

UNIVERSITY PHYSICIANS, INC.

MEMBER PRACTICE AGREEMENT

THIS AGREEMENT is made by and between University Physicians, Inc., and the undersigned Member, effective as of the date set forth opposite the signature of the President and Executive Director of University Physicians, Inc. on the final page of this Agreement. The Member designated on the signature pages hereof (hereinafter referred to as "Member") shall satisfy the five requirements of the University Physicians, Inc. (hereinafter referred to as "UPI") Amended and Restated Bylaws, Article III, Section 2, as amended and restated from time to time. This Agreement is intended to supplement any specific existing or future contractual agreements between Member and the Board of Regents of the University of Colorado. In the event of a conflict between this Agreement and any other agreement between the parties, this Agreement shall control.

I. Member hereby accepts the terms of this Agreement with UPI. UPI is a Colorado non-profit corporation established for the University of Colorado School of Medicine by action of the University's Board of Regents on June 17, 1982. The Operating Agreement entered into by and between the University of Colorado and UPI (f/k/a University of Colorado Medical Services Foundation) is hereby incorporated by reference (copies of which are available from the UPI Administrative Office). Pursuant to the terms of the Operating Agreement, UPI has been designated as the University's agent to accomplish certain University purposes, including education, research and service, and UPI is designated as the exclusive billing agent for the University of Colorado Denver School of Medicine. Under the Operating Agreement, UPI bills, collects, and supports clinical activities. A portion of the revenues therefrom shall be transferred to the University of Colorado Denver School of Medicine to support, in part, Member's faculty salary. Member acknowledges and agrees that Member benefits from UPI's contracting, billing and collection services and the transfer and provision of revenues to support member salaries. In accordance with UPI bylaws, each School of Medicine Department ("Cost Center Unit") will be required to have in effect an incentive plan governing allocation of surplus UPI revenues. The Member may also be eligible to earn incentive payments as provided in such incentive plan. Member will provide professional or clinical services only at UPI-designated sites of practice, which may be revised by UPI from time to time. Member shall not contract nor make any arrangements for the provision of services except as expressly permitted under contracts or arrangements entered into by UPI.

II. In consideration of the promises of UPI, Member hereby assigns to UPI for purposes of billing, collection, administration, and distribution in accordance with UPI's Bylaws and the Cost Center Unit Incentive Plan for Member's Cost Center, all Service Income (as that term is defined below) earned by Member at any time during the term of this Agreement, including vacation. The only exceptions to the above assignment are that a member is not required to assign Service Income to UPI if Member has been granted an official leave of absence by the Dean of the School of Medicine, or that portion of Service Income earned while the Member is employed by and paid directly by one of the following affiliated hospitals: Veterans Administration Medical Center; Denver Health & Hospital Authority; National Jewish Hospital; or other employment with an affiliated hospital approved in writing by the Dean of the School of Medicine.

A. Except as specifically provided in subparagraphs II.B, II.C, or II.D. below, this Agreement is applicable to all income or other compensation or remuneration earned by a Member at any time during the term of this Agreement for professional, clinical, consulting, advisory or similar services (hereinafter collectively referred to as "Service Income"), including, but not limited to, the following:

1. fees, retainers, payment or any other compensation earned for performing patient care, administrative or consultative services, teaching, lecturing, training, work-for-hire, product development, or honoraria (including Exempt Honoraria as defined below). Compensation for such services is hereby assigned by Member to UPI regardless of whether such services were provided pursuant to a written contract; and
2. fees, retainers or any other form of compensation or remuneration earned for services rendered as an expert witness or consultant in a legal matter.

For purposes of this Agreement, any reference to "income," "compensation" or "remuneration" received for professional activities covered by this Agreement shall include, but not be limited to, income as defined under Section 61 of the Internal Revenue Code of 1986, as amended from time to time (26 U.S.C. §61), the regulations issued thereunder, and applicable federal case law. Without in any way limiting the definition of the terms "compensation," "income" or "remuneration," such terms shall include cash compensation, deferred compensation (whether pursuant to a qualified or non-qualified plans or arrangements), qualified or non-qualified deferred compensation plans, warrants, phantom stock, qualified, statutory and non-qualified stock option plans or arrangements, stock appreciation rights, restricted property plans or arrangements, book value and junior stock plans, and any other compensation or benefit plans or arrangements similar to any of the foregoing. Distribution of assigned income shall be subject to the School of Medicine Department Incentive Plan governing allocation of surplus UPI revenues.

B. Provided the Member is in compliance with the University policies for commercializing intellectual property, royalties, licensing fees and other income from publications, editorial services, patents, copyrighted materials and trade secrets are not assignable Service Income.

C. Exempt Honoraria need not be assigned to UPI. In order to be characterized as and qualify as Exempt Honoraria under this Agreement, the honoraria must satisfy the School of Medicine definition of "honoraria" as amended from time to time (i.e., as of July 31, 2003 honoraria consists of compensation which is provided in exchange for presentations by accomplished faculty who have achieved a level of expertise sought by others outside the University. Honoraria include one-time payments for lectures, articles, visiting professorships, NIH study sections and service on boards.) Any honoraria payments not meeting these requirements must be reviewed by the Cost Center Unit Director and Dean of the School of Medicine, and classified as either Exempt or assignable income in accordance with paragraph II.D, below.

With respect to any honoraria not meeting the definitional requirements for Exempt Honoraria status, Member must receive written approval as provided in paragraph D below and obtain the written assignment exemption from the appropriate Cost Center Unit Director and the Dean of the School of Medicine before entering into such arrangement or transaction.

D. All income, except for income described in paragraphs II.B and II.C above, shall be assigned to UPI unless the Member obtains an exemption decision as provided in this paragraph. In order for Member's compensation or remuneration to be characterized as Exempt Honoraria, Member must submit a written request for exemption from assignment that includes the following information: (a) Member Name; (b) Department; (c) amount and method of determining compensation (e.g., \$200 per hour, \$1,000 per week, \$5,000 per year); (d) name of individual or entity paying the compensation; (e) a summary description of services Member must provide or other reason for receiving compensation; (f) copies of all correspondence (written or electronic) to and from the propose contracting party that would be making payments to Member and a copy of the proposed contract or engagement letter; and (g) the reason(s) Member believes such compensation does not constitute Service Income and therefore should be exempt from assignment. If the compensation arrangement is memorialized in any form of written document, Member must attach a copy of any such documents to the written request. The written request for exemption shall be submitted to Member's Cost Center Unit Director. The Cost Center Unit Director and Dean of the School of Medicine shall use reasonable efforts to respond to Member's written request for assignment exemption within 60 days of receipt. The Dean of the School of Medicine shall provide Member with a written decision that is final, conclusive and binding on Member. The decision of the Dean of the School of Medicine is final and not appealable.

E. In each instance in which a Member intends to provide services that may generate income exempt from assignment, the Member must, prior to the performance of any such services, advise in writing the person, firm, or agency for whom any services specifically permitted under this Agreement are to be performed that (a) Member is acting solely as an independent contractor, and not as an agent or Member, or under the sponsorship, auspices, or control of either UPI, the University of Colorado or University of Colorado Denver School of Medicine, and (b) neither UPI, the University of Colorado or University of Colorado Denver School of Medicine assumes any responsibility whatever, express or implied, for the actions or omissions of the Member in his/her services.

F. UPI, in consultation with the Cost Center Director, shall establish a reasonable fee for Member's professional services rendered, but Member shall have no personal claim whatsoever to such fees. All Service Income of Member is hereby irrevocably assigned to UPI and will be billed and collected, or arranged to be billed and collected, received, held, and administered by UPI in accordance with the UPI Bylaws and Operating Agreement.



**ADDENDUM I**  
**UNIVERSITY PHYSICIANS, INC. MEMBER PRACTICE AGREEMENT**  
**MEMBER COVENANT NOT TO COMPETE**

1. Member acknowledges that the University of Colorado Denver School of Medicine ("University") has an investment in Member's development, in the University's patients, and in the practice of the University. Member further acknowledges that the Member has received and used, or will receive and use, trade secrets and confidential information from the University including, but not limited to, patient lists, contracting processes and terms and other confidential information. UPI shall be a direct and intended third party beneficiary of this Addendum I. In addition, Member acknowledges that University is making a significant investment in the practice of Member and that the University would suffer damage if Member were to leave as a faculty Member of University and divulge University's confidential information and trade secrets, compete with the business of the University, or leave without sufficient notice to allow University to adequately arrange for his/her replacement. In consideration of the above, Member shall not, during the term of Member's tenure with University and after any termination of Member's tenure and privileges with University for any reason, with or without cause, except if terminated by the University for lack of resources or program discontinuance:

A. For a period of two (2) years after termination, establish, operate or provide professional medical services, either in his own practice or as an independent contractor, partner, shareholder, owner, or agent of a medical practice, clinic, or hospital within a \_\_\_\_\_ (\_\_\_\_) mile radius of the intersection of Colfax and Ursula, Aurora, Colorado or any other facility where the Member regularly provides medical services on behalf of the University.

B. At any time whatsoever, use University's confidential information or trade secrets for any purpose other than his/her performance as an employee of the University nor disclose such information to any other person or entity, except as required by law or medical ethics.

2. Should Member violate the restrictions in Paragraph 1.A hereinabove, Member shall pay University and UPI all of University's and UPI's Actual Damages. Member acknowledges that the elements of University's and UPI's Actual Damages shall include, but not be limited to the following:

A. If Member was recruited to the University and entered into this Agreement within 60 months of termination of this Agreement, the amounts incurred or expended by UPI and the University to recruit and relocate Member to the University including but not limited to investments in research, equipment, practice development, and staff;

B. The amount of the Member's salary underwriting ("Salary Underwriting") funded by UPI, the University, or affiliated hospital, or any of them, as determined by the Department Chair and/or affiliated hospital director in their reasonable judgment. Salary Underwriting shall mean the amount by which the Member's allocable expenses and overhead exceeds the Member's cash collections from professional services. Without limiting the categories of expenses that may be allocated to the Member's Salary Underwriting, the Member agrees that the following categories of allocable expenses shall be deemed allocable to Member's Salary Underwriting: expenses of unused or underutilized support staff, facilities, and overhead of UPI, the University, or both, allocable or attributable to Member or Member's department or services;

C. The amounts incurred or expended by UPI and the University to recruit a replacement Member to UPI and the University;

D. The Salary Underwriting attributable to the Member's replacement at UPI or the University, funded by UPI, the University, or both, as determined in accordance with Paragraph B, hereinabove;

E. University's and UPI's cost of transferring patient records;

F. Harm to University's and UPI's goodwill; and

G. University's and UPI's costs and expense of enforcing this Agreement and Covenant Not to Compete, including but not limited to University's and UPI's attorneys' fees, experts and consultants' fees, court, court reporter, copying and related costs and expenses.

Based upon these components, the Member and University and UPI agree that these actual damages are estimated to be \_\_\_\_\_.

3. Should Member violate Paragraph 1.B hereinabove, University shall be entitled to all remedies available under applicable law.

4. Member acknowledges and agrees that these terms and conditions are reasonable as to geographic scope, duration and amount, and reasonably reflect actual damages that University and UPI would suffer. Any amounts owed by Member hereunder can be offset by University and UPI against any amounts owed by University and UPI to Member.

5. If any provisions of this covenant not to compete relating to time period, scope of activity restricted, or geographic area described herein shall be declared by any court or arbitrator of competent jurisdiction to exceed the time period, scope of activity or geographic area which the court or arbitrator deems to be reasonable and enforceable, then the time period, scope of activity restricted and/or geographic area provided for in this covenant shall be modified and this covenant deemed amended to be that time period, scope of activity and/or geographic area which the court or arbitrator finds is reasonable and enforceable.

Agreed to:

Member:

REFERENCE ONLY – NOT TO BE USED FOR SIGNATURE

Signature

Date

\_\_\_\_\_  
Print Name

Department Chair:

REFERENCE ONLY – NOT TO BE USED FOR SIGNATURE

Signature

Date

\_\_\_\_\_  
Print Name

Dean, School of Medicine:

REFERENCE ONLY – NOT TO BE USED FOR SIGNATURE

Signature

Date

\_\_\_\_\_  
Print Name

ADDENDUM II  
TO  
UNIVERSITY PHYSICIANS, INC. MEMBER PRACTICE AGREEMENT

**MEMBER PROFESSIONAL CONDUCT AND OTHER RELATED DUTIES OWED TO UNIVERSITY PHYSICIANS, INC.**

1. **Professional Conduct.** Member shall at all times during this Agreement conduct Member's professional activities in accordance and compliance with all applicable federal, state, city, and local laws and regulations and standards of the medical profession.
2. **Medical Records and Recordkeeping.** Member shall complete and maintain, in a timely manner, adequate, legible and proper medical and administrative records with respect to all services rendered to or authorized for patients seen or treated by Member. In addition, Member shall complete and maintain all documents necessary for UPI to obtain reimbursement for the services rendered by Member.
3. **Quality Assurance and Utilization Review.** Member shall participate in risk management, utilization review and management, cost-effectiveness studies and quality assurance plans as are reasonably requested by UPI or third party payors with whom UPI contracts for the services of UPI members.
4. **Managed Care and Insurance Plans.** Member shall participate in all managed care programs, Medicare programs or plans, Medicaid programs or plans, other federal and state health care reimbursement programs, Blue Cross/Blue Shield plans, any commercial health care insurance programs, and any other HMO, PPO, managed care or health benefit program (collectively "Payor") that UPI chooses to contract. To the extent permissible by a Payor, Member hereby assigns and shall execute any other assignment of fees or compensation to UPI arising from a Payor contract if Member is listed as a signator or participating or in-network provider.
5. **Preserving Member's Qualifications.** Member represents Member currently meets the following qualifications and shall at all times during the term of this Agreement maintain the following qualifications:
  - a. Licensure and ability to practice medicine in the State of Colorado. Member shall have no qualifications, conditions or restrictions on his or her license to practice medicine in Colorado. Member shall notify the University of Colorado Denver School of Medicine immediately of any discipline, restriction, surrender or any other action which affects the Member's license to practice medicine in the State of Colorado or any other jurisdiction.
  - b. Maintenance of an unrestricted federal DEA registration to prescribe any medications commonly prescribed by the Member's specialty.
  - c. Medical Staff membership at all affiliated hospitals where the Member provides patient care as part of the Member's regularly assigned duties, with appropriate practice privileges and compliance with the Medical Staff Bylaws and the administrative policies and procedures of said affiliated hospitals.
  - d. Eligibility to provide reimbursable physician services, and participation in the Medicare and Medicaid programs, and other similar state or federal government-sponsored programs.
  - e. Maintenance of professional standing and competence by attendance at continuing medical education courses, institutes or seminars from time to time; and membership in such medical or professional organizations as shall be determined by the parties to be in the best interests of the University of Colorado Denver School of Medicine.

Agreed to:  
Member:

REFERENCE ONLY – NOT TO BE USED FOR SIGNATURE  
Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Print Name