

ADDENDUM C

OCCUPATIONAL HEALTH PROGRAM
PROFESSIONAL SERVICES AND MEDICAL DIRECTOR AGREEMENT

This *Occupational Health Program Professional Services and Medical Director Agreement* (“Agreement”) is made and entered into effective March 1, 2006 by and between **Palomar Pomerado Health**, a local health care district organized pursuant to Division 23 of California Health and Safety Code (“PPH”) and **Donald S. Herip, M.D., M.P.H.** (“Physician”).

R E C I T A L S

A. PPH is the owner and operator of Palomar Medical Center, a general acute care hospital, located at 555 East Valley Parkway, Escondido, California (“Hospital”) and Pomerado Rehabilitation Outpatient Services (“PROS”) a PPH outpatient clinic, located at 15708 Pomerado Road, Poway, California 92064 (“Clinic”).

B. Hospital wishes to develop and institute an occupational health program, to be known as *Corporate Health Services* (the “Program”) to provide occupational health services to PPH employees and other individuals.

C. Physician is qualified and licensed to practice medicine in the State of California, is experienced and qualified in the specialized field of Occupational Medicine, and is a member of the Medical Staff of Hospital (“Medical Staff”).

D. PPH will operate Program at the Clinic and in a new outpatient department of Hospital, pursuant to California Health and Safety Code Section 1206(d) (the “Hospital Department”), and such Program shall consist of facilities and equipment owned by PPH and staffed by PPH employees.

E. PPH desires to retain Physician as an independent contractor to provide professional occupational health services through the Program (“Professional Services”) to PPH patients, including PPH employees, on an as-needed basis, for which PPH will compensate Physician.

F. PPH also desires to retain Physician as an independent contractor to provide certain administrative services (“Administrative Services”), including consultation and medical director services required for the proper development and operation of the Program. PPH has determined that this arrangement will enhance the Program’s organization, procedure standardization, economic efficiency, professional proficiency, and provide other benefits to enhance coordination and cooperation among the Program’s providers and users.

G. PPH and Physician acknowledge and agree that this Agreement shall supersede any and all agreements that have been entered into by the parties previously for the provision of services identified under this Agreement.

H. It is the intent of both PPH and Physician that the terms and conditions of this Agreement, and the manner in which services are to be performed hereunder, fulfill and comply with all applicable requirements of any applicable “safe harbor” or exception to Stark I and II including, but not limited to, the applicable requirements set forth in regulations promulgated by the

Department of Health and Human Services, Office of Inspector General, and the Ethics in Patient Referral Act.

THEREFORE, THE PARTIES AGREE:

I. PHYSICIAN RESPONSIBILITIES

1.1 Professional Services. As part of the Program, Physician shall provide Professional Services to: (a) PPH employees; and (b) in the event PPH contracts with third party employers and other payors (collectively “Plans”) to provide or arrange for the provision of occupational health services to participants of such Plans (“Plan Participants”). PPH employees and Plan Participants shall be collectively referred to herein as “PPH Patients”. Physician shall be available for 40 hours per week to perform Medical Director duties and to treat PPH Patients at the Hospital Department and Clinic. Physician agrees to provide on-call services during the hours he is not scheduled to be on-site at the Hospital Department or Clinic. PPH Department hours shall be Monday through Friday from 7:00 AM to 12:30 PM, and Clinic hours shall be Monday through Friday from 1:00 PM to 7:00 PM. Hours are subject to change to accommodate PPH Hospital Department and Clinic scheduling needs. Physician agrees to cooperate with PPH in setting Physician’s work schedule to maximize operations at both the Hospital Department and Clinic.

1.2 Maintenance of Records. Physician shall cooperate fully with PPH by maintaining and making available all necessary records and Time Reports (as defined herein) in order to ensure that PPH will be able to meet all requirements for participation in government programs or private third-party payors and for obtaining payment from those sources.

1.3 Assignment of Payments. Physician shall assign to PPH all rights to receive payments for the Professional Services provided by Physician under this Agreement. If any payments or reimbursements are not automatically assigned to PPH through the establishment of formal assignments under applicable government and commercial programs, Physician shall directly remit all such payments to PPH. Physician shall execute the Assignment Agreement set forth in **Exhibit A**, and Physician agrees to complete any other documentation or applications that may be required to effectuate automatic assignments under all applicable government and commercial payor programs.

1.4 Professional Standards. Physician shall, throughout the term of this Agreement, comply with the following:

(a) **License/Participation.** Physician shall maintain his license or certification to practice medicine in the State of California without interruption;

(b) **Certification.** Physician shall maintain his Board Certification or Board Eligibility for Occupational Medicine with the applicable accreditation agency without interruption;

(c) **Medical Staff.** Physician shall be a member in good standing of PPH’s Medical Staff and shall comply with all applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations throughout the term of this Agreement;

(d) **Policies.** Physician shall comply with all policies, rules and regulations of PPH and the Program;

(e) **Continuing Education.** Physician shall participate in continuing education as necessary to maintain his licensure and certification, and to remain current with applicable standards of practice; and

(f) **Laws.** Physician shall comply with all applicable laws, rules and regulations of any and all governmental authorities.

(g) **Insurance.** At all times, Physician shall maintain the following insurance: in full eprofessional liability coverage in an amount of \$1,000,000 per provider per claim with an aggregate limit of not less than \$3,000,000.

1.5 Insurance Maintained by Physician. At all times, Physician shall maintain and provide proof of the following types of insurance in the amounts specified below and under the conditions specified below. Physician further agrees to maintain such insurance coverage throughout the term of this or any subsequent agreement:

(a) **Professional Liability.** Professional liability coverage in the amount of \$1,000,000 per provider per claim with an aggregate limit of not less than \$3,000,000. Coverage shall include contractual liability coverage. If policy contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times. If over 50% of any such aggregate limit has been paid or reserved, PPH will require additional coverage to be purchased by Physician to restore the required limits. Any deductible must be declared to and approved by PPH. At the option of PPH, Physician shall provide a financial guarantee satisfactory to PPH for the payment of said deductible.

(b) **Automobile Liability.** \$1,000,000 each accident for bodily injury and property damage. Physician's insurance shall be deemed to be primary coverage for the risk of any automobile accident claim made by or against Physician while providing services under this Agreement.

(c) **Notice of Cancellation.** Each required insurance policy shall be endorsed to state that coverage shall not be canceled except after sixty (60) days' prior written notice by certified mail, return receipt requested, has been given to PPH at the address indicated in the Notices provision of this Agreement.

(d) **Qualifying Insurers.** All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than B+, according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by PPH.

(e) **Evidence of Insurance.** Prior to commencement of this Agreement, but in no event later than the effective date of the Agreement, Physician shall furnish PPH with certificates of insurance and amendatory endorsements effecting coverage required under this Agreement. Thereafter, copies of renewal certificate and

amendatory endorsements shall be furnished to PPH within thirty days of the expiration of the term of any required policy. Physician shall permit PPH at all reasonable times to inspect any policies of insurance that Physician has not delivered.

(f) **Failure to Obtain or Maintain Insurance.** Physician's failure to obtain insurance specified or failure to furnish certificates of insurance, and amendatory endorsements, or failure to make premium payments required by such insurance, shall constitute a material breach of this Agreement, and PPH may, at its option, terminate this Agreement for any such default by Physician.

(g) **No Limitation of Obligations.** The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Physician, and any approval of said insurance by PPH are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Physician under this Agreement, including but not limited to the provisions concerning indemnification.

(h) **Review of Coverage.** PPH retains the right at any time to review the coverage, form and amount of insurance required herein and may require Physician to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

(i) **Claims Made Coverage.** If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements requirements specified above, the policy shall include the following:

1. The policy retroactive date coincides with or precedes Physician's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
2. Physician will maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
3. Physician shall obtain an extended reporting provision ("tail insurance") of at least four (4) years to report claims arising in connection with the Agreement to provide uninterrupted coverage if any event occurs during the term of the Agreement that may diminish, curtail, cancel, or otherwise fail to provide coverage identified under this Agreement, including but not limited to Physician's changing of insurance carriers or modification of insurance terms.
4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

(j) **Occurrence Policy.** If any insurance obtained by Physician for coverage under this Agreement is written on an "occurrence" policy, Physician shall obtain an extended reporting provision ("tail insurance") of at least four (4) years to report claims arising in connection with the Agreement to provide uninterrupted coverage

if any event occurs during the term of the Agreement that may diminish, curtail, cancel or otherwise fail to provide coverage, including but not limited to Physician's changing of insurance carriers, modification of insurance terms, or any requirement in Physician's insurance coverage that claims be presented during a specified period of time after an occurrence, or presented during a specified period of time after obtaining knowledge of an occurrence, insurable event, or triggering event.

(k) **Additional Insured Endorsement.** The policies required under this Agreement are to contain, or be endorsed to contain an additional insured endorsement applying coverage to PPH and its officers, agents, employees and volunteers, individually and collectively.

1.6 Loss or Limitation. Physician shall promptly notify PPH if Physician is subject to any loss, sanction, suspension or material limitation of his license, federal Drug Enforcement Agency number, right to participate in the Medicare or Medi-Cal programs, malpractice insurance or Medical Staff membership or clinical privileges at Hospital or any other hospital or managed care organization.

1.7 Medical Director. Physician shall:

(a) Act as the Medical Director of the Program and shall be primarily responsible for the provision of Administrative Services set forth in the job description and performance evaluation that is attached hereto as **Exhibit B** and incorporated by reference. Physician shall provide these Administrative Services in accordance with the terms of this Agreement, the Medical Staff bylaws ("Medical Staff Bylaws") and PPH's bylaws, rules, regulations, policies and procedures (collectively "PPH Bylaws"). Such Administrative Services shall include consulting services in the development of the Program. Physician and the PPH Clinical Outreach Officer shall use their best efforts to meet monthly to discuss Physician's performance of Administrative Services under the Program.

(b) Set his own work schedule in a manner that is consistent with the proper operation of the Program. Physician shall spend as much time as is reasonably necessary to perform the Administrative Services required under this Agreement. Physician shall not spend more than eight (8) hours during any calendar week providing Administrative Services without first obtaining consent from PPH.

1.8 Use of Premises. Pursuant to state and federal law, in order to preserve PPH's exemption from property and other taxes, any space provided to Physician for the performance of any and all services under this Agreement must be used for Hospital purposes only. As a result, no part of the Program premises at the Hospital Department or the Clinic shall be used by Physician as an office for personal use or the private practice of medicine. Physician shall not incur any financial obligation on behalf of PPH without PPH's prior written consent, which shall be in PPH's sole and absolute discretion.

1.9 Competitive Services. The parties recognize the need for Physician to devote efforts to the Program development activities. Therefore, during the term of this Agreement, Physician shall refrain from assuming any duties or obligations at any third party occupational health care facility within PPH's service area without the prior written consent of PPH. This restriction

shall include, but is not limited to any services that Physician may provide to third party occupational health care facilities to manage, direct, consult, administer, or oversee any aspect of their services or operational functions. Notwithstanding this limitation, Physician may provide medical review officer services to entities other than PPH during the term of this Agreement, provided that such services do not infringe on Physician's ability to perform his duties and obligations under this Agreement.

1.10 Absences. Physician agrees to be absent for no more than thirty-five (35) business days for holidays, vacation, illness, or educational conferences each year during the term of this Agreement. Prior to any absence, Physician shall notify and first obtain consent from the PPH Director of Corporate and Employee Health Services or the Clinical Outreach Officer. PPH will arrange for another qualified physician to provide Professional and/or Administrative Services on Physician's behalf during Physician's absence and PPH shall be responsible for payment to that substitute physician.

II. PPH RESPONSIBILITIES

2.1 Facilities, Non-physician Staff, Equipment and Supplies. PPH shall provide the following for the operation of the Program:

(a) **Facilities.** PPH shall make available to Physician the facilities necessary for the operation of the Program.

(b) **Non-physician Staff.** PPH shall make available to Physician all non-physician personnel required for the operation of the Program. PPH shall establish and classify all non-physician positions and shall designate the persons assigned to each non-physician position. Although Physician may make recommendations to PPH relating to the performance of non-physician employees, PPH shall have the sole and exclusive right to control, select, schedule and discharge such employees, and to take any direct disciplinary measures as needed.

(c) **Equipment.** PPH shall make available to Physician at the Program the equipment necessary for the operation of the Program. PPH shall keep and maintain the equipment in good order and repair.

(d) **Supplies.** PPH shall purchase and provide supplies as requested by Physician for his treatment of PPH employees and Plan Participants.

(e) **Standard of Performance.** The responsibilities of PPH pursuant to this section shall be subject to PPH's usual purchasing practices, budget limitations, governmental approvals and applicable laws and regulations.

2.2 Marketing. PPH shall provide advertising services and support services for the Program and the services provided by Physician under this Agreement. PPH shall use good faith efforts to consult with Physician regarding the content of any advertising or marketing prior to its dissemination.

2.3 Medical Records. Any and all PPH Patient records and charts used or created by or on behalf of Physician relating to services provided under this Agreement shall be and remain the property of PPH. Both during and after the term of this Agreement, Physician, or his agent, shall be permitted to inspect and/or duplicate, at Physician's expense, any individual chart or record to the

extent necessary to meet his professional responsibilities to PPH Patients and/or to assist in the defense of any malpractice or similar claim to which the chart or record may be pertinent. Any inspection or duplication of PPH Patient records and charts shall be permitted and conducted in accordance with the applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Physician shall be solely responsible for maintaining patient confidentiality with respect to any information obtained by him or his agents. PPH shall maintain medical records for such period of time as is required by state and federal law.

2.4 Insurance Maintained by PPH. PPH shall provide, at its own cost and expense, general liability insurance, personal property insurance covering loss or damage to PPH's personal property at the Program, and workers' compensation insurance. The general liability insurance policy shall name Physician as an additional insured and shall provide that any claims made pursuant to the policy shall apply both to PPH and Physician as if the policy were separate policies insuring PPH and Physician independent of each other.

III. COMPENSATION

3.1 Compensation. In consideration of the services provided by Physician to the Program, PPH shall pay to Physician:

(a) An annual base compensation in the amount of [REDACTED] (the "Annual Base Compensation"), plus up to [REDACTED] annually if Physician meets performance goals specified under Exhibit B. The compensation shall be payable in equal monthly installments on or before the 15th day of each month beginning the second month of this Agreement. The parties acknowledge and agree that the compensation under this Section represents fair market value payment for Physician's Professional Services and Administrative Services provided under this Agreement..

(b) [REDACTED] annually for educational expenses.

(c) [REDACTED] annually for dues associated with his Board specialties and certifications.

(d) Reimbursement for reasonable expenses and fees relating to Physician's acquisition and maintenance of professional liability coverage required under this Agreement, including the purchase of any tail coverage required under this Agreement.

3.2 Reports. Physician shall use his best efforts and abilities in the provision of services under this Agreement. Physician shall prepare and submit to PPH a monthly written statement of the Administrative Services provided by Physician as the Medical Director during the month using the form attached hereto as **Exhibit C** to this Agreement (the "Time Reports"). Such Time Reports shall be submitted by Physician on or before the fifth (5th) day of each month beginning with the second month of this Agreement. Payment of the compensation described in Section 3.1 is conditioned on Physician's proper maintenance of monthly Time Reports, PPH's timely receipt of such Time Reports, and PPH's reasonable verification of such Time Reports.

IV. TERM AND TERMINATION

4.1 Term. Subject to termination as set forth below, this Agreement shall commence on **March 1, 2006** (the “Effective Date”) and shall end on June 30, 2008 (the “Initial Term”). For valuable consideration, the receipt of which is hereby acknowledged by the parties, PPH shall have the option to renew Physician’s services beyond the Initial Term for an additional two year term, through June 30, 2010, by providing Physician with notice of its intent to renew this Agreement in writing at any time before the expiration of the Initial Term. Physician shall provide his assent or refusal to renew the Agreement in writing within thirty (30) days after receipt of PPH’s notice of intent to renew. Any failure by PPH to request an additional term or refusal by Physician to accept an additional term shall not affect the parties’ duties and obligations during the Initial Term of this Agreement.

4.2 Either party shall have the right to terminate this Agreement without cause upon not less than ninety (90) days prior written notice to the other party.

4.3 Grounds for Termination. This Agreement may be terminated pursuant to any of the following:

(a) **Mutual Agreement.** Mutual agreement of the parties.

(b) **Material Breach.** In the event of a material breach by any party to this Agreement, the other party shall have the right to terminate this Agreement by service of written notice upon the defaulting party (the “Default Notice”). In the event such breach is not cured within 30 days after service of the Default Notice, this Agreement may terminate at the election of the non-defaulting party.

(c) **Termination Without Cause.** This Agreement may be terminated by either party at any time, without cause, upon 90 days’ prior written notice to the other party.

(d) **Termination With Cause.** PPH shall have the right to immediately terminate this Agreement by giving written notice to Physician in the event of:

(1) Physician’s failure to use reasonable efforts to accurately create and maintain medical records in compliance with all applicable laws, the Medical Staff Bylaws and PPH Bylaws;

(2) The loss, sanction, suspension or material limitation of Physicians’ license, federal Drug Enforcement Agency number, right to participate in the Medicare or Medi-Cal programs, or Medical Staff membership or clinical privileges at PPH or any other hospital or managed care organization.

(3) Breach of the provisions concerning HIPAA by Physician; and/or

(4) Cancellation, termination or non-renewal of the professional liability insurance for Physician or any act, event or condition that would disqualify Physician from obtaining such coverage.

(e) **Special Termination.** If (i) any legislation, regulation, rule or procedures are duly passed, adopted or implemented by a federal, state or local government or legislative body or any private agency; or (ii) Physician or PPH or any of its affiliates, receives notice of any actual or threatened decision, finding, or action by any governmental or private agency, court or third party (collectively referred to herein as an “Action”) which, if or when implemented, would have the effect of (1) revoking or jeopardizing the license-exempt status of PPH; (2) denying expected reimbursement for all or a substantial portion of professional and other fee charges for Professional Services provided to PPH Patients; or (3) subjecting Physician or PPH, its affiliates or any of its employees, officers, directors or agents, to civil, criminal or administrative prosecution, or other adverse proceeding on the basis of their participation herein. If any matter or Action arises that may invoke termination under this Section, the parties shall attempt to amend this Agreement or alter its operation in order to avoid the Action. If the parties, acting in good faith, are unable to meet the requirements of the agency, court or third party in question, or, alternatively, if the parties determine in good faith that compliance with such requirements is impossible or not feasible, this Agreement shall be terminated upon written notice from either party.

4.4 Rights Upon Termination.

(a) Upon termination or expiration of this Agreement, all rights and obligations of the parties shall cease, except those rights and obligations that have accrued or expressly survive termination. Upon termination or expiration of this Agreement, and upon PPH’s request, Physician shall immediately vacate the Hospital Department and the Clinic premises and shall remove any and all of Physician’s personal property. PPH may remove and store, at Physician’s expense, any personal property that Physician has not removed. Following the expiration or termination of this Agreement, Physician shall not take any action that might interfere with PPH’s efforts to contract with any other individual or entity for the provision of Professional Services or Administrative Services in the Program.

(b) Physician shall continue to provide service to any and all PPH Patients under his care in the Program at the time of expiration or termination of this Agreement, until Physician’s professional relationships with such PPH Patients are terminated (*e.g.*, by transferring such patients to the care of another physician, discharge of the patient from the facility, etc.). PPH shall continue to pay Physician for services rendered to PPH Patients in accordance with this subsection at the rates set forth herein and shall use its best efforts to assist Physician in transferring his patients’ care to another physician or physicians. Physician agrees to assist with such patient transfers to any physician who may replace Physician.

V. RELATIONSHIP BETWEEN THE PARTIES

5.1 Independent Contractor. In the performance of this Agreement, it is mutually understood and agreed that PPH and Physician are at all times acting and performing as independent contractors and as such they shall remain professionally and economically independent from each other. PPH and Physician are not, and no act, or failure to act by either party shall be construed to make or render the other party its partner, joint venturer, employee or associate. Neither party nor any employee or contractor of a party shall have a claim under this Agreement or otherwise against the other party for workers’ compensation, unemployment compensation, sick leave, vacation pay, pension or retirement benefits, social security benefits, any other employee benefits, coverage for health, accident, disability or life insurance or payment of any federal, state or

local taxes, including, but not limited to, FICA, FUTA and SDI, all of which shall be the sole responsibility of each party. Each party shall indemnify and hold harmless the other party from any and all loss or liability, if any, arising out of or with respect to any of the foregoing benefits or withholding requirements.

VI. REMEDIES

6.1 Arbitration.

(a) Any controversy or dispute between Physician and PPH concerning the performance, termination or interpretation of this Agreement shall be resolved through arbitration proceeding under the Federal Arbitration Act and before the American Arbitration Association (AAA) in accordance with AAA's Commercial Arbitration Rules at the AAA location closest to PPH's office. The administrative cost of the arbitration and the arbitrator's fee shall be shared equally by the parties. The parties shall have full discovery rights under the California Discovery Act, subject to modification by the arbitrator in his or her discretion.

(b) The Arbitrator shall have no authority or power to amend or modify the terms of this Agreement. All arbitration decisions shall be final and binding on the parties. The prevailing party, as determined by the Arbitrator in his or her decision, shall be awarded an amount equal to its reasonable attorneys' fees incurred in connection with such arbitration, in addition to any other relief that may be awarded.

(c) Judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction.

6.2 Indemnification. Each party shall indemnify, hold harmless and defend the other party and its officers, agents and employees against any loss or liability arising out of or resulting in any way from the acts or omissions of such party or its own officers, employees or agents, except that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory and/or intentional acts or omissions of the indemnified party and its owners, employees, or agents. This Section 6.2 shall survive the termination of this Agreement. This Section 6.2 shall extend only to losses or liabilities arising in connection with Administrative Services hereunder and shall not extend to the provision of Professional Services, for which Physician and/or his designees are solely liable.

VII. GENERAL PROVISIONS

7.1 Access to Records. To the extent required by Section 1861x(v)(1)(I) of the Social Security Act, as amended, and by valid regulation that is directly applicable to that Section, Physician agrees to make available upon valid written request from the Secretary of Health and Human Services, the Comptroller General, or any other duly authorized representatives, this Agreement and the books, documents and records of Physician to the extent that such books, documents and records are necessary to certify the nature and extent of PPH's (and/or the Program's) costs for services provided by Physician.

(a) Physician shall also make available such subcontract and the books, documents, and records of any subcontractor if that subcontractor performs any of Physician's

duties under this Agreement at a cost of \$10,000 or more over a twelve (12) month period, and if that subcontractor is organizationally related to Physician.

(b) Such books, documents, and records shall be preserved and available for four years after the furnishing of services by Physician pursuant to this Agreement. If Physician is requested to disclose books, documents or records pursuant to this subsection for purposes of an audit, Physician shall notify PPH of the nature and scope of such request and Physician shall make available, upon written request by PPH, all such books, documents or records. Physician shall indemnify and hold harmless PPH in the event that any amount of reimbursement is denied or disallowed because of the failure of Physician or any subcontractor to comply with its obligations to maintain and make available books, documents, or records pursuant to this subsection. Such indemnity shall include, but will not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs.

(c) This Section is intended to assure compliance with Section 1861 of the Social Security Act, as amended, and regulations directly pertinent to that Act. The obligations of the Physician under this section are strictly limited to compliance with those provisions, and shall be given effect only to the extent necessary to ensure compliance with those provisions. In the event that the requirements of those provisions are reduced or eliminated, the obligations of the parties under this section shall likewise be reduced or eliminated.

7.2 Amendment. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, signed by the parties and attached to this Agreement. Notwithstanding the foregoing, in the event that PPH intends to seek tax-exempt financing, Physician agrees to amend this Agreement as may be necessary for PPH to obtain such financing.

7.3 No Reciprocation. The parties acknowledge and agree that any benefits made or paid to Physician under this Agreement neither require nor are in any way contingent upon admission, recommendation, or referral; or upon any other arrangement for the provision of any item or service provided by PPH or any of its affiliates to any patients, customers or vendors of Physician or Physician's affiliates, contractors, employees or agents.

7.4 Assignment. Physician shall not assign, sell, transfer or delegate any of Physician's rights, duties or obligations under this Agreement through any means, including but not limited to the hiring or retention of additional physicians or non-physician practitioners to perform services pursuant to this Agreement, without PPH's prior written consent.

7.5 Attorneys' Fees. If any legal action or other proceeding is commenced which is related to this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees and expenses incurred in the preparation for, conduct of or appeal or enforcement of judgment from the proceeding. The phrase "prevailing party" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default, settlement or otherwise.

7.6 Captions. The captions used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

7.7 **Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.

7.8 **Confidentiality and Non-Solicitation.**

(a) **Agreement Terms.** Neither party shall disclose this Agreement or the terms thereof to a third party without the prior written approval of the other party, except as provided herein or as otherwise required by law.

(b) **Confidential Information.** Physician recognizes and understands that, during the term of this Agreement, Physician shall receive, have access to or otherwise become acquainted with various trade secrets, materials and other proprietary information relating to PPH and the Program that is of a secret or confidential nature, including but not limited to names, addresses, telephone numbers and medical history of existing patients and prospective patients, referral sources, business plans, strategic plans, marketing plans and methods of doing business (“Confidential Information”). During and after the term of this Agreement, Physician shall not use the Confidential Information for any purposes other than the performance of this Agreement, and shall not disclose such Confidential Information received by Physician to any third party without the prior written consent of PPH, unless required by law.

(c) **Non-Solicitation of Patients and Employees.** The parties agree that PPH has expended significant effort and expense to hire or contract with qualified personnel to carry out duties and obligations of the Program pursuant to this Agreement. Therefore, Physician shall not, without the prior written consent of PPH: (i) employ, hire or contract for services with any employees, contractors, or former employees or contractors of PPH (“PPH Personnel”), nor directly or indirectly solicit PPH Patients during the term of this Agreement; or (ii) employ, hire or contract for services with any PPH Personnel, nor directly or indirectly solicit PPH Patients, within 5 (five) miles of any PPH facility for a period of one year after termination or expiration of this Agreement. Physician agrees that if Physician employs or contracts with any PPH Personnel in violation of this Section, Physician shall pay to PPH within 30 days of hiring or contracting with such PPH Personnel a sum equal to the annual salary or compensation last paid to such PPH Personnel. The parties agree that the restriction contained in this Section is reasonable both in scope and duration.

(d) **Injunctive Relief and Other Damages.** Physician recognizes that irreparable injury will result to PPH in the event that Physician fails to perform the obligations under this Section. In addition to the relief and remedies specified under this Section 6.8, Physician acknowledges and consents that PPH shall be entitled to any other remedies and damages available to it, including but not limited to whatever injunctive relief may be appropriate to restrain the breach or compel the performance of this Section 6.8. A breach of this Section during the term of this Agreement shall be grounds for immediate termination of this Agreement at the sole discretion of the non-breaching party.

7.9 **Health Insurance Portability and Accountability Act of 1996.** Notwithstanding anything to the contrary contained in this Agreement, if and to the extent and for so long as required by the provisions of 42 U.S.C. § 1171 *et seq.*, enacted by the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as amended from time to time (collectively, “HIPAA”), Physician will appropriately safeguard all Protected Health

Information (“PHI,” as such term is defined in HIPAA) made available to Physician by, or obtained by Physician from, PPH and Hospital or any of PPH and Hospital’s employees, contractors, agents or employees. This Section constitutes a contract between PPH and Physician establishing the permitted and required uses and disclosures of such PHI by Physician. Without limitation of the provisions of this Section, Physician shall:

- (a) Not use or further disclose any PHI other than as permitted or required by this Agreement;
- (b) Not use or further disclose any PHI in a manner that would violate the requirements of applicable laws (including but not limited to HIPAA) if done by PPH or Hospital;
- (c) Use appropriate safeguards to prevent the use or disclosure of such PHI other than as provided for by this Agreement;
- (d) Immediately report to PPH and/or Hospital any use or disclosure of such PHI of which Physician becomes aware that is not provided for by this Agreement;
- (e) Ensure that any subcontractor or agent to whom Physician provides such PHI either (i) agrees in writing with Physician to comply with the same restrictions and conditions that apply to Physician with respect to such information; or (ii) provides a “Chain of Trust” or similar assurance to Physician;
- (f) Make such PHI available for inspection and copying by the subjects thereof in accordance with applicable law (including but not limited to HIPAA);
- (g) Make Physician’s internal practices, books and records relating to the use and disclosure of such PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining the PPH’s and Hospital’s compliance with applicable law (including but not limited to HIPAA); provided, however, that in all events, Physician shall immediately notify PPH upon receipt by Physician of any such request, and shall provide PPH with a copy thereof of the request and a copy of all materials so disclosed;
- (h) Return all PHI upon termination of this Agreement that Physician maintains in any form resulting from this Agreement and retain no copies of such PHI; and
- (i) Incorporate any amendments or corrections to such PHI when notified by PPH or Hospital thereof.

In order to assure that this Agreement is consistent with HIPAA, the parties agree that this Section may need to be amended from time to time and they further agree to accept, upon written notice, reasonable revisions required to make this Agreement consistent with HIPAA. The parties agree that the provisions of this Section will survive the termination of this Agreement.

7.10 Non-discrimination. PPH and Physician shall not differentiate or discriminate in the provision of services to patients due to race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or the rules and regulations of PPH and Hospital with respect to such matters. In this regard, and not by way of

limitation to any other provision hereof, PPH agrees to comply with the Age Discrimination Act of 1975 and the Americans with Disabilities Act, as amended, and all regulations issued pursuant thereto applicable to services under this Agreement.

7.11 Exhibits. All Exhibits attached and referred to herein are fully incorporated by this reference.

7.12 Notices. All notices or other communications under this Agreement shall be sent to the parties at the addresses set forth below:

PPH:

Palomar Pomerado Health
15255 Innovation Drive, Suite 204
San Diego, CA 92128
Attention: Administrator/Chief Operating Officer

Physician:

Notice given by mail shall be deemed received five (5) business days after mailing.

7.13 Prior Agreements. This Agreement represents the entire understanding and agreement of the parties as to those matters contained in it. No other oral or written understanding shall be of any force or effect with respect to the matters contained in this Agreement, unless attached to this Agreement as an exhibit or subsequent amendment.

7.14 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and the remaining provisions shall remain enforceable between the parties.

7.15 Waiver. No waiver of any provision of this Agreement shall be effective against either party unless it is in writing and signed by the party granting the waiver. The failure to exercise any rights shall not operate as a waiver of such right.

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7.16 Authority and Execution. By their signature below, each of the parties represent that they have the authority to execute this Agreement and do hereby bind the party on whose behalf their execution is made.

PALOMAR POMERADO HEALTH

PHYSICIAN

(Signature)

(Signature)

(Print Name)

Donald S. Herip, M.D., M.P.H.

(Title)

EXHIBIT A

ASSIGNMENT AGREEMENT

It is agreed that only PPH or its agent shall bill for and receive any payments or reimbursement for the professional occupational health services provided at the Program by Physician. Physician shall agree to complete all paperwork, applications, and/or documentation to effectuate automatic assignments under all government and commercial payor programs.

This assignment relates only to such services provided pursuant to the Professional Services and Medical Director Agreement between PPH and Physician. PPH shall compensate Physician for services rendered pursuant to said Agreement.

PALOMAR POMERADO HEALTH

PHYSICIAN

By: _____
Michael Covert, CEO

By: _____
Donald S. Herip, M.D. M.P.H.

Date: _____

Date: _____

**EXHIBIT B
ADMINISTRATIVE SERVICES**

PALOMAR POMERADO HEALTH

EMPLOYEE/ CORPORATE HEALTH SERVICES

JOB DESCRIPTION

POSITION TITLE: **Medical Director Employee/Corporate Health Services**

Qualifications:

A physician member of the active medical staff at Palomar Medical Center and Pomerado Hospital, who has special interest and specific knowledge in the assessment, diagnosis and treatment of patients with work related injuries, shall provide medical direction for Employee/Corporate Health. The Medical Director shall be qualified as a board certified Occupational Medicine Practitioner and be in good standing with ACOEM (American College of Occupational and Environmental Medicine).

General Responsibilities:

- A. The Medical Director for Employee/Corporate Health shall provide for overall medical direction of the Department and insure that professional standards of care and ethical practice are adhered in all situations of patient care.

In general Medical Director shall:

- (a) **Provide overall clinical direction for the Program.**
- (b) **Participating in and supervising quality measurement activities conducted for the Program.**
- (c) **Advising individuals regarding the Program services.**
- (d) **Supporting PPH in working with third-party payers to provide or expand coverage for all components and services of the Program.**

- (e) **Assisting in developing Program policies, protocols, and procedures, and guidelines.**
- (f) **Monitoring implementation and execution of medical policies, procedures, protocols, and guidelines pertaining to the Program.**
- (g) **Conducting professional continuing educational sessions consistent with the needs of the Program, the hospital's medical staff, and hospital personnel.**
- (h) **Conducting community seminars regarding the Program services.**
- (i) **Acting as the chief medical liaison for the Program to the Hospital administration, medical staff and the community.**
- (j) **Participating in the evaluation of the performance of the Program against its goals and objectives.**
- (k) **Attending PPH regional/national meetings as appropriate.**
- (l) **Communicating input regarding the Program's services from the medical staff, administration, patients and the medical community to the Program Director of the Program.**
- (m) **Participating in the PPH budgeting process as requested.**
- (n) **Provides direct clinical services in the program.**

Exhibit 1.10

CODE

1. I will perform my duties faithfully and to the best of my ability, and in the interest of Hospital.
2. I will not lie, cheat, steal, or violate any law in connection with my employment by Hospital.
3. I will not pay or arrange for Hospital to pay any person or entity for the referral of patients to Hospital, nor will I accept any payment or arrange for Hospital to accept any payment for referrals from Hospital.
4. I will not participate in any false billing of patients, government entities or any other party, nor will I participate in the preparation of any false cost reports, or other type of report submitted to the government.
5. I will not engage in any conduct or practice that conflicts (or appears to conflict) with interest of Hospital, unless I first obtain the express written consent of the Palomar Pomerado Health Board of Directors or designee.
6. I will not use Hospital's confidential or proprietary information gathered during my employment with Hospital for my own personal benefit, either during or after my employment at Hospital.
7. I will not obtain any improper personal benefits by virtue of my employment with Hospital.
8. I will notify the compliance Director immediately upon the receipt (at work or home) of an inquiry, subpoena (other than for routine licensing or tax matters) or other agency or government request for information regarding Hospital.
9. I will not destroy or alter information or documents in anticipation of or in response to, a request for documents by any applicable government agency or from a court of competent jurisdiction.
10. I will not engage in any business practice intended to unlawfully obtain favorable treatment or business from any government entity, physician, patient, vendor or any other party in a position to provide such treatment or business.
11. I will not solicit or receive from any person or entity, nor offer to give to any person or entity, anything of value if that person or entity is in a position to refer business to Hospital or if Hospital is in a position to refer business to that person or entity.
12. I will not accept any gift of more than nominal value, (\$50), and Hospitality or entertainment which because of its source or value might influence my independent judgment in transactions involving Hospital.
13. I will not provide any gifts to any government or public agency representative.

14. I will disclose to the compliance Director any financial interest or ownership interest or any other relationship that I, or a member of my immediate family has with Hospital customers, and vendors or competitors.
15. I will not disclose confidential medical information pertaining to Hospital patients without the express written consent of the patient in accordance with HIPAA, other applicable law and Hospital applicable policies or procedures.
16. I will promptly report all violations or suspected violations of this manual by myself or other employees to the compliance Director.
17. I will not conspire with a competitor of Hospital to illegally fix prices, labor cost, allocate markets, or engage in group boycotts. Before considering any agreements or entering into discussions with a competitor concerning any of these issues, I should first obtain the advice of the compliance Director concerning antitrust issues.

EXHIBIT C

MEDICAL DIRECTOR'S MONTHLY TIME REPORT

Week One: _____, 200__

Week Two: _____, 200__

	<u>Description of Administrative Services Provided</u>		<u>Description of Administrative Services Provided</u>
Monday		Monday	
Tuesday		Tuesday	
Wednesday		Wednesday	
Thursday		Thursday	
Friday		Friday	
Saturday		Saturday	
Sunday		Sunday	

Week Three: _____, 200__

Week Four: _____, 200__

	<u>Description of Administrative Services Provided</u>		<u>Description of Administrative Services Provided</u>
Monday		Monday	
Tuesday		Tuesday	
Wednesday		Wednesday	
Thursday		Thursday	
Friday		Friday	
Saturday		Saturday	
Sunday		Sunday	

Week Five: _____, 200__

	<u>Description of Administrative Services Provided</u>
Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	
Sunday	

Medical Director Signature