

Employment Agreement

THIS AGREEMENT, made this ____ day of _____, 20__ (the “Execution Date”), and effective as of _____, 20__ (the “Effective Date”), is by and between Medical Practice, P.C., a professional corporation (“Employer”) organized and existing in the State of _____, and John Surgeon, M.D. (“Physician J’), an individual.

Recitals

Whereas, Employer and Physician originally entered into an employment relationship pursuant to that certain Physician Employment Agreement executed on _____, 20__, and now intend to continue that relationship pursuant to the terms, conditions and obligations contained only in this Agreement;

Now, therefore, in consideration of the mutual undertaking of the parties, and other good and valuable consideration the sufficiency of which the parties hereby acknowledge, it is agreed as follows:

1. Agreement to Employ. Employer employs Physician and Physician hereby accepts employment by Employer on the terms and conditions contained in this Agreement; provided, Physician’s employment shall be contingent upon obtaining [specific credentials] on or before [date or event].

2. Term. This Agreement shall govern the relationship of the parties for a period commencing on _____, 20__ (the “Effective Date”), and continuing through _____, 20__ (the “Initial Term”). This agreement shall automatically be renewed for an additional term of one year upon the expiration of the Initial Term, unless either party gives notice to the other at least 120 days prior to the expiration date of his/its intention that renewal not occur.

3. Physician’s Duties.

(a) Physician shall devote his or her full-time and best professional efforts to the performance of all duties hereunder under the direction of Employer; provided, nothing herein is intended to interfere with Physician’s professional autonomy as a physician. During the term of this Agreement, Physician will not engage in the practice of medicine except as an employee of Employer unless specifically authorized to do so by the Employer. Physician may engage in activities outside his employment not otherwise precluded by this Agreement such as personal investments, hobbies, and civic activities, which do not interfere with the full performance of his duties under this Agreement.

(b) During the term of this Agreement, all fees, salaries, commissions, royalties and other compensation (other than regular compensation provided in this Agreement or fees specifically exempted by Employer) attributed to the professional services or activities of Physician shall be the

property of Employer. Consistent with the foregoing, Physician hereby assigns to Employer all amounts, which he has a right to receive, including, without limitation, fees due him under the Medicare Program.

(c) Physician shall render reasonable and appropriate treatment to every patient presented. Physician shall timely complete all required medical records on each patient treated. Physician shall attend professional meetings and educational programs to continue his medical education. Physician shall participate in Employer's professional and community education programs, as requested by Employer. Physician shall at all times act in a manner which furthers the professional image of Employer and shall take such action as may be necessary to maintain and encourage the Employer's relationship with its patients and other professionals.

4. Compensation.

[ALTERNATIVE #1] Employer shall pay to Physician the following compensation: during the Initial Term the sum of One Hundred Thousand Dollars (\$100,000); during the second year after the Initial Term the sum of One Hundred Fifty Thousand Dollars (\$150,000). Employer shall pay compensation to Physician in equal bi-weekly installments, less required deductions, including payroll taxes.

[ALTERNATIVE #2]

(a) Employee's Base Salary. Physician shall receive Base Salary from Employer. The amount of Base Salary for each non-shareholder physician shall be Ninety Thousand Dollars (\$90,000). Base salary shall be paid in equal bi-weekly installments. Payroll tax and other usual, customary and required withholdings shall be withheld from each payment of Base Salary.

(b) Employee's Additional Performance Bonus. Physician shall receive a performance bonus (the "Bonus") in addition to Base Salary. The Bonus shall be based generally upon the quality and value to Employer of Physician's services. Payroll tax and other usual, customary and required withholding shall be withheld from each payment of Bonus. The amount and timing of Physician's Bonus shall be determined from time to time by Employer's Board of Directors in its exclusive discretion. The Bonus will be paid out of the Employer's cash after its debts and other payables have been paid or otherwise satisfied and taking into consideration its cash requirements for current and anticipated expenses. Employer's Board of Directors shall establish Physician's Bonus independently of each other physician-employee bonus. Employer's Board of Directors shall, however, use substantially the same criteria for determining the amount of Bonus for each physician-employee. Employer's Board of Directors shall base the amount of Bonus each physician-employee may receive on the following factors:

- (i) The physician's productivity measured in relative value units (RVUs);
- (ii) Market forces, which limit or influence the physician's access to new or existing patients;

- (iii) The physician's participation in seeing patients in outreach clinics;
- (iv) The physician's participation in practice development and marketing activities;
- (v) The physician's participation in administrative and other committees formed from time to time by Employer;
- (vi) The physician's compliance with procedures established in order to comply with Medicare, Medicaid and managed care organization participation and reimbursement guidelines, and other legal requirements applicable to Employer;
- (vii) The physician's compliance with representing the Employer by participating in various committees formed with or by hospitals, other facilities and business affiliates or Employer;
- (viii) The physician's compliance with performing the duties as a medical director of a hospital or other healthcare entity or facility other than Employer;
- (ix) The physician's compliance with wearing appropriate professional attire while on duty.

5. Benefits.

(a) Malpractice Insurance. Employer shall provide malpractice insurance on Physician with basic liability limits of \$6 (or such other amount and with such terms as Employer may require). At the time of the Effective Date, the parties anticipate that this coverage will be on an "occurrence" basis. If at any time during Physician's employment (whether during or after the term of this Agreement) this coverage is provided on a "claims made" basis, Physician shall either continue insurance coverage after termination of employment or shall provide extended reporting (also known as "tail" coverage) by endorsement or otherwise regarding services physician provided on behalf of Employer. If Employer terminates Physician's employment, the Employer shall bear the cost of obtaining the extended reporting coverage; if Physician terminates his or her own employment, then Physician shall bear the cost of the extended reporting coverage. Upon request of Employer, Physician shall promptly provide Employer with evidence of compliance with this provision.

(b) Business Expenses. During each year of the term of this Agreement, Employer shall reimburse Physician, or pay on Physician's behalf, expenses of up to an annual amount of Five Thousand dollars (\$5,000) for the following: attending continuing medical education seminars, professional meetings or professional conventions; membership dues in professional associations; license fees; and medical texts and subscriptions to professional journals. Physician may not carry over any expense allowance that is unused during a year to a future year. Reimbursement for expenses described above will be subject to the submission of appropriate documentation and

records demonstrating the payee, the time, place and purpose of the expense. In its exclusive discretion, Employer may refuse to reimburse Physician for any expense that is not documented in a reasonable and businesslike manner.

(c) **Supporting Facilities and Services.** Employer shall provide to Physician a suitably equipped office and clinic space, use of [specified equipment], and the service of an adequate number of support personnel qualified to perform their duties including without limitation [e.g., one surgical scrub nurse]. Employer shall, at its expense, provide all necessary facilities, medical instruments, equipment, supplies, as well as all necessary nursing, technical, clerical and other support personnel required for the providing of medical services to the patients of the Physician.

(d) **Retirement Plan.** Physician may participate in any retirement plan for which Employer's physician employees are generally eligible according to the terms of the plan.

(e) **Vacation and Sick Leave.** Physician is allowed [___] [business days] [calendar days] during a calendar year away from work for vacation, illness, or continuing education. [New employees: Physician will not be eligible for vacation time until [180] days after the Effective Date of this Agreement. [___] days of allowed time off that is not used in one calendar year may be carried over and used in the next calendar year. On termination of this Agreement, Physician will be compensated for unused leave time.

6. Acceptance of Patients; Health Plans. Physician shall participate in the Medicare and Medicaid programs, and agrees to accept Medicare, Medicaid and indigent patients into the practice. Physician shall also participate in managed care programs in which Employer participates. Physician shall become credentialed by all such programs and payers in a timely manner, including execution of all other applications, agreements and instruments necessary to obtaining and maintaining the credentials with such programs and plans.

7. Representations and Warranties. Physician represents and warrants to Employer the following:

(a) On the Effective Date of this Agreement and throughout Physician's employment by Employer, Physician will:

- (i) be fully licensed as a physician by the State;
- (ii) be board certified or "board eligible" in [specialty];
- (iii) as deemed appropriate by the Employer from time to time, have staff membership and clinical privileges in [specialty] at those hospitals and other facilities at which Employer provides services;
- (iv) have a valid license from both the federal and [state] governments to prescribe controlled substances.

(b) Physician is not now, nor has Physician ever been, a defendant in a medical

negligence lawsuit other than as fully disclosed in writing to Employer. Physician will immediately disclose to Employer the details of any medical negligence lawsuit which is commenced against him or her, as well as any facts which reasonably might give rise to any other legal action against Employer.

(c) Physician has never had his or her medical license or any clinical privileges suspended or terminated, nor has Physician surrendered a medical license or clinical privileges. Physician will immediately disclose in writing to Employer the details of any suspension, termination or surrender of his or her medical license or his or her clinical privileges, or any peer review action or investigation which is commenced against Physician.

(d) Physician has never had his or her authority to prescribe controlled substances limited or terminated. Physician will immediately disclose in writing to Employer the details of any restriction of Physician's authority to prescribe controlled substances.

(e) Physician is not now, nor has Physician ever been, excluded from any government sponsored healthcare payment program, such as Medicare or Medicaid. Physician will immediately disclose in writing to Employer the details of any exclusion from a government sponsored healthcare program; and Physician will immediately disclose, in writing to Employer any action brought against him or her that might result in exclusion from a government sponsored healthcare program.

(f) All of the information contained in Physician's curriculum vitae, a copy of which is attached hereto as Exhibit A, is true and correct. Physician will immediately disclose to Employer, in writing, the details of any material change to his or her curriculum vitae.

(g) Except as Physician discloses to Employer in writing prior to the execution of this Agreement, Physician has never been terminated as an approved provider by any managed care organization or third-party payer. Physician will immediately disclose in writing to Employer his or her termination from any managed care organization, and any proceeding undertaken by any managed care organization that might result in such termination.

(h) Physician has never been convicted of a felony, or pled guilty or no-contest to any accusation of having committed a felony. Physician will immediately disclose to Employer in writing the fact of any indictment or criminal information brought against him or her by any jurisdiction.

(i) Physician is fully capable, both physically and mentally, of carrying out the obligations of this Agreement. Physician will immediately disclose in writing to Employer the existence of any physical or mental condition which reasonably would materially impair his or her ability to carry out the obligations of this Agreement.

(j) Physician will indemnify and hold the Employer harmless for any costs, fees, expenses or damages that may arise out of any action that occurred before [Effective Date].

(k) Physician consents to be subjected to drug testing on request of Employer, and to

random screening for drug use.

- (l) Employer represents and warrants to Physician the following:
 - (i) Employer's business is not bankrupt and is not in receivership and there are no legal impediments preventing Employer from carrying on the business of operating a medical practice or entering this agreement.
 - (ii) Neither Employer nor any of its shareholders have been excluded from any government healthcare program, including the Medicare and Medicaid programs.
 - (iii) Employer will inform Physician of any facts and occurrences that reasonably indicate that Physician may become a party to legal action.

8. Disability.

(a) Compensation while disabled.

- (i) If, in the determination of Employer, Physician shall have become disabled such that Physician is unable to perform his or her duties as an employee of Employer, Physician shall be entitled to receive his or her monthly salary as then in effect pursuant to this Agreement for the first ninety (90) days of such disability.
- (ii) Unless Employer determines otherwise, if the period of disability shall continue for at least ninety (90) days, Physician's salary shall then terminate; thereafter, Physician shall have no right to any salary or other benefits or compensation from Employer so long as such disability continues.
- (iii) If Physician is unable to resume the performance of his or her regular duties in a manner and on terms satisfactory to Employer within twelve (12) months from the commencement of disability, this Agreement shall, at Employer's sole discretion, terminate and Physician shall have no further rights under this Agreement.

- (b) Determination of disability.** If any dispute exists with respect to whether Physician is disabled in a manner entitling Physician to benefits from Employer as specified above, the determination as to the existence of Physician's disability shall be made by a physician who is licensed to practice medicine and who is acceptable to both Employer and Physician. If no physician mutually acceptable to both Employer and Physician can be selected, the determination of such disability shall be made by a panel of three (3) physicians, one to be chosen by Employer, one to be chosen by Physician, and one to be chosen by those two physicians. A determination of such panel shall be final and binding upon all parties. Expenses relating to such determination shall be borne by Employer.

9. Recordkeeping and Billing.

(a) **Records.** Physician agrees to maintain complete and accurate records of patient encounters, and accurately complete patient charts and other documents needed for billing purposes (including without limitation assignment of the appropriate billing code(s) to patient encounters and provision of sufficient information in each patient's chart to establish the medical necessity of the services provided).

(b) **Ownership of Records.** Employer is the owner of all patient charts of the practice, including charts of patients treated by Physician in the course of providing services under this Agreement, and Physician has no ownership interest in such records. Upon termination of this Agreement for any reason, Employer will retain all patient and other business records. After termination of this Agreement, patients may request in writing to have a copy of his or her chart be sent to the Physician's then current practice location to permit the continuity of the patient's care, upon the receipt by the Practice of required written authorization for release of the records and payment of reasonable copying and administrative fees for transmitting the records.

10. Confidentiality. Physician's employment by Employer exposes Physician to Employer's confidential information, which includes, but is not limited to, the following:

- (a) The identity of, and personal and medical information concerning, Employer's patients;
- (b) Employer's managed care provider agreements and identity of enrollees under such provider agreements;
- (c) Employer's medical case management methods and protocols, its quality improvement and risk management process, and the documents devised by or for Employer for documenting patient analysis, care and progress (whether those forms are in written, printed or electronic format);
- (d) Employer's general medical business contracts, contacts and patient referral sources;
- (e) Employer's personnel information, including, without limitation, the contents of personnel files and information about employment agreements and arrangements;
- (f) Employer's financial and business data, including, without limitation, its accounting records, financial statements, cost records, billing and reimbursement records, revenue projections and budgets, third-party payer agreements; and
- (g) Employer's analyses, compilations, forecasts, studies or other similar and related documents that are based on confidential information.

Employer's confidential information is proprietary and valuable to Employer; if Physician were to disclose to anyone outside Employer any confidential information, Employer would be irreparably damaged. Physician agrees that he or she will never (whether during the term of this Agreement or

after its termination) disclose to anyone outside Employer any confidential information unless: (1) The president of Employer specifically consents to the disclosure; or (2) Physician is compelled by force of law to make such disclosures. In the event either (1) or (2) above occurs, Physician shall disclose no other information than that which is the subject of the Employer's specific consent; that which is required to benefit a patient in the event of a medical emergency or that which is compelled by law. In the event that Physician is compelled by law to make such a disclosure, the Physician shall notify the Employer of the existence of the legal process that purports to compel him or her to make the disclosure; this notice shall be given to Employer's president; notwithstanding any other provision of this Agreement to the contrary, this notice shall be given at the earliest possible time after Physician becomes aware of the existence of such legal process, and by the swiftest means of communication reasonably available to the parties.

11. Restrictive Covenant.

(a) As part of the consideration for the covenants and promises of Employer under this Agreement, Employee agrees that during the term of this Agreement, and for a period of two (2) years from the date of termination of Employee's employment with the Employer, Employee will not, directly or indirectly engage in any business that is in competition with the Employer, in any manner, within a ten (10) mile radius of _____ or any other facility served by the Employer ("the prohibited area") for Employee's own benefit or for the benefit of any other person, firm or company other than the Employer. This prohibition includes solicitation of patients or business contracts in any manner for the same two (2) year period.

(b) The Employer and Employee agree that violation of this section would cause irreparable injury to the Employer. Employer and Employee agree that in the event that Employee violates this section, a court may immediately enter, and Employee shall be bound by, an injunction from practice consistent with the provisions of this section.

(c) For a period of two (2) years following termination of the employment for any reason, Employee shall not directly or indirectly solicit: (i) the employment of any person who is employed by the Employer at the time the employment of Employee is terminated and Employee shall not hire or otherwise employ, either full-time or part-time, any personnel of the Employer; or (ii) any person who is, or in the five years prior to the termination of Physician's employment was, the recipient of medical services from Employer or any of Employer's physicians, for the purpose of continuing or establishing a professional relationship with such person.

12. Indemnification. Each party agrees that it will hold harmless and indemnify the other, its successors and assigns, from and against any and all liabilities, costs, damages, expenses and attorney fees resulting from or attributable to any and all acts or omissions to act; provided, however, that indemnification shall not be required by such other party for such liabilities, costs, damages, expenses and attorney fees to the extent that they are compensated through insurance.

13. Termination.

(a) **Grounds for Termination.** Notwithstanding the provisions of Section 2, this Agreement may be terminated in the following circumstances:

- (i) *Death or disability.* By Employer upon the death of Physician, or upon continuing disability of Physician in accordance with Section X (“Disability”), herein.
- (ii) *Discontinuance of business.* By Physician immediately upon: (i) Employer’s ceasing to do business for any reason; (ii) commencement of voluntary or involuntary bankruptcy proceedings of Employer or the appointment of a receiver for Employer; or (iii) Employer’s merger with or acquisition by another entity.
- (iii) *Breach by Physician.* By Employer upon a material breach of any of the terms of this Agreement by Physician, which breach is not cured within thirty (30) days after Employer has given written notice of the breach to Physician.
- (iv) *Breach by Employer.* By Physician upon a material breach of any of the terms of this Agreement by Employer, which breach is not cured within thirty (30) days after written notice thereof is given to Employer by Physician.
- (v) *License and privileges.* By Employer immediately upon the occurrence of any action by Physician which, in the reasonable opinion of Employer, could: (i) jeopardize the health or well-being of a patient of Employer; or (ii) gives (or could give) rise to disciplinary action by State Board of Medical Licensure (or such other entity with similar authority over Physician), or the denial, revocation, limitation or suspension of staff membership or clinical privileges at any hospital or facility where Physician or the Employer’s other physicians customarily provide professional services, or the loss or limitation of Physician’s authority to prescribe controlled substances. The institution of disciplinary action by any governing body shall not be a prerequisite to termination under this provision.
- (vi) *Regulatory action.* By Employer immediately upon the imposition of any sanction, restrictions or limitations by any governmental authority having jurisdiction over Physician to such an extent that Physician cannot gainfully engage in the professional practice of medicine for which the Physician is employed, including without limitation the imposition of administrative sanctions or civil or criminal penalties in connection with any government sponsored healthcare program.
- (vii) *Failure to perform.* By Employer upon Physician’s refusal or inability for any reason (other than total or partial disability, the consequences of which are specifically addressed in Section X, above) to render all those professional

services to patients required under this Agreement in the manner required by this Agreement and/or the instructions of Employer, provided termination under this subsection shall be conditioned upon Employer: (i) attempting to contact Physician at Physician's last known address in order to confer with him or her regarding the reason for non-performance; and (ii) attempting to secure Physician's commitment, as deemed satisfactory in the exclusive determination of Employer, that Physician will continue the performance of Physician's obligations under the terms of this Agreement. Provided further, however, Employer shall satisfy the foregoing conditions only once, and it shall not be required to satisfy them for Physician's subsequent refusal or inability for any reason to render all those professional services to patients required under this paragraph.

- (viii) *Unauthorized compensation.* By Employer immediately upon Physician's engaging in medical practice for himself or herself or for another Employer, group practice or entity while employed by Employer without the approval of Employer.
- (ix) *Practice standards.* By Employer immediately upon Physician's failure to render services in accordance with the qualitative standards applicable to Physician's practice of medicine, including without limitation, conduct which exposes Employer to professional liability claims from patients or the personal representatives thereof.
- (x) *Uninsurability.* By Employer immediately upon Physician becoming uninsurable for professional liability coverage at standard rates for Physician's specialty with Employer's insurer.
- (xi) *Criminal and other improper actions.* By Employer immediately upon Physician engaging in any improper or unlawful act involving a controlled substance, or becoming addicted to drugs or alcohol, or engaging any action that involves moral turpitude or immoral conduct or which would be punishable as a felony if Physician were convicted of having engaged in such action; however, no conviction shall be required as a condition to Physician's termination under this provision.
- (xii) *Sexual harassment.* By Employer upon Physician's engaging in any action of unlawful sexual harassment, or the violation of any sexual harassment policy established by Employer.
- (xiii) *Third-party payer action.* By Employer upon a third-party payer's removal of Physician from its list of approved providers for any but economic reasons, or the termination by a third-party payer of its participation agreement with Physician for any reason other than economic reasons.

- (xiv) *Misrepresentation by physician.* By either party immediately upon any misrepresentation of a fact which is material to this Agreement, or the breach of any warranty which is material to this Agreement, in which event no notice or opportunity to cure the breach or misrepresentation is required before the termination is effective.
- (xv) *Mutual Agreement.* By both parties upon their mutual agreement, evidenced by a writing executed by both parties.

(b) Rights Upon Termination. Upon the termination of this Agreement and of Physician's employment by Employer, Physician: (i) shall have no claim or right to inspect Employer's books, records, charts, patient lists, accounts or other assets or documents relating to Employer's operations; (ii) may copy at own cost any patient treatment records and case histories if the subject patient request, in writing, that such documents be made available to Physician; (iii) shall promptly complete all patient charts and records; and (iv) shall have no interest in or right to receive any portion of Employer's property other than such salary benefits as are provided in this Agreement.

14. Miscellaneous Provisions

(a) Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by certified mail to Employee's last known address in the case of Employee, or if delivered to its principal office in the case of Employer.

(b) Assignment. Except as provided under § _____ above, neither Employee nor anyone acting on Employer's behalf shall not assign or convey to anyone the right to receive payments hereunder, which payments and rights thereto are expressly declared to be nonassignable and nontransferable.

(c) Entire agreement. This Agreement constitutes the entire Agreement between the parties and shall be deemed to supersede and cancel any other Agreement between the parties relating to Employee's employment with Employer.

(d) Governing law. This Agreement is drawn to be effective in and shall be construed in accordance with the internal laws of the state of _____.

(e) Waiver. A waiver of any of the terms and conditions hereof by either party shall be free to reinstate any such term or condition, with or without notice to the other party.

(f) Amendments. No amendment or variation of the terms and conditions of this Agreement shall be valid unless the same is in writing and signed by all of the parties hereto.

(g) Severability. Except as otherwise provided by this Agreement, any provision of this Agreement that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof, and the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

(h) Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration, in the city of, in accordance with the rules then obtained from the American Health Lawyer's Association Dispute Resolution Service, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled to recover reasonable attorney fees.

In Witness Whereof, the parties have executed or have caused their authorized representative to execute this Agreement as of the date first above written.

Employer:

By: _____

Title: _____

Physician:

Print Name: _____

Exhibits: _____