



Advancing Excellence

Physician Group Employment Agreement
Sample with Annotations

The following sample agreement is an example of an agreement between a pathology group and a physician employee. This agreement is not provided as a “model” in any sense, but rather is used as a vehicle for identifying specific contract provisions that may raise issues. The agreement is footnoted throughout to identify many of the provisions that raise specific issues that may be of concern to a pathology group and/or the physician employee.

Please Note: In general, sample agreements are made available to CAP members as a supplement to the CAP’s other practice management resources. The sample agreements illustrate the general form and content of representative contracts, but they are not intended as “models” and should not be used without appropriate adaptation to reflect changing laws and regulations and the specific needs of each pathologist.

PHYSICIAN GROUP EMPLOYMENT AGREEMENT

THIS AGREEMENT is effective as of the _____ day of _____, 20____, (“Effective Date”), by and between _____, (“**CORPORATION**”), a _____ professional services corporation with its mailing address at _____ and _____, **M.D. (“PHYSICIAN”)**, a Board-Certified pathologist who is qualified to be licensed to practice medicine in the State of _____¹ and will be so licensed by the Effective Date.

WHEREAS, CORPORATION has entered into a contract to provide certain of the pathology services to _____ Hospital, Inc., a _____ not-for-profit corporation, with its place of business at _____ (“Hospital”) pursuant to the Pathology Services Agreement dated _____;²

WHEREAS, CORPORATION desires to employ **PHYSICIAN** to provide professional pathology services at Hospital³ and at such other facilities at which **CORPORATION** may have responsibility to provide pathology services pursuant to the terms and conditions set forth herein and in accordance with the reasonable direction of **CORPORATION**;

WHEREAS, PHYSICIAN is qualified to provide professional pathology services at the foregoing facilities and desires to do so under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the adequacy and receipt of which both parties acknowledge, the parties agree as follows:

ARTICLE I

EMPLOYMENT

CORPORATION hereby employs **PHYSICIAN** and **PHYSICIAN** hereby accepts full-time⁴ employment as a physician specializing in the practice of pathology with **CORPORATION** on the terms and conditions set forth in this Agreement. **PHYSICIAN** represents to **CORPORATION** that **PHYSICIAN** is qualified to obtain a license to practice

¹ Practices providing services in multiple states may want to expand the list of required states in which the physician employee is to maintain a current license. Contracting parties may also want to change the Article I Employment and section 3.2 Medical Staff and Licensure for the sake of consistency.

² This declaration section may not be relevant to all situations. Examples:

- A practice may want to include it to reinforce that the employment contract is dependent on retaining a specific hospital contract. See also Section 2.3 sub section (K) of this sample contract regarding contract termination if the hospital terminates the group’s contract.
- A practice may want to make it easier to re-assign or share a physician employee among multiple facilities (hospitals, hospital campuses or surgery centers). To support this concept a practice may consider eliminating this section and changing the next declaration section (see footnote 2)

³ This declaration section may not be appropriate for all situations. Sample alternatives are “... initially at Hospital.....” or “...primarily at Hospital...”

⁴ If the position is part-time this wording would change. Contracting parties may also want to change sub section 2.3 (D) regarding contract termination and Exhibit A position description for the sake of consistency.

medicine in the State of _____⁵ and will be so licensed by the Effective Date, is either Board Certified in Anatomic and Clinical Pathology or eligible to be Board-Certified, and is qualified to practice in the medical specialty of pathology⁶.

ARTICLE II

TERM AND TERMINATION

2.1 Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with this Article II.

2.2 Termination by Either Party. This Agreement may be terminated by either party as follows:

- (A) for any or no reason upon [sixty (60) days]⁷ prior written notice to the other party, provided that (1) **PHYSICIAN** shall pay all costs associated with **CORPORATION** obtaining in locum tenens coverage and any other costs associated with **PHYSICIAN**'s departure in the event that **PHYSICIAN** departs prior to the end of the [sixty (60)] day notice without the permission of **CORPORATION**; and (2) **CORPORATION** at its discretion may move up **PHYSICIAN**'s last day of employment to a date within the notice period provided that **CORPORATION** pays **PHYSICIAN** for the remainder of the notice period;
- (B) upon 30 days written notice to the other party in the event of the other party's fraud, gross negligence, or repeated acts of negligence, material misrepresentation, or material breach of a term or condition of this Agreement unless the party that has breached this Agreement has cured the breach within fourteen (14) calendar days after receipt of written notice specifying the nature of the breach; or
- (C) by mutual written agreement of **CORPORATION** and **PHYSICIAN** at any time.

2.3 Termination by CORPORATION. Notwithstanding the foregoing, this Agreement may also be terminated by **CORPORATION** immediately as follows:

- (A) in the event that the professional liability carrier selected by **CORPORATION** should refuse to underwrite the professional liability coverage of **PHYSICIAN** or if the cost of obtaining coverage for **PHYSICIAN** exceeds the average cost of covering other physicians employed by **CORPORATION** by at least ___ %;

⁵ Practices providing services in multiple states may want to expand the list of required states in which the physician employee is to maintain a current license. Contracting parties may also want to change the first paragraph of this agreement and section 3.2 Medical Staff and Licensure for the sake of consistency.

⁶ If the position requires sub-specialty Board Certification or eligibility for examination for sub-specialty certification contracting parties may want to include that information here and Section 3.3 Board Certification and in Exhibit A Position Description.

⁷ Contracting parties may want to consider changing the notice period. Parties should consider the implications of either party making notification. Please note Section 2.2 (C) provides for termination by mutual agreement which provides flexibility in terminating the contract.

- (B) upon the death of **PHYSICIAN**;
- (C) if **PHYSICIAN** has become disabled, including partially disabled, for a period of time exceeding three (3) months by virtue of an injury, illness or condition, such that **PHYSICIAN** is unable, in the opinion of a physician selected by **CORPORATION**, to perform the tasks to fulfill **PHYSICIAN's** obligations under this Agreement⁸;
- (D) upon **PHYSICIAN** working less than full time⁹;
- (E) upon **PHYSICIAN's** failure to comply with a clear written management directive of the Board of Directors of **CORPORATION** that is reasonable under the circumstances after being advised that failure to comply may be grounds for termination;
- (F) upon termination or non-renewal of **CORPORATION's** contract to provide pathology services to Hospital or any other entity or person;
- (G) upon **PHYSICIAN's** declared insanity;
- (H) upon **PHYSICIAN's** loss of professional license or involuntary suspension;
- (I) upon **PHYSICIAN's** becoming ineligible for Medicare, Medicaid, or other reimbursement programs;
- (J) upon **PHYSICIAN**, in public or private, taking any action or actions clearly contrary to the best interests of **CORPORATION** which results in exposing **CORPORATION** to any substantial business or professional liability risk;
- (K) upon termination or rescission of an existing contract or other manifestation of an unwillingness to contract with **CORPORATION** by Hospital or other hospitals at which **PHYSICIAN** provides services under the terms of this Agreement unless **CORPORATION** and **PHYSICIAN**

⁸ Contracting parties may want to consider alternatives in regards to determining disability. One such alternative is: *If Physician has become disabled, including partially disabled for a period of time exceeding three (3) months by virtue of an injury, illness or condition such that Physician is unable to perform the tasks to full Physician's obligations under this agreement. If Physician, and Corporation can not agree as to whether the Physician is disabled, Physician and Corporation shall select an appropriate medical doctor who shall make the determination of disability, and whose determination shall be binding upon all parties to this Agreement. If Physician and Corporation cannot agree upon such medical doctor, Physician and Corporation shall each select a separate medical doctor and the medical doctors so selected shall select a third medical doctor, whose determination shall be binding upon all parties to this Agreement. Corporation shall bear all costs incident to obtaining medical examination under this subsection.*

⁹ Parties will want this subsection to be consistent with the position (part or full time) and may want to establish, either in Exhibit A or a physician employee handbook, guidelines or formal agreement as to what is considered full and/or part time employment.

mutually agree on a reassignment to another hospital at which **CORPORATION** maintains a contract;

- (L) in the event that **PHYSICIAN** becomes impaired by the use of alcohol or the abuse of drugs; or
- (M) upon the loss of or reduction in **PHYSICIAN's** staff privileges at Hospital or at other hospitals where **PHYSICIAN** provides services other than as set forth in **ARTICLE V** below.

2.4 Payment Upon Termination. In the event of termination of this Agreement for any reason, (a) **CORPORATION** shall pay **PHYSICIAN** for compensation and vested rights to fringe benefits prorated to the date of termination less any amounts owed by **PHYSICIAN** to **CORPORATION** pursuant to Sections 4.2 ("Fringe Benefits"), 4.3 ("Insurance/Tail Coverage"), and Exhibit B of this Agreement, and (b) **CORPORATION** shall make available to **PHYSICIAN** continuation coverage for certain benefits as required by the Consolidated Omnibus Budget Reconciliation Act or applicable _____ law. Should **PHYSICIAN's** last paycheck be insufficient to fully cover the amounts owed by **PHYSICIAN** to **CORPORATION** pursuant to Sections 4.2, 4.3, and Exhibit B of this Agreement, **PHYSICIAN** shall pay **CORPORATION** the difference within ten (10) calendar days of **PHYSICIAN's** last day of employment.

2.5 Resignation from Medical Staff. In the event of termination or non-renewal of this Agreement for any reason, **PHYSICIAN** shall immediately resign from each of the medical staffs on which **PHYSICIAN** maintained staff privileges during the term of the Agreement at the direction of **CORPORATION**. To facilitate such resignations, **PHYSICIAN** shall provide **CORPORATION** with a written resignation from the medical staff of Hospital and all other hospitals at which **PHYSICIAN** maintained privileges at the direction of **CORPORATION** during the Term of this Agreement. Any such resignations must be executed in the form and manner provided by **CORPORATION**. If all such resignations are not provided to **CORPORATION's** satisfaction at least thirty (30) days before the termination date of this Agreement, **CORPORATION** shall have the right to withhold any amounts owed pursuant to Section 2.4 of this Agreement until such resignations are provided to the satisfaction of **CORPORATION**.

2.6 Return of CORPORATION and Facility Information and Property. On or before the last day of **PHYSICIAN's** employment with **CORPORATION**, or at any time upon **CORPORATION's** request, **PHYSICIAN** shall return to **CORPORATION** all of its property and information including, but not limited to, all of **CORPORATION's** documents, keys, credit cards, computer software, and all copies thereof. **PHYSICIAN** shall also return any property and information that is owned by any facility at which **PHYSICIAN** provided services during this Agreement.

ARTICLE III

RESPONSIBILITIES OF PHYSICIAN

3.1 Job Description.

(a) **PHYSICIAN** shall render pathology services on behalf of **CORPORATION** at times scheduled by **CORPORATION** at such place or places as the President of **CORPORATION** may direct. **PHYSICIAN** shall comply with all rules and regulations of **CORPORATION** and all requirements under any agreement to which **CORPORATION** is a party and perform all duties in the manner determined by **CORPORATION**; provided, however, that **CORPORATION** shall not require performance of any duties which violate any law or ethical principle of pathology or medicine. **PHYSICIAN** shall use **PHYSICIAN's** best efforts to further the practice of **CORPORATION** and enhance **CORPORATION's** standing among members of the medical profession and present or prospective patients. In performing all services under this Agreement, **PHYSICIAN** shall satisfy the responsibilities set forth in more detail as attached Exhibit A.

(b) All income and fees that **PHYSICIAN** earns during the term of this Agreement from the practice of medicine shall belong to **CORPORATION**^{10 11}.

¹⁰ In addition to language in an employment agreement a practice may want to have on record a separate document for assignment of billing rights to the corporation. Here is a sample of what the separate document might look like:

*Assignment of billing rights
Corporation Name*

The undersigned physician assigns to Corporation, a _____ medical professional corporation, all of their right to bill and collect for their professional services rendered to patients on behalf of Corporation. In addition, the undersigned agree to execute any additional documents required by Corporation. in order to effectuate such assignment of billing and collection rights. By: _____ Date: _____

¹¹ Contracting parties may want to provide more flexibility in regards to the revenue generated by the physician employee. Here is sample of alternative language:

With the exception of income received from such teaching, publishing, consulting and other such activities that may be specifically approved in writing by the Corporation's governing board, so as not to infringe on the duties of Physician as an employee of Corporation, all fees that Physician earns during the term of this Agreement from the practice of medicine shall belong to Corporation.

Sample written approval:

Legal testimony privately provided by an individual pathologist may be billed at a rate determined by the individual pathologist. This is exclusive of testimony that is directly required

(c) During the term of **PHYSICIAN's** employment with **CORPORATION**, **PHYSICIAN** shall not engage in the provision of medical services or any related activity other than on behalf of **CORPORATION** without **CORPORATION's** prior written consent.

3.2 Medical Staff and Licensure. **PHYSICIAN** shall maintain privileges on the medical staff of Hospital and at such other hospitals as **CORPORATION** may reasonably direct. **PHYSICIAN** shall also maintain **PHYSICIAN's** licensure in good standing under the laws of the State of _____¹².

3.3 Board Certification¹³. **PHYSICIAN** shall obtain a Board Certification in Anatomic Pathology and Clinical Pathology within two (2) years of the Effective Date of this Agreement¹⁴. Thereafter, **PHYSICIAN** shall maintain that Board Certification throughout the Term of this Agreement.¹⁵

3.4 Continuing Medical Education. **PHYSICIAN** is required to fulfill the Continuing Medical Education requirements necessary for State licensure. **CORPORATION** shall pay fees, dues, costs and reasonable expenses incurred by **PHYSICIAN** for such medical education and professional associations membership, in accordance with the **CORPORATION** benefits and limitations set forth in Exhibit B.

3.5 Reports and Medical Records. **PHYSICIAN** shall complete all medical records and other documentation as may be reasonably required by **CORPORATION** in a timely fashion. **PHYSICIAN** shall reasonably assist **CORPORATION** at **CORPORATION's** sole

and/or requested by Corporation or facilities for which it provides services

Collection of fees is the responsibility of the individual pathologist and shall be considered property of the pathologist. All taxes or other responsibilities that are incurred by such payment shall be the responsibility of the collecting pathologist. Corporation shall not be responsible for such liabilities, either financially or procedurally. Such activities shall be considered as an "independent contractor" status, separate from the duties of provided to the Corporation under this agreement. Such fees are not considered income from the Corporation. The Corporation's EIN shall not be used in such cases.

When providing legal testimony, consultation or other time for such activities, the pathologist shall perform such duties on non-Corporation time, such as scheduled "half days" or days scheduled for CME or vacation, in advance. Meetings for such work must be scheduled off hospital property.

¹² If the practice provides services in multiple states then parties to this contract may want to include the list of states in this section of the contract.

¹³ Depending on the practice's requirements the contracting parties may want to include additional or different sub-specialty Board Certifications or qualified for examination for Board Certification.

¹⁴ Contracting parties will want this requirement to be consistent with the requirements of their facility contracts.

¹⁵ Contracting parties may consider referring to The American Board of Pathology's certification time limitations for both the period of time the physician has to become certified and Maintenance of Certification. Another alternative used by some practices is specifying the deadline for certification as a specific date.

cost in the billing for and collection of fees for the provision of professional services under this Agreement.

3.6 Agreement Not to Bind CORPORATION. **PHYSICIAN** acknowledges that decisions regarding the business operations of **CORPORATION** are only to be made in accordance with the **CORPORATION** By-laws. **PHYSICIAN** shall not take any individual action that purports to bind **CORPORATION**. **CORPORATION** shall be bound only by decisions made and agreements executed in accordance with the requirements of the **CORPORATION** By-laws.

3.7 Cooperation in Providing Coding and Billing Information. At the request of **CORPORATION**, **PHYSICIAN** shall provide to **CORPORATION** all information needed to properly bill for **PHYSICIAN**'s services, including where requested accurate CPT and other billing codes for services provided. **CORPORATION** shall determine the fees charged for the physician services. **PHYSICIAN** shall assign to **CORPORATION** all collections for professional services provided on behalf of **CORPORATION**. **CORPORATION** and not **PHYSICIAN** shall have the sole right to keep all such collections.

ARTICLE IV

RESPONSIBILITIES OF CORPORATION

4.1 Salary. **CORPORATION** shall pay **PHYSICIAN** compensation at an annual rate of _____, less required deductions for federal, state and local wage and employment taxes and any other applicable deductions¹⁶. **CORPORATION** shall pay **PHYSICIAN** the pro-rated annual salary on a monthly basis^{17, 18}.

4.2 Fringe Benefits. **CORPORATION** shall provide the benefits and pay the expenses of **PHYSICIAN** as are set forth in Exhibit B to this Agreement or as otherwise determined by **CORPORATION** from time to time and communicated to **PHYSICIAN**. **CORPORATION** reserves the right to change benefits for **PHYSICIAN** and similarly-situated physician employees of **CORPORATION** from time to time.

4.3 Insurance/Tail Coverage.

(a) **CORPORATION** will provide at its expense liability insurance coverage for **PHYSICIAN** during the period of time **PHYSICIAN** is affiliated with **CORPORATION** or is an employee of a corporation affiliated with **CORPORATION**.

¹⁶ When the physician is uncertified the contracting parties may consider negotiating a starting salary with an increase when the physician is certified. Sample language:

With successful completion and passing the Anatomic and Clinical Pathology certification examinations, compensation will be increased annual salary of \$_____ per year effective in the first pay period after Corporation notification of same.

¹⁷ Contracting parties may consider adding a provision for changes in the physician's salary. Sample language:

The parties may by mutual agreement adjust the salary to reflect changed economic conditions.

¹⁸ Contracting parties may consider adding a section that addresses potential bonuses. Sample language:

Corporation may in its sole discretion pay Physician a bonus in an amount determined in its sole discretion.

(b) In the event of termination of this Agreement for any reason, **PHYSICIAN** shall (i) at **PHYSICIAN's** sole expense¹⁹, obtain an extended reporting endorsement for the professional liability coverage²⁰ (commonly referred to as "tail coverage") for the period of time **PHYSICIAN** was employed by **CORPORATION**, which tail coverage must be underwritten by the same entity which issued **PHYSICIAN's** liability insurance coverage while **PHYSICIAN** was employed by **CORPORATION**,²¹ and (ii) provide **CORPORATION** written evidence of such tail coverage at least fourteen (14) calendar days before his or her termination date, unless such termination date is immediate, in which event **PHYSICIAN** shall provide written evidence of such tail coverage within ten (10) calendar days of **PHYSICIAN's** termination date. If **PHYSICIAN** fails to obtain and provide written evidence of tail coverage as described herein to the satisfaction of **CORPORATION**, **CORPORATION** at its sole election may obtain such tail coverage on behalf of **PHYSICIAN**. Any amounts incurred by **CORPORATION** for obtaining such tail coverage on behalf of **PHYSICIAN** shall be offset against amounts owed by **CORPORATION** to **PHYSICIAN** pursuant to Section 2.4 of this Agreement, if any, and/or **CORPORATION** shall invoice, and **PHYSICIAN** shall pay within ten (10) days of receipt of such invoice, such amounts incurred by **CORPORATION** for obtaining such tail coverage on behalf of **PHYSICIAN**.

ARTICLE V

CONSTRUCTION WITH MEDICAL STAFF BY-LAWS

Any rights or privileges conferred upon **PHYSICIAN** by virtue of membership on the medical staff of any hospital shall in no way affect the terms of this Agreement. In the event of any inconsistencies between any hospital medical staff by-laws, rules, and regulations and this Agreement, the provisions of this Agreement shall control **PHYSICIAN's** rights and obligations with respect to **CORPORATION**. Any loss of hospital privileges or staff rights resulting from an inconsistency between the provisions of this Agreement and a hospital medical staff's by-laws, rules, and regulations shall not be deemed a material breach by **PHYSICIAN**.

ARTICLE VI

MISCELLANEOUS

6.1 Nondisclosure and Confidentiality. **CORPORATION's** employment of **PHYSICIAN** will result in **PHYSICIAN's** exposure and access to confidential and proprietary information including, but not limited to, **CORPORATION's** and its affiliates' patient records, billing records, payroll records, financial information, coding schedules, business strategies, and personal information about **CORPORATION's** and its affiliates' owners, officers, and employees

¹⁹ The physician may want to request an estimated schedule of tail cost over the next few years based on the Corporation's current professional liability insurance underwriter and premiums. This estimate would not provide guaranteed amounts for tail coverage cost but will provide the physician an idea of the potential cost associated with this provision.

²⁰ Contracting parties may consider specifying the owner of the tail coverage and which parties are covered by the tail policy (physician and/or corporation).

²¹ Contracting parties may consider specifying the tail coverage policy will not limit the reporting period.

to which **PHYSICIAN** did not have access prior to **PHYSICIAN's** employment with **CORPORATION** and which information is of great value to **CORPORATION**, its affiliates, their owners, officers, and employees. **PHYSICIAN** shall not, other than on **CORPORATION's** behalf, at any time during **PHYSICIAN's** employment with **CORPORATION** and thereafter, make available, divulge, disclose, or communicate in any manner whatsoever to anyone including, but not limited to, any person, firm, corporation, investor, member of the media, or entity, any such confidential or proprietary information, or use any such confidential or proprietary information for any purpose other than on **CORPORATION's** behalf, unless authorized to do so in writing by **CORPORATION's** President, required by law or court order, or such information has become publicly available other than by reason of a breach by **PHYSICIAN** of this Section 6.1 or of another individual's or entity's violation of an obligation not to disclose such information. Should **PHYSICIAN** be required by law or court order to disclose such confidential or proprietary information, **PHYSICIAN** shall give **CORPORATION's** President reasonable notice so as to allow **CORPORATION** sufficient opportunity to challenge such application of the law or court order, or to otherwise attempt to limit the scope of such disclosure. This Agreement applies to all confidential and proprietary information of **CORPORATION** and its affiliates, regardless of when such information is or was disclosed to **PHYSICIAN**.

6.2 Covenant Not to Compete.²² During **PHYSICIAN's** employment with **CORPORATION**, and for a period of two (2) years after the termination of that employment, irrespective of the reason, **PHYSICIAN** shall not, other than on **CORPORATION's** behalf, directly or indirectly perform anatomical or clinical pathology services for any individual, physician group, or entity for which **CORPORATION** provides pathology services as of the Effective Date including, but not limited to, _____, and any other individual, physician group, or entity that uses _____ as a pathology services reference laboratory as of the Effective Date²³. Violation of this covenant by **PHYSICIAN** will entitle **CORPORATION** to injunctive or other relief, including damages, in a court of competent jurisdiction. If the period of time or the scope of non-competition specified is adjudged unreasonable in any court proceeding, then the period of time or scope shall be reduced as is deemed necessary to allow this covenant to be enforced during such period of time and scope as is determined to be reasonable.²⁴

6.3 Nondisparagement. **PHYSICIAN** recognizes that the professional reputation of **CORPORATION** is a unique and valuable asset. **PHYSICIAN** shall not make any negative, disparaging, or unfavorable comments regarding **CORPORATION** or any of **CORPORATION's** owners, officers, or employees to any person, either during the term of this Agreement or following termination of this Agreement. Any person shall include, but not be limited to, any patient, third party payor or representative of such third party payor, hospital or other client of **CORPORATION**, laboratory personnel, hospital medical staff member, physician, or similar person or entity.

²² Contracting parties may want to be aware of Section 6.11 of this sample agreement interaction with this Section 6.2

²³ Contracting parties may want to consider to specify a geographic region as alternative or additional specification. For some practices the distance used in the following sample language will be defendant on the geography and demographics of where the practice is located. Sample language:

...and any entity within a distance of _____ miles from a facility where the Corporation provides pathology services.

²⁴ Contracting parties may consider incorporating a non-solicitation clause or section that prohibits the physician employee from soliciting or inducing clients and/or employees to leave the Corporation.

6.4 Injunctive Relief. **PHYSICIAN** acknowledges and agrees that the covenants contained in Sections 6.1, 6.2, and 6.3 above are reasonable in scope and duration, do not unduly restrict **PHYSICIAN's** ability to engage in **PHYSICIAN's** livelihood, and are necessary to protect **CORPORATION's** legitimate business interests. Without limiting the rights of **CORPORATION** to pursue any other legal and/or equitable remedies available to it for any breach by **PHYSICIAN** of the covenants contained in Sections 6.1, 6.2, and 6.3 above, **PHYSICIAN** acknowledges that a breach of those covenants would cause a loss to **CORPORATION** for which it could not reasonably or adequately be compensated by damages in an action at law, that remedies other than injunctive relief could not fully compensate **CORPORATION** for a breach of those covenants and that, accordingly, **CORPORATION** shall be entitled to injunctive relief to prevent any breach or continuing breaches of **PHYSICIAN's** covenants as set forth in Sections 6.1, 6.2, and 6.3 above. It is the intention of the parties that if, in any action before any court empowered to enforce such covenants, any term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court.

6.5 Disputes. Neither party to this Agreement shall commence any action or suit relating to this Agreement more than six (6) months after the date of termination of this Agreement ("Limitations Period"), and both Parties waive any statute of limitations or other law to the contrary. The parties further agree, prior to instituting any action or suit relating to this Agreement other than any action under Sections 6.1, 6.2, or 6.3 above which may be initiated and adjudicated in a court of law without first submitting to mediation, to submit the matter to non-binding mediation by a neutral mediator under the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") or under such other rules or under the auspices of such other organization as the parties may mutually agree, and to refrain from filing suit until receiving the decision of the mediator or until 60 days after submitting the matter to mediation, whichever occurs first. All information regarding the dispute or claim or mediation proceedings, including any mediation settlement, shall not be disclosed by **PHYSICIAN, CORPORATION,** or any mediator to any third party without the written consent of **CORPORATION's** President and **PHYSICIAN.** Both parties agree that the Limitations Period stated in this Section 6.5 will not run during the mediation period.

6.6 Notice. Any notice required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered or certified United States mail, or sent by a reputable overnight delivery service such as Federal Express that tracks its deliveries, to the parties at the following addresses:

If to CORPORATION:

With a Copy to:

If to PHYSICIAN:

Either of the parties may change the foregoing addresses by written notice to the other party by the methods provided by this Section 6.6.

6.7 Severability. If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be deemed stricken from this Agreement and the remainder of this Agreement shall remain in full force and effect. The parties shall negotiate in good faith to amend this Agreement to replace any provision found to be invalid or unenforceable with a valid and enforceable provision which, as nearly as possible, accomplishes the original objectives of the parties.

6.8 Waivers. One or more waivers by either party of a breach of this Agreement shall not be construed as a waiver of further breaches of this Agreement, and such party may reinstate any such term or condition waived upon written notice to the other party.

6.9 Governing Law. This Agreement shall be governed by the laws of the State of _____.

6.10 Headings. All headings are for convenience only and shall not be construed to modify the substance of this Agreement.

6.11 Amendments. Other than with respect to Section 6.2 above, any amendments, additions, or supplements to this Agreement shall be effective and binding on **CORPORATION** and **PHYSICIAN** only if in writing and signed by each party to this Agreement. Upon providing **PHYSICIAN** with written notice, **CORPORATION** unilaterally may amend Section 6.2 without **PHYSICIAN's** written consent to include additional individuals, physician groups, or entities for which **CORPORATION** begins to provide pathology services after the Effective Date of this Agreement. **PHYSICIAN** acknowledges and agrees that **PHYSICIAN's** decision to remain employed with **CORPORATION** after receipt of such written notice shall provide sufficient consideration for, and acceptance of, the amendment to Section 6.2.²⁵

6.12 Benefit. This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by and against **CORPORATION**, its partners and its successors and assigns, and **PHYSICIAN** and **PHYSICIAN's** heirs, beneficiaries, and legal representatives.

6.13 No Shareholder Ownership Rights. This Agreement shall not be construed to provide to **PHYSICIAN** any rights to become a shareholder in **CORPORATION**. **CORPORATION** shall determine in its sole discretion whether and when to offer **PHYSICIAN** shareholder status and the terms under which such shareholder status may be offered. In the event that **CORPORATION** shall not offer **PHYSICIAN** any opportunity to become a shareholder, **PHYSICIAN** shall have no right under the terms of this Agreement to become a shareholder or to maintain any relationship with **CORPORATION**.

²⁵ In this section the Corporation is obligated to provide its employed physicians with a written notice of each new client to enforce Section 6.2. To help ensure all practice physicians receive written notice of update client list the practice may consider providing its physician employees a periodic list of all the Corporation's clients.

6.14 Entire Agreement. This Agreement contains the complete, full and exclusive understanding of the parties with respect to **PHYSICIAN's** engagement by **CORPORATION** and supersedes any and all other agreements between the parties with respect to this subject matter.

6.15 Warranty of Authority. The person signing this Agreement on behalf of **CORPORATION** represents and warrants that he or she has authority to execute this Agreement on behalf of **CORPORATION** and thereby bind **CORPORATION** to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below their signatures.

By: _____, M.D.
President

Date: _____ Date: _____

EXHIBIT A

POSITION DESCRIPTION

I. Summary

PHYSICIAN shall provide needed physician services, medical counsel and educational services at the direction of **CORPORATION** acting through the Board of Directors of **CORPORATION** and the Medical Directors of the laboratories served by **CORPORATION**.

II. Position Requirements^{26,27}

PHYSICIAN:

1. Must be eligible for active membership on the medical staff of Hospital or achieve eligibility within the minimum time requirements set forth in the Medical Staff By-Laws of Hospital. **PHYSICIAN** shall obtain membership on such of the medical staffs as may be directed by the Board of Directors of **CORPORATION** and shall maintain memberships on such medical staffs at the appropriate level consistent with functioning as a pathologist at the laboratories staffed by **CORPORATION**.
2. Must maintain certification by the American Board of Pathology.²⁸
3. Must demonstrate an ability to relate to personnel in a manner acceptable to and in accordance with the policies of **CORPORATION**.
4. Must demonstrate an ability to effectively provide pathology services in coordination with the needs of the Hospital and other customers of **CORPORATION**.
5. Must reasonably cooperate with **CORPORATION** and shall comply with the directives of the **CORPORATION** Board of Directors.

III. Duties:

Under the direction of **CORPORATION**, **PHYSICIAN** shall.²⁹

1. Provide supervision of the day-to-day testing activities conducted at laboratories served by **CORPORATION**;

²⁶ In order to meet the group's obligations the physician may be requested to commit to specific telephone and on-site call response time frames. This type of requirement or expectation may impact the location where a physician employee establishes their home in regards to the travel time from the group's facilities.

²⁷ The contracting parties may want to include typical work hours for the position either in the contract or refer to an physician employee policy handbook in which typical work hours for the position is defined.

²⁸ Contracting parties may consider referencing the specialties or sub-specialties for which the physician is to maintain certification. This section should be consistent with contract terms such as those listed in Section 3.3 of this sample contract.

²⁹ The corporation may consider adding a reference to adding and/or referring to the list of CLIA or the laboratories accrediting agency requirements.

2. Coordinate with the Department Director to select, establish, and quality control all testing procedures within the laboratories staffed by **CORPORATION**.
3. Coordinate with the Chief Executive officer (CEO), Chief Operating Officer (COO), and Manager of the laboratories staffed by **CORPORATION** to which the **PHYSICIAN** is assigned to assure adequate levels of technical staffing and professional competence of laboratory personnel.
4. Establish adequate technical back-up for laboratory personnel.
5. Provide, as necessary, clinical interpretations of tests done with the laboratories.
6. Suggest appropriate projects and facilitate an ongoing research and development program.
7. Contribute to and facilitate educational programs for physicians, other professionals, and allied health personnel and students as required.
8. Adhere to and ensure compliance with current applicable local, state and federal laws and regulations and the accrediting standards of any certification or accrediting body that accredits or certifies any facility at which **CORPORATION** provides services.
9. Participate in strategic planning, medical operational review, and budget planning as required.
10. Participate in the development and implementation of marketing plans as appropriate for **CORPORATION** and the laboratories staffed by **CORPORATION**.

EXHIBIT B

BENEFITS and EXPENSES

(1) **Business Expenses.** CORPORATION shall reimburse PHYSICIAN for reasonable expenses incurred by PHYSICIAN in connection with the performance of PHYSICIAN's duties pursuant to this Agreement including, but not limited to, Medical Staff membership fees, professional dues and approved educational expenses, books and periodicals relevant to the practice, travel expenses, expenses in connection with approved seminars, professional conventions or similar professional functions and other reasonable business expenses. CORPORATION shall be responsible for reimbursing PHYSICIAN only for such expenses approved by CORPORATION in advance. Notwithstanding the foregoing, the maximum reimbursement due PHYSICIAN from CORPORATION during any _____ to _____ annual period ("Fiscal Year") for professional dues, books and journals, expenses relating to continuing medical education and participation in professional association meetings, including all associated travel, lodging, meals and incidentals shall be \$ _____, but shall be pro-rated for any Fiscal Year during which PHYSICIAN's employment commences or terminates. Should CORPORATION have reimbursed PHYSICIAN for a greater amount of expenses than PHYSICIAN otherwise would have been entitled based upon the pro-rata amount as of PHYSICIAN's employment termination date, CORPORATION shall deduct the excess reimbursement from PHYSICIAN's last paycheck. Should PHYSICIAN's last paycheck not be sufficient to cover the excess expense reimbursement, PHYSICIAN will pay back to CORPORATION any remaining amount within ten (10) calendar days of PHYSICIAN's last day of employment.³⁰

(2) **Health, Life, and Disability Insurance.** CORPORATION shall provide (i) health insurance for PHYSICIAN that is comparable to the insurance provided by CORPORATION for other physicians affiliated with CORPORATION, (ii) term life insurance in an amount (currently \$ _____) comparable to that provided to non-shareholder physician employees of CORPORATION, (iii) short term disability salary continuation up to a maximum of _____ months, provided that (a) a physician selected by CORPORATION certifies that PHYSICIAN's health condition prevents PHYSICIAN from performing the tasks to fulfill PHYSICIAN's obligations under this Agreement during the disability period, and (b) PHYSICIAN shall be required first to utilize any unused vacation and medical education and professional leave time before any salary continuation begins, and (iv) long term disability insurance comparable to that provided to non-shareholder physician employees of CORPORATION.

(3) **Vacation/CME/Sick Leave.**

³⁰ In order to share the responsibility of only reimbursing physician employees legitimate business expenses the contracting parties may consider a clause that requires the employee to reimburse the corporation for any unqualified reimbursements. This type of clause may assist both the Corporation and the Employee. Sample language:

Any reimbursement found to not qualify for reimbursement during inspection by the IRS, shall be reimbursed to the Corporation , including any fines, penalties or legal costs associated with such audit.

(a) **First Full Fiscal Year.** During the first full Fiscal Year of **PHYSICIAN's** employment hereunder, **PHYSICIAN** shall be entitled to a total of ____ [weeks/days] of compensated vacation, [____ [weeks/days] of compensated sick leave] and ____ [weeks/days] of compensated leave for those continuing medical education and professional meetings that are approved by **CORPORATION**. Such amounts will be pro-rated for any partial Fiscal Year in which **PHYSICIAN** commences employment.

(b) **Second and Subsequent Full Fiscal Years.** Beginning with the second full Fiscal Year and for each subsequent full Fiscal Year of **PHYSICIAN's** employment hereunder, **PHYSICIAN** shall be entitled to ____ weeks of compensated vacation, and ____ weeks of compensated leave during each such Term for those continuing medical education and professional meetings that are approved by **CORPORATION**.

(c) **No Carry-Over.** In no event may **PHYSICIAN** carry over any vacation/CME leave time beyond the expiration of any Fiscal Year.

(d) **Termination Prior to End of Full Fiscal Year.** Should **PHYSICIAN's** employment terminate prior to the end of any full Fiscal Year, **PHYSICIAN's** vacation/Sick/CME leave shall be pro-rated accordingly and **CORPORATION** shall deduct any excess vacation/Sick/CME leave paid from **PHYSICIAN's** last paycheck. Should **PHYSICIAN's** last paycheck not be sufficient to cover the excess vacation/Sick/CME leave amount, **PHYSICIAN** will pay back to **CORPORATION** any remaining amount within ten (10) calendar days of **PHYSICIAN's** last day of employment.

(e) **Leave Approval.** In order to provide adequate pathology coverage during **PHYSICIAN's** absence, any request for vacation or approved medical education/professional meeting leave must be approved in advance by **CORPORATION**, which shall consider whether to grant such approval in light of scheduling needs and the vacation policies of **CORPORATION**.

(4) **Pension Plan.** **PHYSICIAN** shall be permitted to participate to the same extent as the other physician employees of **CORPORATION** in accordance with the terms of any pension plan then maintained by **CORPORATION**.