

**Editor's Note: This sample contract, provided by Phoenix-based May, Potenza, Baran & Gillespie, PC (www.maypotenza.com), is intended as an *example* only.**

## HEALTH PRACTITIONER EMPLOYMENT AGREEMENT

THIS HEALTH PRACTITIONER EMPLOYMENT AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_, P.C. ("Employer") and \_\_\_\_\_, ("Employee").

### R E C I T A L S :

A. Employer is a professional corporation whose shareholder, \_\_\_\_\_ ("[OWNER INITIALS]") is licensed to practice \_\_\_\_\_ in the State of \_\_\_\_\_. Employer owns and conducts a \_\_\_\_\_ practice at \_\_\_\_\_, \_\_\_\_\_, or at such other location or locations as Employer may do business from time to time in the \_\_\_\_\_, \_\_\_\_\_ Metropolitan Area (the "Practice").

B. Employee is, or will be, as of the Effective Date, duly licensed by the State of \_\_\_\_\_ as a \_\_\_\_\_ and certified by the \_\_\_\_\_ Joint Board of Regulation of \_\_\_\_\_s (the "Board"). Employee desires the opportunity to be employed by Employer and to assist Employer in the conduct of the Practice, and Employer desires to employ Employee on the terms and conditions set forth in this \_\_\_\_\_ Employment Agreement ("Agreement").

### A G R E E M E N T :

In consideration of the foregoing and the mutual covenants and agreements herein contained, Employer and Employee agree as follows:

#### 1. Employment; Duties.

1.1 Subject to and in accordance with the terms of this Agreement, Employer hereby employs Employee and Employee hereby accepts such employment. Employee shall devote no less than \_\_\_\_\_ (\_\_\_\_) hours per week of patient care and related administrative duties, based on a regular work schedule approved by Employer, in addition to such other responsibilities as may be assigned from time to time by Employer. Employee is expected to devote Employee's full professional energies, interests, abilities and time to the conduct of the Practice.

1.2 Employer shall be responsible for, and shall assist Employee in scheduling and assignment of the particular duties, hours, days and administrative procedures for Employee's performance of services hereunder, and Employee shall at all times cooperate with Employer in connection therewith.

1.3 Employee shall have no authority to bind Employer in any manner whatsoever in connection with any contract or agreement and shall not enter into any oral or written contract or agreement with any third party which would in any way bind Employer, except as expressly authorized in writing by Employer.

1.4 Employee shall not accept other full or part-time employment during the term hereof without the prior written approval of Employer, which approval may be granted or withheld in Employer's sole and absolute discretion. As a condition precedent to obtaining such written consent, however, Employee must obtain additional \_\_\_\_\_ malpractice coverage, apart from coverage provided by Employer, for work performed outside the Practice in such amounts and from a carrier acceptable to Employer, and must provide acceptable evidence thereof to Employer. Responsibilities of the Practice will take precedence over additional employment duties which may exist outside the Practice and may not interfere in any manner with Employee's duty to perform Direct and Indirect Patient Care and Administrative Responsibilities as described herein. Notwithstanding anything herein to the contrary, any outside employment by Employee shall at all times be subject to the process of Section 5 hereof.

1.5 Employee shall, in the course of the performance of Employee's duties hereunder, comply with all (i) clinical policies and procedures, mandated by any health plans, payors or hospitals or their staffs, that are applicable to the Employee, the Practice or any of its employees; and (ii) laws and regulations applicable to Employee and to the conduct of the Practice. Employee represents and warrants that as of the Effective Date, (i) Employee shall be licensed as a \_\_\_\_\_ in the State of \_\_\_\_\_ or eligible for such licensure; (ii) Employee shall be certified by the Board; (iii) Employee shall hold a current Drug Enforcement Administration License; and (iv) there shall be no pending actions, proceedings or citations which would in any way restrict Employee's ability to perform the services contemplated under this Agreement. In the event that, during the term hereof, any licensing or governing authority shall institute any proceeding which may permanently or temporarily affect the ability of Employee to practice \_\_\_\_\_ in the State of \_\_\_\_\_, Employee shall notify Employer immediately of the commencement of such proceeding.

1.6 Employee shall complete all patient records and charts in accordance with the standards and procedures established from time to time by Employer, and shall promptly provide Employer with such billing information and records as may be required by Employer in order for Employer to bill for Employee's services.

1.7 Employee shall abide by all terms, procedures and policies adopted from time to time by Employer with respect to the Practice and communicated in writing to Employee.

1.8 Employee must seek a minimum of a two week's prior approval by Employer for any vacation days and/or C.M.E. days which will remove the Employee from the Practice or from the coverage of call so that the Practice can make prior arrangements for coverage and call.

1.9 Employee shall, at all times, maintain the highest level of professionalism in connection with Employee's relationship with Employer, other physicians and staff employed by (or sharing space with Employer), other physicians in the community, all of the patients in the Practice, and all facilities at which Employer or Employee provides services.

## 2. Term and Termination.

2.1 This Agreement shall become effective on the later of \_\_\_\_\_, 201\_\_\_\_ or the date on which Employee actually commences employment (the "Effective Date") and shall continue until \_\_\_\_\_, 201\_\_\_\_ (the "Stated Term"). Thereafter, this Agreement shall automatically renew on each anniversary of the Effective Date, unless sooner terminated as provided herein.

2.2 Either party may terminate this Agreement for any or no reason other than for "Cause", as described below, upon giving the other party fifteen (15) days prior written notice.

2.3 Employer may terminate this Agreement and Employee's employment hereunder for "Cause" without any prior notice thereof. For purposes of this Agreement, the term "Cause" shall mean: (i) death or disability of Employee; (ii) a breach of any of the terms of this Agreement, which breach is not cured within ten (10) days after written notice from Employer; (iii) the Employee conducts himself or herself in an unprofessional, unethical or fraudulent manner, or is found guilty of unethical or unprofessional conduct by any board, institution, organization or professional society having any privilege or right to pass judgment on the conduct of the Employee; (iv) the willful failure by Employee to substantially perform Employee's duties hereunder; (v) the suspension, revocation or cancellation of Employee's license within the State of \_\_\_\_\_ or the imposition of any restrictions or limitations by any governmental or quasi-governmental authority having jurisdiction over Employee and Employee's license; or (vi) the loss or restriction of Employee's privileges, if any, for any reason, at any \_\_\_\_\_ facility at or for which Employer or any of its employees is then providing services.

## 3. Compensation.

3.1 In consideration for the services to be performed by Employee, Employee shall be paid an annual base salary of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), exclusive of bonus. Employee shall be paid bi-weekly. Such compensation shall be based on the required work week. All amounts paid to Employee shall be subject to, and net of any and all withholding and other employment taxes or offsets required under applicable state or federal law.

3.2 In addition to the compensation set forth above, Employee shall be entitled to such additional and/or bonus compensation described in Exhibit "A".

3.3 Employee agrees and acknowledges that, during the term of this Agreement, all fees or income generated by Employee or Employer which may be charged or collected, whether by Employer or Employee, or on their behalf, for any services rendered by Employee

hereunder, shall be the sole property of Employer. Employer shall have the sole and absolute right and authority to bill and collect for services rendered by Employee pursuant to this Agreement, and Employee shall not separately bill any patients treated by Employee during the term hereof. Any amount tendered to, or collected by Employee by any patient or third party payor for services rendered by Employee pursuant to this Agreement shall be promptly remitted to Employer.

#### 4. Vacation/CME; Fringe Benefits.

4.1 Employee shall vest eighty-three one-hundredths (0.83) days of paid leave for each full month worked by Employee during the Stated Term of this Agreement, and for each month thereafter. Such leave time shall include time off for vacation or personal reasons. The time or times during which leave may be taken shall be by mutual agreement of Employer and Employee. Employee's entitlement to leave time shall vest semi-annually, such that Employee will have fully vested five (5) days of paid leave upon completing six (6) months of employment, and ten (10) days after completing twelve (12) months of employment. In addition to the foregoing, Employee shall accrue five (5) days of sick leave per year, which days may be used only for injury or illness of Employee. Unused leave or sick time in any year during the term hereof shall not be carried over to any subsequent year, and shall not entitle Employee to additional compensation in lieu of the use of such leave or sick time. If this Agreement is terminated prior to the Stated Term, and Employee has taken leave or sick time in excess of time vested, Employee shall be obligated to promptly remit to Employer any payments for leave or sick time taken in excess of vested leave or sick time.

4.2 Employer shall reimburse Employee for actual cellular telephone charges in an amount not to exceed Twenty and NO/100ths Dollars (\$20.00) per month, payable quarterly in arrears.

4.3 Employer shall pay premiums, not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per month for major \_\_\_\_\_ health insurance for Employee and shall provide Employee with the opportunity to procure such insurance for Employee's family at Employee's expense, with such insurer as may be determined by Employer. Employer shall also purchase life insurance for Employee in the face amount of One Hundred Thousand Dollars (\$100,000.00).

4.4 Employee shall be entitled to a maximum of twenty (20) days of unpaid maternity/paternity leave per year in addition to the leave time specified in Section 4.1 above. Such days of maternity/paternity shall not be cumulative, and shall not carry over from year to year.

4.5 Employer shall provide or cause to be provided to Employee "claims made" professional errors and omissions liability insurance coverage (i.e., malpractice insurance), covering Employee's performance and services for and on behalf of Employer, in amounts and with such carriers as may be determined, from time to time, by Employer.

4.6 Employee shall be entitled to five (5) paid days for approved CME training during the each year hereof, in addition to reimbursement for approved CME courses and related expenses, including room, travel and meals, to a maximum of One Thousand Dollars (\$1,000.00) during any year. Any such time taken for CME by Employee shall be as agreed to by Employee and Employer.

4.7 Employer shall pay, for and on behalf of Employee, their professional license fees and hospital staff fees and dues at institutions at which Employee provides services for and on behalf of Employer.

4.8 Under extraordinary circumstances, should additional time-off be requested by Employee which does not meet the criteria of vacation time, sick time, C.M.E. time, unpaid maternity/paternity leave or disability leave, Employee must first receive prior approval by Employer to take additional time off, which approval may be granted or withheld in Employer's sole and absolute discretion. Additionally, Employee's salary for that period of leave will be uncompensated. Associated benefits will not continue to accrue during a period of an uncompensated absence from the practice.

#### 5. Employee's Additional Covenants.

5.1 For so long as Employee is employed by Employer, and for a period of twelve (12) months after the termination of Employee's employment for any or no reason, whether by Employer or Employee, Employee shall not (i) be employed by any person or entity engaged in the practice of \_\_\_\_\_ within a five (5) mile radius of the Practice, or any of Employer's then existing office locations; or (ii) directly or indirectly, solicit any patients of the Practice, or solicit any employees of Employer to work for Employee or any other person or entity engaged in the practice of medicine.

5.2 Employee recognizes and acknowledges that the nature of Employer's business is highly specialized and unique and that Employee's position with Employer is one of confidence and trust. Employee recognizes and acknowledges that Employee will acquire certain confidential information concerning the business and professional activities of Employer, including, but not limited to, Employer's internal operating procedures, financial and business arrangements, contracts with payors and institutions, and business plans and strategies, and that all such information constitutes proprietary information (collectively the "Information"), the disclosure of which would cause Employer substantial loss. In view of the foregoing, Employee agrees that Employee shall acquire no ownership rights to such information, and that at no time, during or after the termination of this Agreement, for any or no reason, whether by Employee or Employer, will Employee, without Employer's express written consent, reveal, make known or utilize, directly or indirectly, for any reason or purpose whatsoever, any Information which Employee may acquire in the performance of Employee's duties or concerning any work in which Employee may engage on behalf of Employer, except to the extent that such information can be shown to have been generally available to the public other than as a result of a disclosure by Employee.

5.3 Employee hereby acknowledges that all files, lists, books, records, literature, \_\_\_\_\_ forms, patient charts, educational materials, policy and procedure manuals, computer programs, computer files, computer disks and/or computer software (whether purchased off-the-shelf or customized for the Practice), products and any other materials generated for or by Employee, or provided to Employee by Employer in connection with Employee's employment shall at all times be and remain the property of Employer and that upon termination of Employee's employment with Employer, Employee will surrender to Employer all such files, lists, books, records, literature, \_\_\_\_\_ forms, patient charts, educational materials, policy and procedure manuals, computer programs, computer files, computer disks and/or computer software (whether purchased off-the-shelf or customized for the Practice), products and other materials and all copies thereof.

5.4 Employee shall, at all times, comply with any and all applicable AHCCCS and/or Medicare requirements. In the event of any Medicare or AHCCCS audit, review or inquiry concerning \_\_\_\_\_ services billed, charged or incurred and submitted for reimbursement by Employee or by Employer with respect to services purported to have been rendered by Employee, Employee shall fully cooperate in any investigation or defense of such audit.

5.5 Employee hereby indemnifies and holds Employer and [OWNER INITIALS] harmless from and against any and all claims, costs, expenses, damages or awards (collectively "costs") they may incur, which arise in whole or in part, from (i) the failure of Employee to perform any of Employee's obligations hereunder; (ii) the professional malpractice or misconduct of Employee; and (iii) any other act or omission of Employee.

## 6. Enforcement/Remedies for Breach.

6.1 Employee acknowledges that (i) the covenants contained in Section 5 are a material inducement for Employer to enter into this Agreement and to perform Employer's obligations hereunder; (ii) the services Employee is to render to Employer hereunder are of a special and unusual character with a unique value to Employer; (iii) this Agreement provides for the full and fair compensation of Employee to maintain and establish goodwill on behalf of Employer with Employer's patients; and (iv) the covenants contained in Section 5 are reasonable restrictions to prevent Employee or a future employer of Employee from making unfair use of the information and goodwill of Employer which may be associated with Employee as a result of Employee's employment by Employer. Accordingly, Employee acknowledges that the restrictions contained in Section 5 are reasonably necessary for the protection of Employer's business and that a breach of any of such restrictions could not adequately be compensated by damages in an action at law; wherefore, in the event of any violation thereof, Employer shall be authorized and entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights and remedies to which Employer may be entitled.

6.2 The covenants contained in Section 5 shall be construed as constituting agreements independent of any other provisions of this Agreement so that the existence of any claim or

cause of action of Employee against Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Employer of such covenants.

6.3 The remedies provided in this Section 6 shall be in addition to and not in lieu of any and all other remedies of Employer at law or in equity, which remedies shall be cumulative.

6.4 The provisions of this Section 6 shall survive the termination of this Agreement.

7. Arbitration. Except as set forth in Section 6, in the event any dispute or controversy arises under, out of or in connection with this Agreement, said dispute or controversy shall be settled by arbitration in \_\_\_\_\_, \_\_\_\_\_, by and under the prevailing rules and regulations of the American Arbitration Association governing commercial transactions. The arbitration shall be determined by a panel of three (3) disinterested arbitrators, with each party selecting one (1) arbitrator and the two arbitrators selecting a third arbitrator to serve as chairman of the arbitration panel. Except to the extent terms of conditions of this Agreement are illegal or unenforceable under applicable law, the arbitration panel shall have no power to modify any of the provision of this Agreement and their participation is limited accordingly. The arbitration proceeding shall be conducted and maintained in complete confidentiality. A party requesting arbitration hereunder shall give ten (10) day written advance notice to any other interested party prior to requesting arbitration. The decision of the majority of arbitrators shall, unless in clear violation of the terms of this Agreement, be binding and final upon all parties involved, and judgment to enforce any such decision may be entered in the Superior Court, Maricopa County, \_\_\_\_\_. For the purpose of entering such judgment, each party expressly and irrevocably consents to the jurisdiction and venue of the above court. Notwithstanding the foregoing, the parties may proceed with an action prior to the commencement of arbitration solely for the limited purpose of seeking provisional remedies or injunctive relief. Arbitration proceedings shall not be postponed or delayed because a party is seeking provisional remedies or injunctive relief.

8. Other Material Provisions.

8.1 All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given and received (i) on the date of service if personally served on the party to whom notice is to be given, (ii) on the date of transmission if sent by telephone facsimile or telecopy to the number set forth below where confirmation is provided by the sending machine and a copy of the notice and confirmation is sent to the party to whom notice is to be given, by first class United States mail, postage prepaid and addressed as follows, (iii) on the third day after the date of the postmark of deposit if mailed to the party to whom notice is to be given, by first class United States mail, registered or certified, postage prepaid and properly addressed as follows, or (iv) on the second day after deposit with a nationally recognized private express courier service providing proof of receipt and delivery and guaranteed "same day" or "next day" delivery and properly addressed as follows.

If to Employer: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

If to Employee: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Any party may change their address for purposes of this Section 8.1 by giving the other parties written notice of the new address in the manner set forth above.

8.2 This Agreement shall be binding upon, and inure to the benefit of, any successor of Employer and [OWNER INITIALS] and any such successor shall be deemed substituted for Employer or [OWNER INITIALS], as is appropriate, under the terms of this Agreement. As used in this Agreement, the term "successor" shall mean any person, firm, partnership, corporation or other entity which at any time, whether by merger, purchase or otherwise, acquires all or substantially all of the assets or business of Employer.

8.3 In the event any party hereto brings an action or proceeding to enforce any provision hereof or to secure specific performance hereof or to collect damages of any kind for any breach of this Agreement, the prevailing party shall be entitled to all court costs, all expenses arising out of or incurred by reason of the litigation and any reasonable attorneys' fees expended or incurred in any such proceedings.

8.4 This Agreement is personal to Employee, and Employee may not assign or delegate any of Employee's rights or obligations hereunder without first obtaining the written consent of Employer.

8.5 The failure by either party to this Agreement to strictly enforce such party's rights hereunder shall not constitute a waiver of any of such party's rights unless such party executes a written waiver with respect thereto. Any waiver of any breach of any provision hereof shall not be deemed a waiver of a subsequent or continuing breach thereof.

8.6 This Agreement shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of \_\_\_\_\_ without regard to the conflicts or choice of law provisions thereof. Except as provided in Section 7 hereof, any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought in the Superior Court, \_\_\_\_\_ County, \_\_\_\_\_, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

8.7 This Agreement is the result of negotiations between the parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose



attorney) prepared the executed Agreement or any earlier draft of the same. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular the plural. The words "hereof", "herein", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to "Sections" herein shall refer to the sections and paragraphs of this Agreement unless specifically stated otherwise. The section and other headings contained in this Agreement are inserted for convenience of reference only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation of this Agreement.

8.8 This Agreement and any exhibits or schedules attached hereto constitute the entire agreement and understanding between the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements, representations and understandings of the parties. No supplement, modification, or amendment of any term of this Agreement shall be deemed binding or effective unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8.9 If any covenant, condition, term or provision of this Agreement is illegal, or if the application thereof to any person or in any circumstance shall to any extent be judicially determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, condition, term or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each covenant, condition, term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.10 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The partially executed signature page of any counterpart of this Agreement may be attached to any other partially executed counterpart of this Agreement without impairing the legal effect of the signature(s) on such signature page.

EXECUTED as of the date first set forth above.

" \_\_\_\_\_ "  
"Employee"

\_\_\_\_\_, an \_\_\_\_\_ professional corporation

By: \_\_\_\_\_