

CLINICAL PRACTICES OF THE UNIVERSITY OF PENNSYLVANIA
DEPARTMENT OF _____
MEMBER PRACTICE AGREEMENT

AGREEMENT between the Clinical Practices of the University of Pennsylvania (“CPUP”) of the University of Pennsylvania d/b/a “Penn Medicine,” acting on behalf of the Trustees of the University of Pennsylvania, and _____, M.D. (“Member”).

PURPOSE

The purpose of this Agreement is to set forth, in conjunction with CPUP Bylaws, policies and other CPUP documents and the policies of the University of Pennsylvania (the “University”), Penn Medicine, and the Perelman School of Medicine (“PSOM”), as currently stated and modified in the future, various rights and responsibilities that exist between CPUP and its member physicians. This Agreement is intended to be compatible with Member’s employment with the University of Pennsylvania, but sets forth additional terms which, while subject to University policies, otherwise takes precedence in the event of conflict. This Agreement is necessary to promote the consistent and uniform operation of CPUP with regard to each of its members, while recognizing the unique needs of CPUP and its members and protecting the interests of both.

CPUP is established as an organizational component of the PSOM to serve as an association of approved departmental practice plans through which clinically active standing and associated faculty of the University provide patient care services at approved sites of clinical practice as described in the CPUP Bylaws.

THE AGREEMENT

CPUP and Member, each intending to be legally bound, agree as follows:

1. **Duties.** Member shall, in conjunction with serving as a teacher for medical students, residents, and others, render professional medical services to patients on behalf of CPUP in accordance with:

(a) The Bylaws, governing documents, policies, contracts and agreements of CPUP, as established by the CPUP Executive Committee and approved by the Executive Vice President/Dean and under the direction of the Member’s Department Chair;

(b) Applicable policies, documents, contracts, and agreements of the PSOM, Penn Medicine, Health System and University of Pennsylvania;

(c) Applicable laws, regulations, and requirement of accrediting agencies.

Member agrees to devote his/her entire professional clinical effort to CPUP and the University of Pennsylvania Health System (“UPHS”) and agrees not to conduct any professional

* (specify School of Medicine department. Hereafter, “Department” will refer to Member’s department specified above)

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patient care activities except under the auspices of CPUP. Member agrees not to teach, conduct research or engage in clinical practice at any facility or in any program not approved by CPUP in accordance with its Bylaws.

Member further acknowledges that from time to time, CPUP, through UPHS and the PSOM, shall undertake various efforts and programs directed toward enhancing professionalism among the CPUP members and PSOM faculty, including programs focused on the evaluation of patient complaints, and Member agrees to participate in such program on their terms and conditions as they may exist from time to time.

2. **Fees.** All fees for Member's patient care and patient care-related services, performed on behalf of CPUP pursuant to this Agreement, whether billed under such Member's name or provider number or in some other appropriate manner, shall be assigned by Member to CPUP and shall be the exclusive property of the University. Revenues and accounts receivable shall be deposited upon collection in the appropriate CPUP account and shall be administered by the Department. For purposes of this Agreement, where the activities have been approved in accordance with University, departmental and CPUP policy, monies received from the following sources shall remain the property of Member and shall not be assigned to CPUP:

(a) Honoraria

(b) Royalties from publications such as books or articles (other royalties are addressed in the University's Patent and Tangible Research Property Policies and Procedures)

(c) Consulting not involving direct patient care

(d) Fees, salaries, or other payments made to Member or Member's Department by the Veteran's Administration Hospital or Howard Hughes Medical Institute

By signing this Member Practice Agreement, the Member acknowledges and accepts this assignment.¹

3. **Compensation.** Member shall receive compensation for academic, clinical, and research activities and services, subject to the terms and conditions specified in the CPUP Bylaws and by the University, in accordance with the terms and conditions of Member's Department's compensation plan, as it exists from time to time, with the Department reserving all rights to revise, rescind, and/or replace such plans in a manner of general application, and periodic salary letters furnished to Member by Member's Department.

Member shall be expected to maintain his or her compensation information in confidence.

4. **Term.** This agreement shall commence on the date hereof and shall continue for an initial term of one year, thereafter renewing for subsequent one year intervals, unless terminated sooner by mutual agreement of Member and CPUP, or when Member becomes ineligible for

¹ Adapted from CPUP Accounts Receivable and Sick Pay Policy, 1986.

CPUP membership under the terms of the CPUP Bylaws and/or this Agreement. These terms include maintenance of an academic appointment at the PSOM and appropriate staff privileges at the Hospital of the University of Pennsylvania (“HUP”) or other approved UPHS facilities and conformance with all University policies, including conflict of interest and intellectual property policies as they exist from time to time. Terms are coexistent with appointment to the standing or associated faculty and as UPHS Physician. The cessation of Member’s employment with the University of Pennsylvania shall automatically effectuate the termination of this agreement effective the same date, provided however that the provisions of section 10 hereof shall survive in accordance with their terms.

Member shall be expected to provide at least three months’ notice of termination of Member’s faculty appointment and/or CPUP membership, unless additional time is required by the terms of any department plan.

5. **Academic Appointment.** Member’s Department Chair shall recommend Member for an academic appointment at the PSOM. This appointment is subject to the standard University academic review process as it may exist from time to time. Approval and maintenance of this appointment will be conditioned upon Member’s continued ability to meet the requirements of the designated position as described in the Handbook for Faculty and Academic Administrators, along with applicable University, PSOM and CPUP policies. Failure to maintain an academic appointment with the PSOM will result in the loss of CPUP membership and termination of this Agreement.

6. **Medical Staff Appointment.** Member is required to maintain an appropriate appointment to the medical staff at HUP or other approved UPHS facilities. Member’s Department Chair shall recommend Member for initial appointment. It will be the responsibility of the Member to meet and maintain the criteria for appointment and reappointment, which include an academic appointment at the PSOM, the maintenance of a valid Pennsylvania license to practice medicine and DEA licensure. Additionally, Member will comply with the Medical Staff Bylaws, the CPUP Principles of Practice and the Pennsylvania Patients’ Bill of Rights, as well as the practices, policies, and procedures of HUP, including HUP risk management and quality assurance programs. Failure to maintain an appropriate staff appointment will result in loss of CPUP membership and termination of this Agreement unless an exception is approved by the Executive Vice President/Dean.

In addition, Member is required to maintain an appointment and clinical privileges with the medical staffs of other hospitals as his/her Department Chair may reasonably designate.

7. **Insurance.** During the period of membership hereunder, Member’s professional liability insurance coverage shall be provided by the University through CPUP, in accordance with CPUP policy. In addition, the University shall provide professional liability coverage for any claim arising out of activities performed by Member within the course and scope of membership hereunder, regardless of when such claim may be reported, coverage for which is conditioned upon Member’s cooperation in the event of litigation implicating such coverage.

Prior to CPUP membership, Member shall provide evidence of tail coverage for professional liability from Member's current and previous practice(s). Such coverage for professional liability will be provided by the University if Member is joining CPUP upon completion of professional training at Penn Medicine, provided that Member had not been engaged in practice prior to or during such residency and/or fellowship training.

General liability coverage will also be provided to Member. This will cover Member for activities conducted in good faith within the scope of the Member's University employment and CPUP membership.

8. **Fringe Benefits.** Member will be provided health, disability, and life insurance and other fringe benefits as described in the then current University benefit program literature in addition to those benefits offered by CPUP. Both the University and CPUP retain the right to modify or rescind any portion of their benefits packages at any time. Member will be eligible for benefits according to the terms of applicable plans as they may exist from time to time.

9. **Cooperation.** Member agrees, upon termination of CPUP membership, to cooperate with CPUP in the transition of patient care and other programs or activities in which Member is involved. All materials and records associated with patient care, including medical records, are and shall remain property of CPUP and may not be removed without written authorization of the Executive Vice President/Dean.

10. **Restrictive Covenants.** Member acknowledges that for UPHS to fulfill its mission to constantly improve patient care, medical education and biomedical research, it must maintain patient relationships and the stability of its physician staff at UPHS locations. The following restrictive covenants (as well as Member's obligation to comply with CPUP Bylaws and applicable University bylaws, rules, policies and procedures) are designed to support these goals in a reasonable and fair manner and are accepted by Member in consideration of UPHS's offer of employment and this Agreement, which Member acknowledges constitute fair and adequate consideration for such restrictive covenants.

(a) **Covenant Not to Compete:** Member agrees that for the duration of Member's employment plus one year after the termination of such employment for any reason, Member will not practice medicine, or in any other way attend or administer to or advise patients, in return for compensation or remuneration of any kind at any hospital, health system, or physician organization or practice group in any position or capacity that has any responsibility or authority whatsoever, or in any position that may recommend the exercise of responsibility or authority, within a 20-mile radius of HUP, PPMC, and PAH or within a 10-mile radius of any other UPHS clinical practice or hospital in which Member has attended to patients on a regular basis within the twelve calendar months preceding Member's termination. Member agrees that for the duration of Member's employment plus one year after the termination of such employment for any reason, Member will not directly or indirectly own, manage, operate, join, control, finance or participate in the ownership, management, operation, control or financing of any hospital, health system, or physician organization or practice group that provides any health care services of any kind within a 20-mile radius of HUP, PPMC, and PAH or within a 10-mile radius of any other UPHS clinical practice or hospital in which Member has attended to patients on a regular basis

within the twelve calendar months preceding Member's termination. The provisions of this section 10(a) shall be waived and not enforced against Member provided that Member (i) provides written notice of Member's employment termination to Member's Department Chair at least six (6) months in advance and (ii) Member completes duties as assigned and complies with applicable Penn Medicine policy, as well as section 10(b) hereof, during such notice period.

(b) Non-Interference/Solicitation: Member agrees that for the duration of Member's employment plus one year after the termination of such employment for any reason, neither Member nor any corporation, partnership, or other business entity or person owned or controlled, directly or indirectly, by Member, or in which Member has authority to recommend such action, shall engage or participate in any effort to solicit or act to induce or encourage in any way any UPHS patient, physician, provider, practitioner, employee, associate or contractor to terminate his or her relationship with UPHS and/or affiliate himself or herself with any competing practice or entity, or practice or entity with which Member is affiliated.

(c) Proprietary/Confidentiality Information and Nondisclosure: Member acknowledges a duty of confidentiality owed to UPHS and the University. Member shall not, nor shall any corporation, partnership, or other business entity or person owned or controlled by Member, directly or indirectly, at any time during or after Member's employment by the University, disclose or make accessible to anyone, use, or retain in writing or any other medium, without the express authorization of the University and UPHS, any Confidential or Proprietary Information belonging to the same. Member hereby acknowledges that the Confidential or Proprietary Information is the property of the University and UPHS, that Member shall not duplicate or make use of any such Confidential or Proprietary Information other than in the proper scope of employment and work hereunder, and that, upon termination of employment for any reason, Member shall deliver to UPHS or the University, without further demand, all copies thereof, in any medium whatsoever, which are then in Member's possession. For purposes of this Agreement, Confidential or Proprietary Information shall mean all types of proprietary data, trade secrets and confidential information of UPHS or the University, or any of its affiliates, which is not legitimately in the public domain, including, but not limited to, all pricing or business strategies, compensation or financial information, patient lists, patient files, charge data, price lists, contract forms and other books, records or files relating to their business, or that of any of their affiliates.

(d) Application for Release of Restriction: Under certain circumstances in which Member leaves employment to accept a position with a substantially greater academic leadership responsibility (for example, an academic dean or department chair), certain terms of the foregoing restrictive covenants may be waived, but only in writing and in the sole discretion of the CPUP SVP and Vice Dean for Professional Services, upon the recommendation of Member's Department Chair.

(e) Savings Clause: Both parties acknowledge that the provisions contained in this subparagraphs (a)-(c) are reasonable and necessary to protect the legitimate interests of the University and UPHS, that any breach of these provisions will result in irreparable harm to the same, and that the University and UPHS will be entitled to injunctive relief for any breach in addition to any other remedies that may be allowed by law. In the event that these restrictions

are adjudged to be overbroad or not fully valid and enforceable, such restrictions shall be modified so as to make them fully valid and enforceable, consistent with the parties' intentions to provide the maximum protection permissible in law and equity. You hereby waive any objections on the grounds of improper jurisdiction or venue to the commencement of an action in the Court of Common Pleas for Philadelphia County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. This entire agreement and subparagraphs (a)-(c) are also assignable by the University or UPHS to their affiliates, successors and assigns.

11. **Miscellaneous.** Member enters into this Agreement voluntarily and has had the opportunity to consider the terms of this Agreement and discuss them with legal counsel. This Agreement constitutes the entire agreement of the parties with respect to the matters covered herein. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs and personal representatives. This Agreement may not be assigned by the Member. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

If any provision of the Agreement shall be found unenforceable, the remainder of this Agreement shall continue in full force and effect.

DATED this _____ day of _____, 20_____.

BY _____

TITLE _____

(Member)

Approved: _____
(Department Chair)