of patients to participate in decision making concerning their care, as well as patient choice in choosing their health care providers. Group and each Physician shall also cooperate with the Hospitals in patient notification efforts concerning patients cared for by the Physicians. Each Physician shall act with professional decorum and respect toward visitors, staff and patients at all times while providing Services.

EXHIBIT 1.1-1

**ELECTION TO PARTICIPATE
Call Coverage Services Agreement**

I, the undersigned Physician, am an employee or independent contractor of **CHIPPEWA VALLEY ORTHOPEDICS AND SPORTS MEDICINE, S.C. (“Group”)**. I hereby acknowledge that I have read the Call Coverage Services Agreement between Sacred Heart Hospital of the Hospital Sisters of the Third Order of St. Francis (“**Sacred Heart**”), St. Joseph’s Hospital of the Hospital Sisters of the Third Order of St. Francis (“**St. Joseph’s**”) and Group (“**Agreement**”), and hereby elect to participate in the rendering of services thereunder. In consideration of my employment or independent contractor arrangement with Group, I agree to abide by all provisions of the Agreement, including Sections 1.3, 1.4, 4.1, 4.2 and 5.1.

PHYSICIAN

Physician's Name: _____

Date: _____

EXHIBIT 2.1

COMPENSATION

- 1.2 **Compensation.** The Hospitals shall collectively pay Group \$2,000.00 per 24-hour shift of call coverage for orthopedics (pro-rated for any partial shifts). For clarity, a single payment of such rate covers both Hospitals for each day of call coverage.
- 1.2 **Payment of Compensation.** Group shall invoice Sacred Heart on a monthly basis for all Services rendered in the prior month. Subject to timely receipt of an undisputed invoice, Sacred Heart shall remit payment to Group on behalf of itself and St. Joseph's as of the tenth day of the second month following the month in which the Services were rendered (e.g. for services rendered in August, payment would be due by the 10th of October). Hospitals shall have ten (10) business days to notify Group's CEO or his or her delegate that Hospitals dispute an invoice submitted by Group, and in so doing, Hospitals shall include the rationale for such dispute, which shall not be indiscriminately or arbitrarily made.
- 1.3 **Fair Market Value.** The Parties intend that the compensation is consistent with fair market value in an arms-length transaction, and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by any Party, or of any other business that may be generated between the Parties.
- 1.4 **Payment Errors.** This Agreement sets forth an objectively verifiable formula for compensation. If any error occurs in the payments that are required by this Agreement, then the Party who has identified the error shall promptly notify the other Party of the error. Examples of such errors include, but are not limited to, a payment that is different than stated in the Agreement, or a miscalculation of the amount due. The notice of the payment error shall be provided in writing within a reasonable period of time. The Hospitals shall then correct the error and restore the Parties to the position they would have been in had no such error or discrepancy occurred. If there is an underpayment by the Hospitals, then the Hospitals shall increase the payment due to the other party to correct the error and cure the underpayment within no more than fifty (50) days. If there is an overpayment by the Hospitals, then the Hospitals shall decrease the payment due to the other party to correct the error, or Group shall refund the overpayment amount to the Hospitals, so the overpayment is cured within no more than fifty (50) days. The error or discrepancy may be cured by equal installment payments or as a lump sum payment. The action to cure shall be in the discretion of the Hospitals.