



Physician Guide to Group Practice Employment Agreements

How to Use This Document

This Physician Guide to Group Practice Employment Agreements (“Guide”) discusses several provisions that are commonly included in employment agreements drafted by group practices. This Guide focuses on the legal and practical issues that are presented in the agreements. Sample contract language is included to demonstrate how some of the provisions may appear in the agreements.

This Guide is for general informational purposes only. It does not include or discuss each and every potential contract provision. This Guide does not provide, and is not intended to provide, legal advice or legal opinions on any specific facts or circumstances, nor is it intended to substitute for legal advice. Physicians are urged to seek legal advice from their own lawyers specific to the agreements at issue.

1. The Parties

The agreement will begin with a statement identifying all parties to the agreement. In most cases, the parties to the agreement will be the physician and the group corporate entity. It is important that the correct parties be named, using the proper legal names.

Example:

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between **ACME MEDICAL GROUP, P.C., d/b/a ACME MEDICAL CLINIC** a professional corporation (“Group”), and **SAM JONES, DPM**, a physician duly licensed to practice medicine (“Physician”).

2. Recitals

Some agreements include recitals, which are statements explaining who the parties are and why they are entering into the agreement. This section should be reviewed to confirm that the recitals are accurate.

Example:

WITNESSETH:

WHEREAS, ACME is a group medical practice which provides health care services to individuals in the Happy Valley area;

WHEREAS, ACME has identified the need to provide podiatric physician services to its patients;

WHEREAS, Physician has the requisite training and expertise in podiatric medicine; and

WHEREAS, Physician is willing to accept employment by ACME and provide administrative and professional services pursuant to the terms of this Agreement.

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3. A Description of the Physician's Duties and Responsibilities

This section of the agreement will describe the physician's duties and responsibilities to the Group. Generally, this section should describe the physician's duties and responsibilities with enough specificity so that the physician has a clear understanding of what is required under the agreement. For example, a sentence that states that the physician should "perform the typical duties associated with a physician" does not provide the physician with a clear description of the employer's expectations. In many contracts, this section may not list the physician's specific duties and responsibilities but will instead refer to an exhibit (an attachment to the contract), which contains the list of duties and responsibilities. If the exhibit is incorporated into the contract, it is part of the contract.

Note that regardless of where the physician's duties are described in the agreement, if the list of duties includes a general description such as "and any other duties and responsibilities required by Group," the group has the discretion under the agreement to add or modify the physician's duties and responsibilities without the approval of the physician.

The following are potential issues to consider when reviewing this section of the agreement:

- Does the section specify where the physician will provide services? This may be important if the group has multiple practice locations and the physician does not want to be required to provide services at all locations.
- Does the section specify the number of hours that the physician must work? This may be important if the physician expects part-time employment.
- Does the section specify the physician's on-call duties?
- Does the section specify whether the physician will have any administrative duties in addition to patient care duties, and if so, does it specify the number of hours required to be devoted to administrative duties?
- Does the section require the physician to provide a standard of care that is higher than required by state law? For example, if the agreement states that the physician is expected to provide care of "the highest quality possible" the physician is likely agreeing to accept a standard that is not required and that is higher than what state law generally requires.
- On the other hand, if the agreement states that the physician shall provide care in compliance with generally accepted standards in the community, such an agreement does not impose a higher standard than required by law.
- Does this section prohibit the physician from engaging in any other outside activities, or is it silent on this issue? For example, if a physician wants to the ability to lecture or serve as a consultant or expert witness, the physician should request language in the agreement to allow such activities and the agreement should also specify whether the physician is allowed to retain the compensation for such activities.

In addition to describing the specific duties of the physician, this section of the contract may also include related obligations imposed upon the physician such as maintaining Board-certification, participation in the group's third-party payor programs, and maintaining hospital privileges and/or an unrestricted state medical license.

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Note: The agreement may require the physician to make “representations and warranties” of certain facts, for example that the physician possesses a full and unrestricted state medical license and federal DEA registration. A representation and warranty is generally considered a fact which induces someone to enter into a contract. Therefore, the group will likely consider it to be a breach of the agreement (which will allow the group to terminate the agreement) if the fact represented was not true at the time it was made, and/or depending on the language, if the fact is not true sometime in the future.

This section may also require the physician to “comply with all group policies.” Such language would contractually bind the physician to unspecified policies even if the policies have not been provided to the physician. In order to avoid such an issue, the physician can request that the group specifically name the policies in the agreement and provide the physician with copies of all such policies. From the group’s perspective, it is regulated by federal and state agencies; therefore, the group has legitimate reasons to require the physician to comply with its policies. However, it is also reasonable for the group to identify and provide all relevant policies to the physician so the physician knows the terms to which he is agreeing prior to signing the agreement.

Example:

Employment Duties and Responsibilities

3. Employment. Physician shall provide the services described herein on a full-time basis in accordance with the terms of this Agreement. Physician’s work hours shall be determined in the reasonable discretion by Group but shall not be less than forty (40) clinical hours per week, of which Physician shall be available to provide professional services at any site designated by Group. Physician shall: provide medical services to Group’s patients on such days and during such hours designated by Group; promptly complete medical records and cooperate in completion of necessary forms for third-party reimbursement; and participate in the performance of such administrative matters and meetings, peer review programs, utilization review programs and educational programs as required by Group.

3.1 Licensure. Physician shall hold and continue to hold an unlimited license to practice medicine in all states in which Group operates, an unrestricted state and federal registration to dispense drugs and write prescriptions, shall be enrolled as a provider in Medicare, Medicaid, any other federally funded health care program, as well as any managed care plan that has a signed provider agreement with Group; and shall comply with those regulations and standards of professional conduct adopted by the applicable state Medical Board.

3.2 Medical Staff Privileges. Physician shall obtain and maintain active membership on the active staff with clinical privileges sufficient to permit Physician to perform all services required throughout the Term of this Agreement at such hospitals as Group requires from time to time.

3.3 Compliance with Group Policies. Physician shall abide by the policies of Group as well as Group’s corporate compliance program, which such may be established, adopted or revised by Group from time to time.

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3.4 Participation of Third-Party Payors. Physician:

3.4-1 will participate in all managed care and third-party payor programs designated by Group, including but not limited to, the Medicare and Medicaid programs;

3.4-2 will abide by all applicable requirements and guidelines of the payment and health delivery plans in which Group participates; and

3.4-3 will not contract or participate with any third-party payor or managed care plan without the prior written consent of Group.

4. A Description of the Group's Duties

The group's duties are explained in this section of the agreement. Sometimes the agreement does not include any specific duties on the part of the group. However, it is appropriate for the agreement to include at least the basic duties of the group. This section may also indicate when the physician might be considered eligible to become an owner of the group practice.

Example:

Obligations of Group

4.1 Space and Facilities. Group shall provide Physician use of space, equipment, personnel, and other resources as Group deems appropriate for the delivery of services Physician is to provide under this Agreement.

4.2 Management and Support Staff of Group; Employee Discipline and Termination. Group shall, at its expense, by itself or through a third party, provide and maintain the operations of Group's physician services, including practice management, equipment and supplies. Group shall provide staff that are reasonably necessary for Physician to provide Services hereunder. The final determinations regarding hiring and termination of personnel shall remain with Group.

4.3 Acquisition of Stock Ownership. At the second anniversary of the Effective Date, Group will consider Physician for shareholder status with the Group. Group has no obligation to offer shareholder status to Physician, and shall determine in its sole discretion whether to offer shareholder status to Physician.

5. Compensation

Compensation can be addressed in various ways in the agreement. It is not unusual for group agreements to include a base or guaranteed annual salary in addition to an incentive bonus. It is important that the contract specify the amount and type of compensation and that the physician understand the compensation structure. Some agreements include basic compensation structures while others use very detailed formulas with multiple components. The following are relevant questions when reviewing this section of an agreement:

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- Is the compensation structure clearly spelled out in the agreement?
- Does the agreement address whether and how the base salary will be increased? If not, this likely means that any employment agreement would have to be renegotiated to modify the base compensation.
- Does the agreement address what happens with respect to compensation if employment is terminated early by either party? For example, is the physician entitled to compensation based on receivables obtained after termination, or does all compensation end when employment ends for any reason?

In addition to base and incentive compensation, the agreement should address whether the group intends to provide fringe benefits such as health and disability insurance, vacation, and continuing medical education expenses.

The agreement should also specify whether the group will pay for professional liability or malpractice insurance. The physician should be knowledgeable about the state's malpractice liability coverage requirements and options. For example, if state law requires that a physician have a minimum amount of coverage, the agreement should specifically require such coverage. In addition, state law may (1) require the physician or her insurer to pay a surcharge or participate in a compensation fund; or (2) provide the physician with benefits for paying the surcharge (for example, placing a limit on the amount of malpractice damages that can be awarded). If so, the agreement should require payment of the surcharge.

The agreement should also specify whether the professional liability coverage will be on a claims made basis, which means that the insurance policy will only cover claims made during the time that the policy was in effect. As a result, if a claim is made against the physician after the physician is no longer employed by the group, the group's policy would not cover the claim even if it relates to a patient treated during the physician's employment with the group. Therefore, either the group or the physician would need to purchase "tail coverage" to cover those claims which involve the physician's acts while he was employed by the group, but which were made after termination of employment. The agreement should specify which party will be responsible for obtaining and purchasing the tail coverage.

Example:

Compensation

5.1 Compensation.

(a) **Base Salary.** In consideration of the Services to be provided by Physician hereunder, Group shall compensate Physician with an annual base salary of **[DOLLAR AMOUNT]** 00/100 Dollars (\$ _____) ("Base Salary"), less applicable taxes, subject to the provisions herein. Group shall pay the Base Salary in equal installments as such regular intervals as similarly situated employed physicians are paid.

(b) **Incentive Bonus.** Physician will have the opportunity to earn an incentive bonus. At the end of every 12-month period, if the Employee Collections exceed the Physician Expenses, Physician will receive incentive compensation in an amount which equals 15% of the Physician Net Revenue. The bonus for

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each period will be paid within forty-five (45) days of the end of the 12-month period. To be eligible for a bonus during the relevant period Physician must work the entire 12 months. For purposes of this Agreement, “Physician Collections” means the aggregate revenues actually collected by Group which are attributable to services rendered by Physician. “Physician Expenses” means all expenses attributable to Physician, including, but not limited to, salary, benefits, malpractice, phone, staff, rent and equipment. “Physician Net Revenue” means Physician Collections minus Physician Expenses.

5.2 Employee Benefits. Physician shall be eligible to participate in such employee benefit plans of Group as such benefits are provided from time to time to similarly situated employees of Group with similar durations of employment; however, participation in such benefit plans shall be pursuant to and subject to the conditions and terms of such plans, as amended from time to time at the sole discretion of Group. Group retains the right to modify the benefits offered to employees and such modifications shall apply to Physician and shall not be considered a breach of this Agreement.

5.3 Time Off. Physician shall be entitled to fourteen (14) days paid time off for vacation, sick, holidays and five (5) days paid time off for Continuing Medical Education (CME) during the Term of this Agreement. Physician shall schedule such time off in advance and with the approval of Group. Physician may not accumulate any time off into the next succeeding contract year. If not taken within the contract year, the time off is lost to Physician.

5.4 Continuing Medical Education. Physician shall be provided an allowance (includes fee for seminars and all travel cost) of up to [DOLLAR AMOUNT] during the Term of this Agreement subject to authorization by Group to include fee for seminars and all travel cost.

5.5 Professional Liability. Group shall provide professional liability coverage for Physician during the Term of this Agreement and for claims made involving Physician after the Term of this Agreement, but covering services rendered during the Term hereof (“tail coverage”) by Physician to the same extent as any other physician employee of Group acting within the scope and course of employment. Physician shall provide proof of Physician’s own tail insurance on an annual basis to Group covering all of Physician’s administrative and professional actions that occurred prior to the Effective Date of this Agreement. Physician shall be covered by Group’s professional liability coverage only while Physician is acting within the scope and in the course of Physician’s employment with Group.

6. Billing and Assignment

This section of the contract will state that the group will bill for all services provided by the physician and that all amounts collected will be the property of the group. The group will likely require the physician to sign a separate statement indicating that the physician will reassign all Medicare and Medicaid payments to the group. Some agreements may include an indemnification provision which requires the physician to indemnify or reimburse the group for all costs the group incurs (including attorneys’ fees, sanctions and money judgments) caused by the physician’s errors or intentional acts related to billing. Such a provision could potentially expose the

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physician to significant liability. If the group insists on such a provision, the physician could require that the indemnification be mutual, which means that if the group incurs costs related to a billing issue which is caused solely by the physician, the physician agrees to reimburse the group for the costs, and if the physician incurs costs related to a billing issue caused by the group, the group agrees to reimburse the physician for the costs.

Example:

6.1 Billing. Group shall be responsible for the billing of Patients, Medicare, Medicaid and/or third party payors for all Services of Physician provided hereunder. Physician agrees not to independently bill any Patient for Physician Services. All such billings will be under Group's taxpayer identification number. All collections received on account of Services rendered by Physician shall be the property of Group. Physician shall take all actions reasonably requested by Group to assist Group in the collection of payments for services of Physician, including, but not limited to, the submission of provider applications to third party payors.

6.2 Indemnification. Group will indemnify Physician for any costs, fines, penalties, and expenses actually incurred by Physician in connection with any governmental investigation regarding any improper billing by Group or any third party acting on Group's behalf, other than those arising from acts or omissions of Physician.

7. Term and Termination

This section of the agreement establishes the length of time that the agreement is in effect (the term), whether the agreement will automatically renew at the end of the initial term, and the specific reasons which would allow one or both parties to terminate the agreement prior to the term of the agreement. Usually agreements will allow one or both parties to terminate the agreement "with cause," which means upon the occurrence of a specified condition (like breach of contract), and "without cause," which means for any reason.

For this section, the physician should consider his or her specific circumstances and whether it is more advantageous to the physician to have a longer term and whether it is more advantageous for the physician to have the ability to terminate without cause with a shorter or longer time period for the required notice. For example, if the agreement allows either party to terminate without cause with 30 days written notice, such a provision would allow a physician to terminate his or her employment with fairly short notice. On the other hand, it would also allow the group to terminate upon the same short notice, which may not provide the physician with much time to arrange for other employment.

With respect to termination for cause, it is important to understand whether the agreement gives the physician the opportunity to "cure" or fix the physician's breach of contract before termination, or whether the group can terminate simply upon the physician's breach of the contract. There will be some situations that the physician cannot cure and the group will likely want the ability to terminate without having to provide the physician with an opportunity to cure. A common example is conviction of a felony. However, where possible and applicable,

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the physician can request that termination for cause will only occur after the group (1) gives written notice to the physician of the breach of the agreement; and (2) the physician fails to cure the breach within 30 days of receiving such written notice.

Finally, it is important to ensure that there is a provision which allows the physician to terminate the agreement if the group breaches the agreement. Some agreements are initially drafted one-sided, so that only the group has the ability to terminate the agreement.

Example:

Term and Termination

7.1 Term. This Agreement shall be effective on the ____ day of _____, 20__ (the “Effective Date”) and shall have a Term of three (3) years (the “Term”). The Agreement shall automatically renew for additional one-year terms unless terminated as provided herein.

7.2 Termination. Notwithstanding Section 7.1, this Agreement shall terminate prior to its natural termination on the occurrence of any of the following events:

7.2-1 Termination by Agreement. In the event Group and Physician agree in writing.

7.2-2 Termination Without Cause. This Agreement may be terminated by either party without cause by providing the other party at least ninety (90) days’ prior written notice of such termination.

7.2-3 Termination for Breach of Agreement. Either party may terminate this Agreement in the event of a material breach of the terms of this Agreement by the other party provided the other party fails to cure such breach within thirty (30) days following written notice of such breach.

7.2-4 Termination by Virtue of Death or Disability. This Agreement shall terminate immediately upon the death of Physician. Physician or Group may terminate this Agreement if Physician has a disability preventing Physician from providing Services required pursuant to this Agreement for one hundred eighty (180) days and Group has no reason to believe that Physician will be able to return to work with or without reasonable accommodations.

7.2-5 Immediate Termination by Group. Notwithstanding any language contained herein to the contrary, this Agreement may be terminated by Group immediately upon the following events:

- i. Physician fails to obtain and maintain a permanent license to practice medicine in the state(s) where Group is located, or Physician’s license to practice medicine is suspended, revoked or limited;
- ii. Physician’s clinical privileges or medical staff membership at any hospital is terminated, restricted, suspended or limited;

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- iii. Physician is excluded from participating in any federal health care program for any reason; or in any managed care organization for reasons related to the quality of patient care or patient satisfaction;
- iv. Physician fails to maintain an unrestricted state and federal registration to dispense and to write prescriptions for prescription drugs and/or controlled substances;
- v. Physician is convicted of a felony;
- vi. Physician commits a crime (other than a minor traffic violation) or engages in immoral conduct tending to injure the reputation of Group; or
- vii. Physician is impaired while providing services under this Agreement or on-call due to the use of alcohol, prescription or non-prescription medications, or illegal drugs, where such use results in Physician being unable to perform the essential functions of his position or results in Physician posing a safety threat to others as determined in the sole discretion of Group.

8. Restrictive Covenant and Non-Solicitation

It is not uncommon for any physician employer to include a restrictive covenant and/or non-solicitation clause in the agreement. Generally, a restrictive covenant prevents the employed physician from competing against the group by practicing in a specific geographic area during and after the term of employment and for a specific time period after termination of employment. Most provisions also allow the employer to go to court and seek injunctive relief, which means that a court can order the physician to comply with the restrictive covenant and refrain from practicing as agreed in the contract. The agreement may also require the physician to pay the group's attorneys' fees and expenses if the group is required to seek the court order to enforce the restrictive covenant.

Each state has its own laws on whether restrictive covenants are permitted, and if so, what terms can be imposed in such restrictive covenants. If a state allows a restrictive covenant, the physician will want to make the scope of the geographic area as small as possible, and the restricted time period as short as possible. Another important consideration is whether the physician should be bound by the restrictive covenant if the group terminates the agreement without cause. The physician may want to negotiate the provision so that the restrictive covenant only applies if the physician terminates the agreement without cause or if the group terminates the agreement for cause, but the restrictive covenant does not apply if the physician terminates the agreement for cause (for example, the group breaches the agreement) or if the group terminates the agreement without cause.

Many hospital employers only require physicians to agree to a non-solicitation provision. This allows the physician to practice in the same geographic area after leaving the hospital but prohibits the physician from

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asking patients to transfer from the hospital clinic to the physician's new practice location. However, most group practices request both a restrictive covenant and a non-solicitation provision.

Example:

Restrictive Covenant and Non-Solicitation

8.1 Restrictive Covenant. Physician agrees that, with the exception of the services and duties that are performed on behalf of Group pursuant to the terms of this Agreement, during the Term and for a period of two (2) years after the termination of this Agreement for any reason, physician shall not, directly or indirectly within a 30-mile radius: (a) engage in the practice of podiatric medicine; (b) have a financial or ownership interest in any group, clinic or other health system that competes with Group, including but not limited to as a partner, member shareholder, director, officer, principal, agent, investor or in any other relation or capacity whatsoever; (c) request any patient who received services at any office of Group to terminate his or her relationship with Group; (c) re-direct patients of Group to another location or induce or attempt to influence any employee or independent contractor of Group to terminate his or her relationship with Group.

8.2 No Running of Covenant During Breach. With respect to any restrictive covenant which applies after the termination of this Agreement, if Physician violates such restrictive covenant and Group brings legal action for injunctive or other relief, Group shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of such restrictive covenant. Accordingly, after the termination of this Agreement for any reason, for any time period that Physician is in violation of the restrictive covenants set forth in this Paragraph, such time period shall not be included in calculating any such restrictive covenant time period described in this Paragraph.

8.3 Injunction. Physician acknowledges that the restrictions contained in this Paragraph are a reasonable and necessary protection of the legitimate business interests of Group. In the event of any violation of these restrictions, Group shall be entitled to preliminary and permanent injunctive relief, in addition to any other remedy to which it may be entitled, including Group reasonable attorneys' fees and costs. Nothing herein contained shall be construed as prohibiting Group from pursuing any other legal or equitable remedies available to Group due to a violation of the restrictions set forth in this Paragraph.

9. Miscellaneous Provisions

The end of the contract will usually include several short miscellaneous provisions. These provisions usually cover the following topics:

- A confidentiality provision which requires the physician to maintain the confidentiality of and agree not to disclose or use for his or her own benefit, any confidential or trade secret information from the group.

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- Whether one or both parties are required to pay for the attorneys' fees of the other party in the event the party must take legal action to enforce the agreement. If this provision is in the agreement, the physician should make sure that this provision applies to both parties and not just the group.
- Indemnification. This requires one party (P1) to reimburse all costs incurred by the other party (P2) which were caused by the acts of P1. The concept is that each party should be liable for its own acts, and not for the acts of others. It is common for indemnification to also require one party to reimburse the other party for costs to defend claims, including attorneys' fees. As an example, if the physician provides information to the group billing personnel to indicate that the physician performed a higher level evaluation and management code than what was actually performed, and the government sues the physician and group to recover the money plus sanctions, an indemnification provision, depending on the language, could require the physician to pay the group all costs associated with the group's defense of the lawsuit and any money penalties imposed by the government against the group. In reviewing the indemnification provisions, the physician should ensure that the group agrees to the same indemnification language that the group is requesting from the physician.
- The agreement may specify how the parties are to resolve disputes. It may require nonbinding procedures, such as mediation, or it may require arbitration, which is binding and eliminates the ability for either party to go to court to resolve disputes.
- The agreement will likely specify that the group owns the patient records and that the physician will not have any ownership or right of control over the records either during or after employment. The physician can request that the agreement allow the physician to have access to records after termination of employment for legitimate business purposes and other reasons such as responding to investigations and defending malpractice claims.
- The agreement will also address how the parties can amend the agreement, which is usually only in writing and signed by the parties.
- Other common provisions include how the parties are to provide notice to each other regarding the agreement, whether either or both parties can transfer or assign the responsibilities under the agreement to other parties, and which court will have jurisdiction over any disputes arising from the agreement. It is also common for the agreement to state that if a party decides not to enforce a breach of the agreement, such a decision does not waive or prevent the party from having the ability to enforce any subsequent breach.

Example:

Confidentiality and Trade Secrets

9.1(A) **Proprietary Information.** In the course of Physician valuable proprietary data and other confidential information with respect to Group's activities. Such proprietary data and other confidential information include, but are not limited to, the following: Group's business and financial methods and practices, pricing and marketing techniques, file or database materials, computer programs, lists of Group's Patients, Patient record cards, Patient files, and data on Group's vendors. In addition, Physician, on behalf of Group, may develop personal acquaintances with patients and prospective patients of Group. As a consequence, the parties acknowledge that Physician will occupy a position of trust and

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confidence with respect to Group's affairs and services. In view of this position and the remuneration to be paid to Physician, Physician acknowledges that it is reasonable and necessary for the protection, goodwill and business of Group, that Physician agrees to those terms contained in this Article regarding the conduct of Physician during and subsequent to Physician's rendering of Services to Group, and that Group will suffer irreparable injury if Physician engages in the conduct prohibited thereby. Physician represents that observance of these terms set forth in Article will not cause Physician any undue hardship or unreasonably interfere with Physician's ability to earn a livelihood.

9.1(B) Restriction on Unauthorized Disclosure. Physician, during the Term of this Agreement and thereafter, will not, without the express written consent of Group, directly or indirectly communicate or divulge, or use for his/her own benefit or the benefit of any other person, firm, association or corporation, any of Group's proprietary data or other confidential information that has not otherwise been disclosed to the public, including by way of illustration, the information described in Section 9.1(A), which were communicated to or otherwise learned by Physician in the course of the employment relationship covered by this Agreement. Physician may, however, disclose such matters to the extent that disclosure is required: (a) in the course of the employment relationship with Group; or (b) by a court or governmental agency of competent jurisdiction. As long as such matters remain proprietary data or other confidential information, Physician will not use such proprietary data or other confidential information, in any way or in any capacity other than as a physician employed by Group and to further Group's interests.

Example:

9.2 Attorneys' Fees. In the event it becomes necessary for any party to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

Example:

9.3 Indemnification. Physician agrees to indemnify and hold harmless Group and its members, directors, officers, employees and authorized agents from any damages, losses, liabilities, claims, actions, demands, judgments, fines, fees, costs and expenses for actions of Physician that occurred prior to the Effective Date of this Agreement or that arise during the Term of this Agreement by reason of personal injury or property damages of whatever nature or are caused as a result of the negligent or intentional acts or omissions of Physician.

Example:

9.4 Dispute Resolution Procedures. Physician agrees that prior to initiating litigation of any type against Group (or any of its officers, directors, agents, or employees) in a court of law, Employee shall comply with the following:

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- (a) **Notice.** Physician shall send Group written notice setting forth in reasonable detail the nature of the dispute or claim.
- (b) **Mediation.** Following notice, Physician shall engage in a good faith attempt to mediate the claim before a neutral attorney mediator who has met qualifying training criteria for mediation from time to time established by the [applicable state] court.
- (c) **Arbitration.** Following mediation, at the option of Group, any dispute arising out of or relating to this Agreement may be settled by arbitration by an individual arbitrator mutually acceptable by both parties.
- (d) **Litigation.** Following all such procedures, in the event that any remaining, outstanding claims of any type against Group (or any of its officers, directors, agents, or physicians), then all such claims shall be tried in any court, if at all, without a jury, notwithstanding any rights to a jury trial. Physician hereby expressly waives any rights to a jury trial.

Example:

9.5 Health Records. The ownership and right of control of all reports, records and supporting documents that may be prepared in connection with the Services contemplated herein shall vest exclusively in Group; provided, however, that Physician shall have such right of access to such reports, records and supporting documentation as necessary for the provision of Services hereunder.

Example:

9.6 Amendments. This Agreement may be amended only by an instrument in writing signed by the parties hereto.

Example:

9.7 Notices. Notices or communications herein required or permitted shall be given to the respective parties or by registered or certified mail (said notice being deemed given as of the date of mailing) or by hand delivery at the following addresses unless such party shall otherwise designate its new address by written notice:

Physician	Group
[Address]	[Address]

Example:

9.8 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without the prior written consent of the other party, except for an assignment by Group to an entity controlled by or under common control with Group.

Example:

9.9 Governing Law. This Agreement shall be construed and governed by the laws of the State of [INSERT STATE].

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8725 West Higgins Road
Suite 555
Chicago, Illinois 60631-2724

info@acfas.org
773-693-9300 phone
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acfas.org
FootHealthFacts.org

Example:

9.10 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach hereof.

*ACFAS acknowledges the work of Stacy L. Cook, Esq. in contributing to this Guide.
Ms. Cook practices with the law firm of Barnes & Thornburg, LLP.*

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