

SUMMARY OF THE ARGUMENT

Plaintiff Albert J. Turk, M.D. (“Dr. Turk”), has failed to state a claim on which relief can be granted under the Texas Open Meetings Act. Dr. Turk alleges a violation of the Open Meetings Act, but the only civil relief available for a violation of the Act is rescission of a voidable action. Because Dr. Turk concedes that no action was taken and fails to allege a violation of Act, his claims under the Texas Open Meetings Act should be dismissed. Further, Dr. Turk’s First Amended Complaint does not allege any additional facts that would allow them to recover under the Texas Open Meetings Act.

Additionally, Dr. Turk has failed to state a claim on which relief can be granted under the First Amendment (First and Fourth Claims for Relief) and Due Process and Due Course of Law (Second Claim for Relief) against Defendants. Dr. Turk alleges that Defendants violated his constitutional rights by taking steps to terminate his employment, imposing adverse personal and employment actions, and frustrating his efforts to present grievances. Because Defendant Somervell County Hospital District (d/b/a Glen Rose Medical Center) is *not Dr. Turk’s employer*, his claims against all Defendants should be dismissed.

STANDARD OF REVIEW

To survive a challenge under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[A] plaintiff’s obligation to provide the ‘grounds of his entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Thus, a plaintiff must “‘raise a right to relief above the speculative level.’”

Nationwide Bi-Weekly Admin., Inc. v. Belo Corp., 512 F.3d 137, 140 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 570).

ALLEGED FACTS

On August 8, 2015, Plaintiffs Albert J. Turk, M.D. and Shelley Turk, R.N. filed a complaint against Somervell County Hospital District and Ray Reynolds, individually and in his capacity as Chief Executive Officer of Glen Rose Medical Center. On November 10, 2015, Plaintiffs filed an Amended Complaint. In their Amended Complaint, Plaintiffs alleged violations of their constitutional right to free speech, their right to due process, and their right to petition the government for redress of grievances, as well as a violation of the Texas Open Meetings Act.

Plaintiffs allegations relating to Dr. Turk stem from Dr. Turk's employment contract, which gives rise to Dr. Turk's employment at Glen Rose Healthcare, Inc. Pl. Amend. Comp., ¶ 8. *See* Attachment A, Dr. Turk's Employment Agreement.¹ Pursuant to this Employment Agreement, Dr. Turk is an employee of Glen Rose Healthcare, Inc., a Texas nonprofit corporation. *See* Attachment A.

Plaintiffs allege Defendants "have taken steps to terminate [his] employment and are still intent on terminating [him] in the near future." Pl. Amend. Comp., ¶ 25. Plaintiffs allege that Defendants have imposed "adverse personal and employment actions" against Dr. Turk. Pl.

¹ The attachment of the Employment Agreement does not convert this Motion to Dismiss into a Motion for Summary Judgment. Courts have continuously held that while a court must "generally limit itself to the contents of the pleadings, the court may also consider documents attached to either a motion to dismiss or an opposition to that motion when the documents are referred to in the pleadings and are central to Plaintiff's claims." *Brand Coupon Network, L.L.C. v. Catalina Marketing Corp.*, 748 F.3d 631, 695 (5th Cir. 2014). *See also Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (considering exhibits attached to an opposition because "[n]o party questions the authenticity of these two documents and both were sufficiently reference in the complaint to permit their consideration on a motion to dismiss"); *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) ("but because the defendants attached the contracts to their motions to dismiss, the contracts were referred to in the complaints, and the contracts are central to the plaintiffs' claims, we may consider the terms of the contracts in assessing the motions to dismiss.") (citing *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004)).

Amend. Comp., ¶ 25. Plaintiffs also allege Defendants’ “took steps to terminate [Dr. Turk] employment.” Pl. Amend. Comp., ¶ 26. Plaintiffs’ further allege that Defendants held a meeting “involving the consideration of his termination.” Pl. Amend. Comp., ¶ 14.

Defendants hereby file this motion to dismiss, asserting that Dr. Turk’s claims for the alleged violation of the Texas Open Meetings Act, Plaintiff Albert Turk’s First Amendment claims, and Plaintiff Albert Turk’s due process and course of law claim against Defendants should be dismissed as a matter of law pursuant to Rule 12(b)(6).

ARGUMENT AND AUTHORITIES

1. Dr. Turk’s Third Claim for Relief (Violation of the Texas Open Meetings Act) Should Be Dismissed.

Dr. Turk alleges in the Amended Complaint that Defendants violated the Texas Open Meetings Act, but acknowledges that the allegedly improper closed meeting resulted in “no action.” Pl. Amend. Comp., ¶ 16. The Texas Open Meetings Act does not provide for general relief through a private cause of action. Tex. Gov’t Code § 551.143. If violated, the Act *only* provides for criminal and civil penalties. *Id.* The only private action that may be brought under the Act is a cause of action to void any action created by a closed meeting in violation of the Act. Tex. Gov’t. Code § 551.141; *see Aleman v. Edcouch Elsa Indep. Sch. Dist.*, 982 F. Supp. 2d 729, 740 (S.D. Tex. 2013) (dismissing claim under TOMA for failing to identify a voidable action or a violated provision); *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975) (agreeing that a violation of the open meeting law subjects the action taken to judicial invalidation).

Dr. Turk has not requested that any action be voided, nor alleged that any voidable action even occurred—in fact, as noted above, Dr. Turk concedes that no action was taken during the closed meeting. Further, Dr. Turk amended his complaint to seek injunctive relief to

prevent a repetition of the illegal conduct in violation of the Open Meetings Act. However, the Open Meetings Act does not provide a cause of action for an injunction of a meeting that does not exist and has not been contemplated. Additionally, Dr. Turk does not allege facts regarding a planned closed meeting in violation of the act. Therefore, Dr. Turk has failed to state a claim on which relief can be granted.

Further, Dr. Turk does not dispute the applicability of the two additional provisions allowing the meeting to be closed. Both the Act and the Health and Safety Code provide exceptions which allow a closed meeting to be held, even if an open meeting has been called for. *See* Tex. Gov't Code Ann. § 551.071; Tex. Health & Safety Code Ann. § 161.032. Somervell County Hospital District's notice included not only the provision cited by Dr. Turk, but also provided notice that the meeting would be closed pursuant sec. 551.071 of the Government Code (permitting a closed session to discuss matters with an attorney), and Texas Health and Safety Code 161.032 (permitting closed meetings for quality of care related issues). Dr. Turk cites the posted notice in their petition, and do not challenge the applicability of either section. Dr. Turk's failure to show how this meeting was not conducted in accordance with the exceptions is a failure to plead that a violation occurred.

Dr. Turk alleges a violation of the Open Meetings Act, but has failed to state a claim on which relief can be granted. The only civil relief available for a violation of the Act is rescission of a voidable action. Dr. Turk conceded that no action was taken. Furthermore, Dr. Turk alleges impropriety of only one of three posted provisions permitting closed meetings, and have therefore failed to allege a violation of the Act. Therefore, there is no relief available to Dr. Turk. Because Dr. Turk has conceded that there was no voidable action, and has failed to allege a violation of the Act, his claims under the Texas Open Meetings Act should be dismissed.

2. Dr. Turk's First Amendment Claims (First and Fourth Claims for Relief) and Due Process and Course of Law (Second Claim for Relief) Against Defendants Should Be Dismissed.

A. Glen Rose Healthcare, Inc. is Dr. Turk's Employer Not Somervell County Hospital District.

Defendant Somervell County Hospital District is not Dr. Turk's employer. *See* Attachment A. Dr. Turk is an employee of Glen Rose Healthcare, Inc. *See* Attachment A. Specifically, Dr. Turk entered into a Physician Employment Agreement with Glen Rose Healthcare, Inc. whereby Glen Rose Healthcare, Inc. "hereby employs the Physician, and the Physician hereby accepts employment with the Employer. . . ." *See* Attachment A, p. 1. Pursuant to this employment agreement, Dr. Turk is an employee of Glen Rose Healthcare, Inc., a Texas nonprofit corporation. *See* Attachment A. Dr. Turk has sued the incorrect entity for claims regarding his employment.

B. Dr. Turk's Constitutional Claims in the First Amended Complaint Are Regarding His Employment.

Dr. Turk's allegations presume that Somervell County Hospital District is his employer. *See* Pl. Amend. Comp., ¶8. Indeed, each of Dr. Turk's allegations and constitutional causes of action emanate from his employment. *See* Pl. Amend. Comp. Specifically, in his First Claim for Relief (Freedom of Speech) Dr. Turk alleges that his first amendment right to freedom of speech was violated because Defendants' "took steps to terminate his employment," are "intent on terminating his employment," and have imposed "adverse personal and employment actions." Pl. Amend. Comp., ¶ 25. Likewise, Dr. Turk alleges in his Second Claim for Relief (Due Process) that his constitutional right to due process was violated because Defendants' "took steps to terminate his employment," are "intent on terminating his employment," and have imposed "adverse personal and employment actions." Pl. Amend. Comp., ¶ 26. Moreover, Dr. Turk's allegations in his Fourth Claim for Relief (Systematically Denying Plaintiffs the

Right to Petition the Government Redress for Grievances) is that Defendants', as his employer, failed to address his concerns and retaliated against him in personnel actions, like scheduling over the holidays. Pl. Amend. Comp., ¶ 22, 24, 28. Additionally, Dr. Turk alleges Defendants held a meeting "involving consideration of his termination." Pl. Amend. Comp., ¶ 14.

Dr. Turk's First, Second and Fourth Claims for relief are grounded in Dr. Turk's employee/employer relationship. Pl. Amend. Comp., ¶ 25, 28.

C. Dr. Turk's Claims Should be Dismissed Because the Hospital District and Ray Reynolds Individually and In His Capacity as CEO of the Hospital District are Not his Employer and Thus, Claims Regarding his Employment Fail.

Because Defendants are not Dr. Turk's employer, they cannot take any steps to terminate his employment or otherwise affect his employment with Glen Rose Healthcare, Inc. Only Glen Rose Healthcare, Inc. can take steps to terminate Dr. Turk's employment. Only Glen Rose Healthcare, Inc. can take adverse employment actions against Dr. Turk. While the Supreme Court recognizes First Amendment and Due Process constitutional claims regarding employment extends to employees and, in certain cases, independent contractors, it does not extend to claims for non-employees, like Dr. Turk. *See generally Board of County Commissioners, Wabaunsee County, Kansas v. Umbehr*, 528 U.S. 668 (1996); *Delahoussaye v. Livingston Parish, Louisiana*, 2014 WL 4538074 (M.D. La. September 11, 2014); *O'Hare Truck Service v. City of Northlake*, 518 U.S. 712 (1996). Accordingly, Dr. Turk's claims against *all* Defendants should be dismissed.

CONCLUSION

For these reasons, Somervell County Hospital District and Ray Reynolds, individually and in his official capacity, asks that the Court dismiss all claims brought by Dr. Turk under

the Texas Open Meetings Act, the First Amendment (First and Fourth Claims for Relief), and the Due Process and Due Course of Law (Second Claim for Relief) against Defendants.

Respectfully submitted,

/s/ Shafeeqa Watkins Giarratani

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent electronically to all counsel of record in accordance with FRCP 5(b) on November 25, 2015.

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/s/ Shafeeqa W. Giarratani

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Somervell County Salo

Attachment A

Somervell County Salon

PHYSICIAN EMPLOYMENT AGREEMENT

THIS PHYSICIAN EMPLOYMENT AGREEMENT (the “Agreement”) is made and entered into by and between Glen Rose Healthcare, Inc., a Texas nonprofit corporation (the “Employer”) and Albert J. Turk, M.D. (the “Physician”) to be effective on the Employment Commencement Date (defined below).

RECITALS

- A. The Employer is a nonprofit corporation organized pursuant to the Texas nonprofit Corporation Act and is certified by the Texas State Board of Medical Examiners for the purpose of providing health care services; principally professional medical services to the public through its physician employees, each of whom is duly licensed to practice medicine in the State of Texas.
- B. The Physician possesses specialized training and experience in the medical specialty of Family Practice and desires to accept employment with the Employer under the terms and conditions of this Agreement.
- C. The Employer desires to employ the Physician under the terms and conditions of this Agreement.
- D. The Physician and the Employer enter into this Agreement to protect the Confidential Information (as hereinafter defined) and the relationship between the Employer and patients, referring physicians, and vendors (hereinafter, the “Goodwill”) of the Employer.
- E. By the execution and delivery of this Agreement both the Employer and the Physician acknowledge that they enter into it on equal footing, having freely reviewed and negotiated its terms, and are familiar with, understand, and accept the extent and implications of their agreement.

The terms and conditions of this Agreement are as follows:

- 1. **Employment of the Physician.** The Employer hereby employs the Physician, and the Physician hereby accepts employment with the Employer, upon the terms and conditions set forth herein and subject to the conditions set forth below. While this Agreement may be executed on a different date, the date on which the employment of the Physician will begin on or before September 1, 2014 (the “Employment Commencement Date”). The Employment Commencement Date must occur by September 1, 2014 or this Agreement is null and void. The inability of the Physician to satisfy all requirements for the performance of services hereunder (including but not limited to obtaining medical staff privileges at the hospitals designated in Section 5) on or prior to the Employment Commencement Date shall render this Agreement null and void, and the Employer shall in such event have no further obligation to the Physician.
- 2. **Duties and Services to be Provided by the Physician.** The Physician will be an employee of the Employer. As such, he/she agrees to devote his/her full professional time and attention to the performance of his/her duties hereunder for and on behalf of the Employer, excepting as may be permitted in paragraphs (b) and (c) below. For purposes of this Agreement, full-time employment means performing no fewer than [forty (40) hours per week in the performance of those duties described on Attachment A to this Agreement (taking into account the provisions for paid time off, meetings and holidays in Section 19 hereof). The Physician’s services hereunder will be rendered at the office location of the Employer at Pecan Family Medical Clinic, Texas (the “Office”). The Physician agrees to serve the Employer faithfully and diligently, according to the best of his/her abilities, will use every effort to promote the best interests and Goodwill of the Employer and will use his/her best efforts to not interfere with such Goodwill.

- a) The Physician will perform his/her duties for the Employer under the general direction, control and supervision of the Glen Rose Healthcare, Inc. President. However, the Employer will not impose other employment duties or constraints of a kind that would require the Physician to infringe the ethics of the medical profession or violate any law. The Employer and the Physician acknowledge that the decisions regarding the diagnosis and treatment of patients are the province of a physician and, therefore, all such decisions will be the responsibility of the Physician to be rendered in accordance with the standards of good medical practice. Physician also agrees to be courteous and respectful of the rights and dignity of patients with whom he/she shall come into contact and shall also work cooperatively with the administrative staff of the Employer.
 - b) The expenditure of reasonable amounts of time for teaching or performing business, charitable or professional activities outside the Physician's duties as an employee hereunder ("Outside Activities") will not be deemed a breach of this Agreement; provided that the Outside Activities do not materially interfere with the services required to be rendered to the Employer. The Physician agrees to confer with and schedule any Outside Activities with the President in order for the Employer to determine whether any material interference will result whenever either party believes a problem may exist from the Outside Activities. The Physician may not voluntarily appear as an expert witness in any litigation or other legal proceeding without prior written consent of the President.
 - c) The Physician will not, without the express written consent of the President on a situation by situation basis, directly or indirectly, during the term of this Agreement provide services of a professional or commercial nature to or for any person or firm, or engage in any activity competitive with or adverse to the Employer's business, whether alone, as a partner, or as an officer, director, employee or shareholder of any association, corporation or other entity or as an agent, a trustee, fiduciary or other representative of any other person or entity. The Physician will not, without the express prior written consent of the President, engage in any promotional activity for himself/herself for professional services other than on behalf of and for the benefit of the Employer. At the date of this Agreement, in satisfaction of the scheduling and approval requirements of Subsections (b) and (c), the Employer consents to those activities described on Attachment C to this Agreement.
 - d) During the Original or any Extended Term the Physician will not solicit, induce, recruit or attempt to solicit, induce or recruit any other employee of the Employer (including, without limitation, any other physician) to leave the employ of the Employer and will not engage in any discussions, efforts, or proposals regarding the solicitation, inducement, or recruitment of any other Physician to leave the employ of the Employer. If Physician is a member of the Board, Physician will report any such instances of recruitment to the remainder of the President.
 - e) Physician acknowledges that serving as a member of the Board or any other governing body of the Employer means serving in a fiduciary capacity, and Physician agrees that, if he/she serves as a member of the Board or any other governing body of the employer, he/she will discharge his obligations as a member of the Board or other governing body of the Employer as required by the fiduciary obligations applicable to such service. Physician acknowledges that information received in his/her capacity as a member of the Board or any other governing body of the Employer is Confidential Information subject to Section 20 of this Agreement.
3. Revenues from the Physician's Services. Unless otherwise agreed to in writing under Subsections 2(b) or (c) above, all medical services, medical director fees and other professional services performed by the Physicians for any remuneration are served performed as an employee of the Employer, and, therefore, all revenues from such services shall be the property of the Employer and the Employer shall be wholly entitled to collect and receive all such revenues.

4. Coverage. After hours, weekend and holiday coverage assignments for Glen Rose Medical Center shall be rotated in an equitable manner among the similarly situated physician who practice at the Hospital. Coverage assignments are intended to provide the availability of a physician to patients on the basis of twenty four (24) hours per day and seven (7) days a week. The Physician shall be responsible for securing coverage for Physician's clinical responsibilities hereunder while Physician is unavailable, with qualified physician(s) acceptable to Employer. The Employer will assist Physician with identifying such physicians to provide coverage.
5. Licensure/Medical Staff Membership. As applicable, as a condition to commencement of employment and otherwise as a continuing condition to employment, the Physician agrees that at all times during the term of this Agreement, the Physician shall (a) maintain a valid and unrestricted license to practice medicine in the State of Texas, (b) maintain in good standing an active staff category of medical staff privileges at Glen Rose Medical Center or at such other hospital(s) as may be designated by the President of the Board, (c) comply with and provide professional services in accordance with applicable law, the ethical standards of the medical profession, and the requirements of any accrediting bodies which may have jurisdiction or authority over the Employer of any facility at which Physician regularly performs services on behalf of the Employer, (d) maintain status as a Medicare and Medicaid provider physician, (e) hold and maintain registration by the Federal Drug Enforcement Administration and the Texas Department of Public Safety to dispense and administer controlled substances, and (f) obtain and maintain the status of a Provider Physician under the Credentialing Policies and Plan of the Employer. The Physician shall promptly inform the Employer of any restriction, limitation or modification of the Physician's medical licensure, certification, credentials, hospital medical staff privileges, controlled substance registration or otherwise on his/her ability to render medical services arising during the term of this Agreement.
6. Credentialing; Policies and Procedures. The Physician agrees to participate in and abide by all credentialing and recredentialing policies procedures and protocols from time to time adopted by the Board. The Physician further agrees to cooperate with and provide any information reasonably requested to the Employer's Credentials Committee (or equivalent committee). The Employer's credentialing procedures include, in part, review of the Physician's utilization of health care resources, the physician staffing requirements of the Employer and the quality of patient care rendered by the Physician. The Physician further agrees, if appointed, to serve on the Credentials Committee. The Physician agrees to comply with all written policies, procedures and protocols of the Employer.
7. Risk Management. The Physician agrees that he/she shall notify the President of the Employer immediately upon the Physician's receipt of notice of a potential professional liability claim against the Physician. The Physician further agrees to participate in and abide by the risk management policies and procedures as may be from time to time established by the Board.
8. Managed Care Contracting. The Physician agrees that he/she will participate in and comply with the provisions of any managed care and other third party payor contracts entered into by the Employer. Additionally, the Physician agrees, in the event a payor contracts only with individual physicians, to sign individually any such contracts as directed by the Employer; but in such an instance the contract must expressly provide that the Physician is entering into the contract in a representative capacity as an employee of the Employer and not in the Physician's personal capacity. Prior to executing any such managed care contract, the Employer will disclose to and consult with the Physician regarding the proposed terms of such contract.

9. **Utilization Management / Quality Improvement.** The Physicians agrees to participate in, and cooperate with other physicians and the administrative staff of the Employer in connection with, the development and implementation of utilization management/quality improvement programs as may be from time to time established by the Board. The Physician shall also be subject to and participate in any utilization management/quality improvement program developed by or on behalf of the Employer in connection with services it offers to its patients and the patients of any managed care plans in which the Employer or the Physician is a participating provider.
10. **Fees for Services.** The fees and charges for the Physician's services shall be established by the Board, with the consultation of the Physician and input from the appropriate committee(s) of the Employer, and submitted to the Employer for approval, which approval will not be unreasonably withheld or delayed. All bills for services performed by the Physician will be prepared, transmitted, and collected by or on behalf of the Employer. As set forth in Section 3 above, unless specifically excepted in writing, all revenue generated by the services of the Physician will be the property of the Employer.
11. **Professional Compensation.** For and in consideration of all services rendered and of the covenants agreed to and entered into by the Physician under this Agreement, the Employer will pay to the Physician compensation as determined pursuant to Attachment B to the Agreement.
12. **Withholding.** The Physician acknowledges that the Employer is required by law to withhold federal income taxes, social security and Medicare insurance contributions and other required or elective payroll deduction items or withholds from compensation paid the Physician. The Physician acknowledges and agrees that such withholds may include deductions and offsets for other costs and expenses of Physician related to employment hereunder, in accordance with a policy approved by the Board and consistent with deductions or offsets by the Employer from compensation of its other, similarly situated physician employees. The Employer will provide the Physician with appropriate Internal Revenue Service and other similar forms relating to the Physician's compensation.
13. **Employee Benefit Plans.** The Physician will be eligible for and entitled to participate in employee benefit plans contained in Attachment (b)(9) maintained by the Employer for the physician employees of Glen Rose Healthcare, Inc., as such plans may be amended from time to time. The eligibility of the Physician for and the conditions for participation in such plans will be governed by the terms of such plans.
14. **Professional Dues and Expenses.** For and in consideration of the Physician's performance of services under this Agreement, the Employer agrees to pay the Physician's annual Texas medical licensure fee, dues in state medical societies and associations consistent with its practice for other physician employees of the Employer, as well as such subscriptions to professional publications and other similar fees and costs as are appropriate to maintain the Physician's licensure and professional standing, all as may be approved and authorized by the President, in accordance with the annual budget for Glen Rose Healthcare, Inc. The reimbursement of \$2,500.00 for such dues and expenses may not be carried over from year to year.
15. **Professional Development.** For and in consideration of the Physician's performance of services under this Agreement, the Employer will pay directly or reimburse the physician for the reasonable expenses (including tuition, lodging, meals and travel) of the Physician for attending continuing medical education programs ("CME") related to the practice of the Physician, and as approved by the President, upon submission of appropriate documentation consistent with the record keeping requirements of the Internal Revenue Service and in an amount approved by the President in accordance with the annual budget for the Operation Unit. The reimbursement limit for CME, which may not exceed \$2,500.00 expenses, may not be carried over from year to year.

16. **Professional Liability Insurance and General Liability Insurance.** For and in consideration of the Physician's performance of services under this Agreement, the Employer, at its expense, agrees to obtain and maintain professional liability insurance for the Physician in an amount and with the terms of coverage determined by the Employer in its sole and absolute discretion. The Employer's obligation to provide the Physician with professional liability coverage will cease upon termination of the Physician's employment and the Physician will need to procure his/her own coverage at the Physician's own expense from that time forward. Any rebate of premium on cancellation of coverage shall be retained by the Employer. If the professional liability coverage is provided on a "claims made" bases, "tail coverage" will be procured and maintained by Physician unless Physician is terminated subject to Section 23(b) or Employer fails to offer Physician an Extended Term to Employment Agreement in which Employer will be required to purchase "tail coverage." In all other cases, Physician will be required to purchase "tail coverage" insurance. In addition, the Employer, at its expense, will obtain and maintain such other forms of insurance as may be advisable for its business, such as property and general liability insurance, in an amount and with the terms of coverage determined by the Employer. Any of this insurance may be provided through self-insurance or similar arrangements established or sponsored by an affiliate of the Employer. The Physician, at his/her expense, may obtain such primary, supplemental or additional insurance coverage as he/she may desire.
17. **Working Facilities.** The Physician will be furnished by the Employer with such facilities, equipment, supplies, and administrative and professional personnel as the Employer, with the advice of and in consultation with the President, deems are required by his/her position and for the performance of the Physician's professional duties and services hereunder.
18. **Paid Time Off, Meetings and Holidays.** The Physician will be entitled to scheduled work days off with pay in each calendar year, with holidays, sick days, CME time, and vacations to count against the days of paid time off in accordance with a uniform policy established by the Board. Paid time off must be scheduled with and approved by the President. The Physician will only be entitled to such days off with or without pay as the President may approve. Paid time off may not be carried over from year to year nor will payment be made for days not taken.
19. **Medical Records and Histories.** Subject to Subsection 24 (c) of this Agreement, all medical records, case histories, x-ray films, files and documents concerning patients seen or treated by the Physician as an employee of the Employer shall belong to and remain the property of the Employer. During the term of employment, the Physician will have appropriate access to and the right to copies of medical records at the Employer's expense as necessary to perform the Physician's duties under this Agreement. Subject to Subsection 24 (c) of this Agreement, in the event of litigation or other situations when access to medical records by the Physician is required after termination of employment, the Physician will be provided reasonable access to records of patients seen or treated by him/her during his/her employment and the Physician may reproduce appropriate portions thereof at the Physician's own expense, in conformance with applicable Texas and federal confidentiality requirement sand the medical records policies of the Employer.
20. **Confidentiality.**
 - a) **Confidentiality of Agreement.** The Physician shall keep this Agreement and its contents confidential and not disclose this Agreement or its contents to any third party other than his/her legal and financial advisors, as required in Subsection 24(e) of this Agreement, or otherwise as required by law, without the prior written consent of the Employer.

b) Confidentiality of Information. During the term of employment, the Employer will provide, and the Physician will have access to, use, and, in the Physician's capacity as an employee of the Employer benefit from, confidential, proprietary and trade secret materials and information of the Employer, and that such information is important material and gravely affects the effective and successful conduct of the business and goodwill of the Employer. Such information may include without limitations, Employer financial information; marketing, development, and demographic information; patient, customer and supplier lists and related information; pricing information and fee schedules; business plans, projections and strategies; referral sources, contracting and managed care strategies and information; past and present methods, procedures and techniques used in conducting and enhancing operations; salary, compensation, and personnel information; compilations of records, information and processes, and other materials, records and/or information of a proprietary nature, (collectively, "Confidential Information"). The Physician agrees to keep confidential and not to disclose to others at any time, except as expressly required in writing by the Employer or by law, Confidential Information of the employer of confidential or proprietary information of the Employer's other physician employees, or a matter or information obtained in the course of employment or the use or disclosure of which would be contrary to the best interests of the Employer, its member, officers, directors, employees and affiliates. The Physician further agrees that during their term of this Agreement and as of the date of termination, expiration or non-renewal of this Agreement, the Physician will neither take nor retain, without the prior written consent of the Employer, any papers, slides, data, records, patient lists (except as provided in the preceding Section 19 and Section 24 of this Agreement), files, computer discs, research data or other demographic analysis, information regarding payor contracts entered or under consideration by the Employer, or other documents or copies thereof of proprietary compilation of such information or other Confidential Information of any kind belonging to the Employer (excepting copies of records of patients in accordance with the provisions of the preceding Section 19 and Section 24 of this Agreement). The Physician acknowledges and agrees that the disclosure of Confidential Information to other persons, including in particular but without limitation any person engaging in a business in any way competitive to the Employer, would result in hardship, loss, irreparable injury and damage to the Employer and that the Employer has a legitimate interest in protecting the Confidential Information and its Goodwill. The Employer agrees that the Physician's use of certain of such information consistent with and in connection with his/her duties under this Agreement (whether in the Office or elsewhere) and with a specific approval from or consistent with a business information use policy adopted by the President is permissible and appropriate.

21. Intellectual Property. All discoveries, concepts and ideas, whether or not registrable under patent, copyright or similar statutes, including but not limited to, patents, copyrights, trademarks, trade secrets, processes, methods, formulae, techniques, tools, solutions, programs, data and documentation, as well as modifications and improvements thereof and know how related thereto ("Intellectual Property"), which Physician, alone or jointly with third parties, their agents or employees, conceives, makes, develops, or lawfully acquires during the Term of this Agreement shall be the sole and exclusive property of the Employer.
22. Trade Secrets of Others. The Physician warrants that the terms of this Agreement and the Physician's employment by the Employer do not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by the Physician in confidence or in trust prior to employment with the Employer, and the Physician will not disclose to the Employer, or induce the Employer to use, any confidential or proprietary information, knowledge or data belonging to any previous employer or others.

23. Term and Termination.

- a) **Term of Agreement.** The employment relationship established by the Agreement will begin on the Employment Commencement Date and shall continue in force and effect for a term of two (2) years (the "Original Term") from and after the Employment Commencement Date, unless sooner terminated as provided in Subsections 23(b) or 23(c) hereof. Unless otherwise terminated, the term of this Agreement shall be automatically extended beyond the Original Term for additional one (1) year terms (each an "Extended Term"), unless either party elects to terminate by giving the other party not fewer than ninety (90) days notice prior to the end of the Original Term or of any Extended Term. As used in this Agreement, the word "termination" includes and may refer to non-renewal or expiration of the term of this Agreement.
- b) **Termination by Employer.** This Agreement may be terminated immediately (subject to the right to cure set forth below), without further liability or payment from Employer to Employee, by the Employer upon the occurrence of any of the following events:
 - i. The suspension, limitation, revocation or cancellation of the Physician's license to practice medicine in the State of Texas;
 - ii. The imposition of any suspension, restriction or limitation by any hospital at which the Physician has medical staff membership or by any governmental authority to such an extent that the Physician cannot perform the medical services required under this Agreement;
 - iii. The Physician's loss or restriction of medical staff privileges at any hospital at which the Physician has medical staff privileges;
 - iv. The death of the Physician
 - v. The Physician's failure or refusal to faithfully and diligently perform the duties required of him/her hereunder or to comply with the other provisions of this Agreement. A determination that the Physician has so acted or failed to act shall be determined only by an affirmative vote of at least two-thirds (2/3) of the Board.
 - vi. The Physician's failure or refusal to comply with the policies, standards, and regulation of the Employer, which from time to time may be established by the Board. A determination that the Physician has so acted or failed to act shall be determined only by an affirmative vote of at least two-thirds (2/3) of the Board.
 - vii. If the Physician suffers a disability and the Physician is unable to provide services as required by the Agreement for a period of time established in the Leave of Absence Family and Medical policy contained in the Personnel Policies and Procedures Section Glen Rose Healthcare, Inc. in effect at the time of such disability;

- viii. For other cause, which shall mean (A) the Physician's engaging in conduct amounting to fraud, dishonesty, gross negligence, willful misconduct; or (B) the finding by any board or professional organization having a right or privilege to pass upon the professional conduct of the Physician and to discipline the Physician therefore, that the Physician is or has been guilty of unprofessional or unethical conduct, or (C) that the Physician has conducted or is conducting himself/herself in an unprofessional and unethical manner so as to discredit the Employer, its reputation, character and standing and/or that of the member or other employees of the Employer; or (D) the services of the Physical provided to or on behalf of the Employer are e not satisfactory to the Employer. Cause shall be determined only by an affirmative vote of at least two-thirds (2/3) of the Board.
 - ix. The Physician's violation of Section 24 or Subsections 2(b), (c), (d), and (e) of this Agreement; or
 - x. Upon the failure to reach agreement under Section 29 of this Agreement. Prior to terminating this Agreement pursuant to paragraphs (v), (vi) or (viii), if the basis for the Employer's action is one capable of being cured by the Physician, the Employer or the President shall furnish the Physician written notice of the Physician's alleged failure to abide by or other breach of this Agreement. The Physician shall have twenty (20) days after the Physician's receipt of such notice to cure such breach and if cured this Agreement shall not terminate but continue in full force and effect.
- c) Termination by Physician. This Agreement may be terminated immediately (subject to the right to cure set forth below) by the Physician upon the occurrence of any of the following events:
- i. The Employer's failure to pay the Physician the compensation due pursuant to this Agreement;
 - ii. The Employer's failure to be affiliated with Glen Rose Medical Center;
 - iii. The Employer's breach of this Agreement; or
 - iv. Upon the failure to reach agreement under Section 29 of this Agreement. Prior to terminating this Agreement pursuant to paragraphs (i) or (iii) above, the Physician shall furnish the Employer written notice of the Employer's alleged breach of this Agreement. The Employer shall have twenty (20) days after the Employer's receipt of such notice to cure such breach and if cured this Agreement shall not terminate but continue in full force and effect. As it relates to paragraph (i) above, the Employer's right to notice and cure shall be limited to no more than three (3) times during any twelve (12) month period.

24. **Covenant Not to Compete.** In consideration of the monetary payments to be provided to the Physician by the Employer as stated in this Agreement, the Physician's access to and use of confidential Information of the Employer, the promise to promote the practice of the Physician and the Physician's promise to promote the Goodwill of the Employer, the mutual promises of the other physicians of the Employer who have also agreed to protect the Confidential Information (including referral sources) and the Goodwill of the Employer, the benefits to be derived by the Physician from such Confidential Information, and the other mutual promises and considerations expressed in this Agreement, the receipt and sufficiency of which is hereby acknowledged and confessed by the Physician, the Physician agrees that , during the Original Term and Extended Term and for a period of twenty-four (24) months after its termination, expiration or non-renewal (or for the maximum period permitted by law, whichever is less, the Physician will not engage, on his/her own behalf, or as an employee, contractor or agent of any individual, partnership, corporation n or association or in any other capacity whatsoever, in any "Prohibited Activity" within the "Relevant Geographic Area", as those phrases are hereinafter defined:

- a) The phrase "Prohibited Activity" as used herein, means:
 - i. To engage in the practice of medicine in the medical specialty of Family Practice in an office practice, an outpatient clinic, ambulatory care clinic or other site which is essentially equivalent to a physician's office practice (but specifically excluding an emergency room in a hospital or continuing care and treatment to a specific patient or patients, upon the patient's written consent, during the course of an acute illness); and
 - ii. Solicitation of any patients of the Employer seen by the Physician at the Office and the other location(s) at which the Physician has regularly performed services on behalf of the Employer; and
 - iii. The solicitation, inducement, recruitment, or attempt to solicit, induce or recruit any other employee of the Employer (including, without limitation, any other physician) to leave the employ of the Employer;
- b) The phrase "Relevant Geographic Area" as used herein means the geographic area within forty (40) miles of (i) the Hospital, (ii) the Office and (iii) the other location(s) at which the Physician has regularly performed services on behalf of the Employer within the immediately preceding twenty-four (24) months; provided however, in the event that such geographic area exceeds the maximum area permitted by law of for any other reason does not state an appropriate geographic are within which the provisions of this Section shall apply, then within the maximum geographic area as renegotiated by the parties in good faith or as reformed by a court. For purposes of this Subsection 24(b) the term "regularly performed" shall mean at a location at which the Physician is scheduled under this Agreement to perform services on a routine basis.
- c) It is the intent of the parties to comply fully with the requirements of Sections 15.50 through 15.52 of the Texas Business and Commerce Code as amended, and the requirements of Section 15.50(b) of the Texas Business and Commerce Code (the "Physician Requirements") are hereby adopted and incorporated herein by reference. If anything to this Agreement is found to be contrary or consistent with the Physician Requirements, such provision shall not apply and, instead, the Physician requirements shall apply. Subject to the foregoing, the parties agree as follows.

- i. Nothing in this Section or otherwise in this Agreement shall be construed to deny the Physician access to a list of his/her patients whom he/she had seen or treated within one year of termination of the contract or employment;
 - ii. The Employer will provide access to medical records of the Physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas State Board of Medical Examiners under Section 159.008, Occupations Code;
 - iii. Any access to a list of patients or to patients' medical records after termination of employment under this Agreement will be provided in the same or similar format to that by which such records are maintained, except by mutual consent of the parties;
 - iv. The provisions of this Section 24 are subject to a buyout, such that the Physician may be relieved of the obligations of this Section 24 by paying the sum of [One Hundred Seventy-five Thousand Dollars (\$175,000)].
 - v. Notwithstanding anything to the contrary in this Agreement, the Physician is not prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after employment under this Agreement has been terminated.
- d) It is agreed that in the absence of the payment of the buy-out and in the event of any breach or attempted or threatened breach of this covenant, the Employer shall have the right, in addition to any other legally available remedies, to obtain a temporary restraining order and temporary injunction against the Physician, his/her employees, agents and others acting in concert with his/her prohibiting such breach, with any judicial court of competent jurisdiction, pending the arbitration of any dispute between the parties (including, without limitation, the amount of any buyout). The parties stipulate that the reasonable amount for any bond required in connection with a temporary restraining order and temporary injunction will be the sum of One Thousand and no/100 Dollars (\$1,000). In addition, the parties agree as follows:
- i. The restrictions set forth in this Section 24 are ancillary to an otherwise enforceable agreement, including without limitation, the monetary payments to be provided to the Physician by the Employer as stated in this Agreement, the Physician's access to and use of confidential Information of the Employer, the promise to promote the practice of the Physician and the Physician's promise to promote the Goodwill of the Employer, the mutual promises of the other physicians of the Employer who have also agreed to protect the Confidential Information and the Goodwill of the Employer, the benefits to be derived by the Physician from such Confidential Information, and the other mutual promises and considerations expressed in this Agreement.
 - ii. The limitations as to time, geographical area, and scope of activity to be restrained by this Section 24 are reasonable and acceptable to the Physician, and do not impose any greater restraint than is reasonably necessary to protect the Confidential Information, Goodwill and other business interests of the Employer, and the Physician hereby knowingly and irrevocably waives all defenses to the strict enforcement of the promises contained in this Section 25.

- iii. The time period covered by the restrictive covenants contained in this Section 24 will not include any period(s) of violation of any restrictive covenant or any period(s) of time required for litigation brought by the Employer to enforce any covenant or in which the Employee is in violation of his/her promises contained in this Section 24. the extension of time provided in this subsection will not exceed an additional eighteen (18) months.
 - iv. The provisions of this Section are separate, severable and enforceable notwithstanding any breach of any other provision of this Agreement by the Employer. Accordingly, the existence or assertion of any claim by the Physician against the Employer, whether based on this Agreement or otherwise, shall not operate as a defense to the Employer's enforcement of the covenants in this Section 24, and the provisions of Section 24 shall be enforceable whether employment is terminated with or without Cause or at the instance of either the Employee or the Physician (except where termination of employment occurs due to death, or where employment is terminated under this Agreement by Physician under Section 23 (c)(ii).
 - v. The Physician expressly acknowledges and agrees that the Physician's experience and abilities are such that the Physician's compliance with the covenants and restrictive agreements contained will not cause the Physician any undue hardship or unreasonably interfere with the Physician's ability to earn a livelihood and practice medicine.
- e) At least thirty (30) days prior to commencing employment with any employer that may be in violation of this provisions of this Section 24, Physician (a) shall provide a copy of this Agreement to the new employer; and (b) shall provide notice to the Employer stating the name of the potential new employer, the address at which the Employee plans to provide services, and the nature of the services that he intends to provide for the new employer.
25. Notices. All notices provided for by this Agreement shall be made in writing either (a) by actual delivery (e.g. personally, by commercial courier service, or by confirmed telefacsimile) of the notice, or (b) by the mailing of the notice by United States Postal Service certified or registered mail, return receipt requested, and addressed to the party to be notified at the address listed below (or at such other address as may be given by notice by a party). The notice shall be deemed to be received (i) if by actual delivery, on the date of its receipt by the party, or (ii) if by mail, on the second day on which mail is delivered following the date of deposit in the United States Postal Service.
26. Governing State Law. The laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Agreement and venue for disputes hereunder shall lie in [Somervell] County.
27. Parties Bound. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the Employer, the Physician, and their respective heirs. Personal representatives, and permitted assigns. This Agreement shall also bind and inure to the benefit of any successor of the Employer by merger or consolidation.
28. Titles, Headings. The titles, heading, and captions used in this Agreement have been inserted for convenience only, and any conflict between the headings and text shall be resolved in favor of the text.


29. **Invalid Provision.** Except as provided in the following Section 30, if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a judicial or administrative body, such holding shall not affect the validity, unenforceable or void materially alters the obligations of either party in such manner as to cause serious financial hardship to a party, or causes a party to act in violation of its articles or bylaws, the affected party(ies) shall make all reasonable efforts, with the cooperation and good faith efforts of the other party, to negotiate amendments to this Agreement that will abrogate the undesirable effects of such decision, failing which this Agreement may be terminated by the affected party(ies) under paragraph (x) of Subsection 23(b) and paragraph (iv) of Section 23(c) above or such shorter time periods as may be required to comply with such decision. Further, should any provisions within this Agreement ever be reformed or rewritten by judicial body, the provisions as so rewritten shall be binding upon the parties hereto.
30. **Reformation upon Change in Law Governing Employment of Physicians.** In the event that the Employer shall no longer be legally authorized to deliver health care to the public through physician employees, with Glen Rose Healthcare, Inc., as a result of any law, rule, regulation or determination enacted or promulgated by federal, state or other administrative body subsequent to the date hereof, based upon the advice of legal counsel to the Employer, the Employer shall make a proposal for modification of its medical practice as carried on by and through its physician employees intended to comply with the law and otherwise carry out the intent of the parties as set forth in this Agreement and transmit notice of the proposed modification to the Physician. If the Employer and the Physician are unable with sixty (60) days thereafter (or such shorter time as may be permitted by law in the opinion of legal counsel to the Employer) to agree upon a modification to their employment relationship that legal counsel to the Employer agrees will effect compliance with law, the Physician and the Employer shall immediately take the following actions: assign this Agreement to another organization selected by the Employer which may employ physicians and offer health care services to the public in the State of Texas (the "New Employer"), which is affiliated with or managed by Glen Rose Healthcare, Inc. The Physician hereby agrees to continue the performance of his/her services under this Agreement for any such New Employer. Both the Employer and the Physician agree to cooperate and deal reasonably and in good faith with each other in negotiating, documenting and effecting any arrangement arising out of the provisions of this Section in order to carry out the purposes and intent of this Agreement.
31. **Assignment.** This Agreement may be assigned by the Employer to an entity wholly owned or controlled, directly or indirectly by Glen Rose Healthcare, Inc., which is authorized by law to employ physicians to engage in the practice of medicine or the New Employer as provided for in Section 30 of this Agreement. The Physician may not assign this Agreement or delegate or subcontract any duties hereunder to any party without the express written consent of the Employer.
32. **Conformance with Law.** Each party agrees to carry out all activities undertaken pursuant to this Agreement in conformance with applicable federal, state, and local laws, rules and regulations, provided, however, that nothing contained herein shall prevent either party from initiating legal action to test the validity of any such law, rule, or regulation.
33. **Good Faith/Arbitration.** In addition to any other applicable provision in this Agreement, and subject to the right of either party to seek a temporary restraining order or temporary injunction from any court of competent jurisdiction to preserve the status quo, the parties adopt the provisions of this Section 33 for dispute resolution. The Employer and Physician will make a good faith effort to resolve any claim or controversy arising out of or relating to this Agreement or an alleged breach hereof, including as to any claim or controversy relating to the Employer's policies and procedures. If a satisfactory resolution does not arise from informal discussions or other appeals mechanisms established by the Employer, either party may submit to the other a written description of the claim or controversy and a proposed method for resolution. If the parties are still unable to resolve the claim or controversy, except as provided below for certain actions to terminate this Agreement, the

parties shall submit the claim or controversy to binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including, without limitation, the AAA Optional Rules for Emergency Measures of Protection, or in accordance with any other rules agreed upon the parties, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The costs of an arbitration proceeding shall be borne equally by the parties. This arbitration provision shall not prevent either party from electing to terminate this Agreement in accordance with the terms of Sections 23(b) or 23(c), but any election to terminate under Sections 23(b) or 23(c) of this Agreement shall be subject to this Section 33; excepting Subsections 23(b)(i), (iii) and (iv) unless the Employer agrees to submit the issue under those Subsections to arbitration, in which case, the arbitration decision shall decide the issue; including whether a default has occurred for which this Agreement may be terminated. Any arbitration proceeding shall be held in Glen Rose, Texas or a location agreeable to both parties for the convenience of the parties.

- 34. INTEGRATION. THIS AGREEMENT, INCLUDING THE ATTACHMENTS HERETO, CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS AND UNDERSTANDINGS, ORAL OR WRITTEN, IN ANY, BETWEEN THE PARTIES IN CONNECTION WITH THE SUBJECT MATTER HERETO. NO MODIFICATION OR AMENDMENT OF ANY OF THE TERMS OR PROVISIONS HEREOF MAY BE MADE OTHERWISE THAN BY A WRITTEN AGREEMENT SIGNED BY THE PARTIES HERETO.**
35. Legal Review. The Employee acknowledges that he/she has been advised, and has been given the opportunity, to review this Agreement with legal counsel before entering this Agreement.
36. Waiver of Breach. The 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 subsequent breach by any party. No covenant, condition, duty, obligation or undertaking that is part of the Agreement shall be waived except by the written consent of the party giving such waiver.
37. Parties Intended to be Benefited. The rights, privileges, benefits and obligations arising under or created by this Agreement are intended to apply to an shall only apply to the Physician (and to the Physician's designated beneficiary(ies) under employee benefit plans or other similar arrangements providing for designation of beneficiaries) and the Employer and to no other persons or entities unless specifically agreed to by the party(ies) who are affected.
38. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and which together shall constitute one and the same Agreement.
39. Execution. *Notwithstanding anything contained in this Agreement to the contrary, or any prior understanding or agreement between the parties relating to employment of the Physician, this Agreement shall in no event be effective or binding on the Employer until it is executed (including execution in counterparts) by both the Physician and the Employer.*

EMPLOYER:

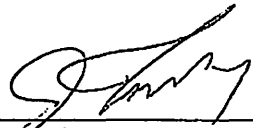
Glen Rose Healthcare, Inc.

By: 
Ray Reynolds

Address for Notice:

Glen Rose Healthcare, Inc.
1021 Holden St.
Glen Rose, TX 76043

PHYSICIAN:


Albert Turk, M.D.

Address for Notice:

Somervell County Salon

Attachment A
To
Physician Employment Agreement of
Albert J. Turk, M.D.

Particular Duties of the Physician

The Physician's duties shall include, but not necessarily be limited to:

1. **Clinical Practice**

- a) Interviewing, examining, and providing medical services and treatment at the Office to patients of the Employer, including, without limitation, patients referred from other physician's and patients from any managed care plan in which the Employer and/or the Physician is a participating provider;
- b) Keeping and maintaining, or causing to be kept and maintained, appropriate records, reports, claims, and correspondence necessary and appropriate in connection with all professional services rendered by the Physician under this Agreement, including, but not limited to, information on the medical services provided and financial information generated therefrom all in accordance with the Employer's policies and protocols regarding medical records, claims preparation and utilization management. This shall include the full utilization of the Hospital's Electronic Health Record Software to include by not limited to Computerized Physician order entry (C.P.O.E.), Physician Documentation (Phys. Doc) and Electronic Prescribing.
- c) Participating in utilization management, quality improvement, risk management and other patient care management programs established by, or carried on for third party payors by the Employer;
- d) Promoting, to the extent permitted by law and the applicable canons of medical ethics, the professional practice of the Employer and assisting in developing a fully integrated health care delivery system as a part of Glen Rose Healthcare, Inc.
- e) Attending, to the extent reasonable and at a minimum to the extent necessary to abide by the Employer's CME policies and the requirements of the Physician's medical board specialty, professional conventions, postgraduate seminars, and functions of professional societies necessary to maintain and improve the Physician's professional skills; and
- f) Providing coverage for medical services and treatment to patients of the Employer who are hospitalized or in other treatment facilities as arranged under this Agreement.

Attachment B
To
Physician Employment Agreement of

Albert J. Turk, M.D.

Compensation Provisions: Based on the Employer's cash Compensation and Benefits Program Objectives and Guiding Principles, during the term of this Agreement, the Physician will be paid a salary and will also be eligible to be paid additional cash compensation, determined as follows:

1. **Original Term.** For the Original Term of this Agreement, the Physician will be paid:

- a) **Base Salary:**
 - a. **Year One (1):** The Physician will be paid an annual salary (the "Base Salary"). The Base Salary will be payable in approximately equal by-weekly payments in accordance with the Employer's normal payroll process. The Base Salary for Year One (1) will be an annual salary of One Hundred Eighty Thousand and no/100 Dollars (\$180,000).
 - b. **Year Two (2):** See extended Term: Base Salary of \$180,000 plus incentive compensation.
- b) **Incentive Compensation:** For Year one, two and each "Extended Term" of this Agreement the Physician shall be paid incentive compensation based on the Actual Relative Value Work Units (RVU's) compared to a targeted number RVU's. Such incentive compensation will be calculated and paid as follows:
 - a. The quarterly targeted RVU's shall be one-fourth of the annual median worked RVU's for the provider's specialty according to the most recent MGMA physician compensation and productivity publication.
 - b. The actual number of worked RVU's per quarter shall be subtracted from the targeted work RVU's.
 - c. Any worked RVU's in excess of quarterly targeted work RVU's shall be paid to Physician as incentive compensation at the median value per worked RVU per the provider specialty according to the most recent MGMA physician compensation and productivity publication.
- c) **Extended term:** for the second year and the first extended term of this agreement, the Base Compensation will be hundred and \$180,000 plus incentive compensation.
 - a. At the end of each Agreement year, the RVU target amount shall be renegotiated based on changes of median work RVU's and medium compensation for Family Practice.

2. **Withholding.** In accordance with section 12 of this agreement the payments of cash compensation to the physician will be back to a federal income taxes, Social Security insurance contributions (FICA), other

withholdings and other payroll deductions required by law, elected by the physician, or otherwise permitted by this agreement.

3. **Modification to Composition Plan Based on Changes in Law.** The Employer and the Physician acknowledge that the payment of compensation hereunder and the method of determining compensation hereunder is at all times intended to be in compliance with the applicable law, including in particular the physician self-referral law known as the "Stark law" and the regulations promulgated hereunder. If upon adoption of final regulations under the Stark Law the Employer in consultation with legal counsel determines that the method of determining and/or paying compensation hereunder should be modified, the Employer through the Board shall adopt a new compensation formula and/or payment mechanism designed to preserve the principles underlying the Employer's cash flow compensation model to the extent possible consistent with applicable law. The Physician shall be consulted in connection with the development and implementation of any such modifications, which, if implemented, shall govern the Physician's compensation hereunder. In the event that Employer and Physician are unable to agree with in sixty (60) days to such modifications, either party may terminate this Agreement by providing not less than thirty (30) days written notice to the other party.
4. **Benefits.** Physician will be entitled to certain benefits according to Employers benefits plans, as they may be amended from time to time. At the time of execution of this Agreement, these include the following:
 - a. Basic health and medical insurance for Physician and Physician's dependents, as that term is defined by any relevant plan document;
 - b. Participation in a retirement plan;
 - c. Dental, short term disability benefits, etc., are available for purchase at the Physician's expense;
 - d. Paid Time Off (PTO) 22 days annually; CME 5 days annually
 - e. Any unused PTO and CME days will be forfeited at the end of each contract year if not used.
 - f. Life Insurance; and
 - g. Long Term Disability
5. **Other.**
 - a. Glen Rose Healthcare Inc. will reimburse Physician up to \$2500 per year for Continuing Medical Education expenses and up to \$2500 per year for license, dues and subscription expenses.
 - b. Glen Rose Healthcare Inc. also agrees to make the monthly payment of \$653.00 for student loan payments that were incurred during the course of Physician completing his medical education. The payment of \$653.00 per month will be paid monthly for each month that the physician is employed by Glen Rose Healthcare Inc. or until student loan is paid in full.

Attachment C
To
Physician Employment Agreement of
Albert J. Turk, M.D.

Employer-Approved Outside Activities:

- 1) Employment as an Emergency Room Physician for EmCare at Glen Rose Medical Center.

Such employment with EmCare shall be at a time that does not conflict with the regular scheduled office hours of Physician or the treatment of patients who require hospital care at Glen Rose Medical Center.

- 2) Employment/Association with Dr. Steve Bishop in Acton, Texas. Employer agrees the physician may practice with Dr. Bishop one (1) day each week. The day shall include one-half day of regular time-off from Office Practice and one-half day that physician would routinely be in the office. The compensation of physician has been reduced from an annual rate of \$200,000 to \$180,000 to reflect the time the physician will be practicing with Dr. Bishop in Acton.

Somervell County Seal