Sample employment contract for a pathologist
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 ________________________, MD (“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:

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 reassign 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….”
ARTICLE I

Employment

CORPORATION hereby employs PHYSICIAN and PHYSICIAN hereby accepts full-time 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 medicine in the State of ____________ 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 pathology.

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] 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.

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

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 subspecialty board certification or eligibility for examination for subspecialty 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.
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 ___ %;

(B) upon the death of the 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 Agreement;

(D) upon PHYSICIAN working less than full time;

(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 nonrenewal 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;

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 fulfill Physician's obligations under this agreement. If Physician, and Corporation cannot 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.
(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 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 Registration from Medical Staff.
In the event of termination or nonrenewal 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 that 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

(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 Certification.13

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 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.
PHYSICIAN shall obtain a board certification in Anatomic Pathology and Clinical Pathology within two (2) years of the Effective Date of this Agreement. 14 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 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 bylaws. 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 bylaws.

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 deductions. 16 CORPORATION shall pay PHYSICIAN the prorata annual salary on a monthly basis. 17

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13 Depending on the practice’s requirements the contracting parties may want to include additional or different subspecialty 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.
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
4.2 Fringe Benefits.

The physician may want to request a schedule of estimated 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.

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.

(B) In the event of termination of this Agreement for any reason, PHYSICIAN shall (i) at PHYSICIAN's sole expense, obtain an extended reporting endorsement for the professional liability coverage (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 that issued PHYSICIAN's liability insurance coverage while PHYSICIAN was employed by CORPORATION, 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 Bylaws

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 bylaws, rules, and regulations and this Agreement, the provisions

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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 The physician may want to request a schedule of estimated 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.

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

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

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 Date. 22 Violation of this covenant by PHYSICIAN

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

22 Contracting parties may want to consider specifying 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
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. 23

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.

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”); 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 that 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

Sample language: ...and any entity within a distance of _______ miles from a facility where the Corporation provides pathology services.

23 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.
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 FedEx 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. 24

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.


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.

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.

24 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 of the Corporation's clients.
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 dates set forth below their signatures.

By: __________________ ______________

President        ,MD

Date: ________________     Date: ______________

By: __________________ ______________

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. 25 26

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 Bylaws 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 demonstrate certification by the American Board of Pathology. 27
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 28:

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

2. Coordinate with the Department Director to select, establish, and quality control all testing procedures within the laboratories staffed by CORPORATION.

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25 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.
26 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.
27 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.
28 The corporation may consider adding a reference to adding and/or referring to the list of CLIA or the laboratories accrediting agency requirements.
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

I. 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 prorated 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.  

II. 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 nonshareholder 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 nonshareholder physician employees of CORPORATION.

III. Vacation/CME/Sick Leave.

(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 prorated 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.

29 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.
(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 prorated 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.

IV. **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.