VIRGINIA: IN THE CIRCUIT COURT FOR NEW KENT COUNTY

BRETT W. SHARP, M.D., **Plaintiff,** **v.** **CUMBERLAND HOSPITAL, LLC d/b/a CUMBERLAND HOSPITAL FOR CHILDREN AND ADOLESCENTS, et al.,** **Defendants.**	**Case No. CL21000414-00**

PLEA IN BAR & DEMURRER PURSUANT TO BRETT SHARP'S ARBITRATION AGREEMENT, OR IN THE ALTERNATIVE, DEMURRER

Defendants Cumberland Hospital, LLC d/b/a Cumberland Hospital for Children and Adolescents, Universal Health Services, Inc.[1], UHS of Delaware, Inc., and UHS Children Services, Inc. (collectively "Defendants") file this Plea in Bar and Demurrer pursuant to the Arbitration Agreement executed by Plaintiff Brett Sharp ("Plaintiff"), or in the alternative, Demurrer. In support, Defendants state:

I. Plea In Bar & Demurrer Pursuant to Brett Sharp's Arbitration Agreement

A. Procedural History

1. On March 27, 2020, Plaintiff executed a Physician Employment Agreement ("Employment Agreement") with Cumberland Hospital. *See* Ex. 1.

2. The Employment Agreement outlines the terms and conditions of Plaintiff's employment with Cumberland Hospital, including Section 3.1 and Exhibit B which outlined Plaintiff's compensation with the Company. S*ee* Ex. 1.

[1] Universal Health Services, Inc. is a holding company that does not employ any individuals.

3. In Section 4.1 and 4.2, the Employment Agreement articulates what constitutes "termination without cause" and "termination for cause".

4. Also included in the Employment Agreement is a comprehensive agreement to arbitrate, which provides:

> **8.1** The Parties will engage in good faith negotiations to resolve their Disputes. "Disputes" includes, without limitation, any claim that arises out of or relates to this Agreement, breach of this Agreement, the employment relationship (including any wage claim, any claim for wrongful termination, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, hostile work environment, sexual harassment, civil rights, age, or disabilities), contract claims and tort claims, but not including claims for workers' compensation, administrative charges for unfair labor practices brought before the National Labor Relations Board or any other claims, that, as a matter of law, the parties cannot agree to arbitrate. If the Parties are unable to resolve their disputes by negotiation, either Party may request the dispute be submitted to voluntary mediation before an impartial mediator with costs of mediation split by the parties. The mediation shall be conducted in the County and State of Physician's Primary Service Location pursuant to the applicable rules for mediation then in effect published by the American Health Lawyers Association (the "AHLA"). If the mediation process does not resolve the dispute, or if the Parties do not agree to submit to mediation, the dispute shall be submitted for binding individual arbitration by one Party sending a written notice of arbitration to the other Party. The notice will identify the Parties, state the dispute with particularity and specify the remedy sought. Physician shall submit any demand for arbitration to Employer's Legal Department at 367 South Gulph Road, King of Prussia, PA 19406. **Physician hereby waives Physician's right to file, join or otherwise participate in any class, collective or group arbitration action against Employer with regard to any Dispute.**

See Ex. 1 (emphasis in original).

5. Pursuant to the Arbitration Agreement, "[a]ll decisions of the arbitrator are binding on all parties and (except as provided below) *constitute the only method of resolving*

disputes or matters subject to arbitration pursuant to this Agreement." *See* Ex. 1 (emphasis added). Consequently, the arbitrator has the exclusive authority to resolve issues of arbitrability.

6. The Arbitration Agreement also incorporates by reference the American Health Lawyers Association's Commercial Arbitration Rules:

> **8.3** Except as set forth in this Article, the arbitrator shall conduct the arbitration according to the AHLA Commercial Arbitration Rules, a copy of which may be obtained from AHLA's website at www.healthlawyers.org/dr. Arbitration shall take place in the County in which Employer is located, unless the parties otherwise agree. The arbitrator shall base the decision on the express language of this Agreement and applicable law. Within thirty (30) days after the arbitrator is appointed or as soon thereafter as reasonably practicable, the arbitrator will conduct a hearing on the dispute. Each arty may make written submissions to the arbitrator, and each party shall have a reasonable opportunity for rebuttal, but no longer than thirty (30) days. As soon as reasonably practicable, but no later than thirty (30) days after the hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel.

See Ex. 1

7. As reflected in the Commercial Arbitration Rules, the arbitrator has the authority to "issue a preliminary award that addresses whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties." *See* Ex. 2, American Health Lawyers Association's Commercial Rules.

8. Finally, the Employment Agreement provides that:

> If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against the other Party, all fees, costs and expenses, including, without limitation, reasonable attorney's fees and court costs, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the non-prevailing Party.

See Ex. 1.

9. Although Plaintiff voluntarily executed the Employment Agreement, which includes a comprehensive arbitration provision requiring Plaintiff to request arbitration, Plaintiff nonetheless filed a Complaint against Defendants with the Circuit Court for New Kent County. *See* Ex. 3. Compl.

10. In the Complaint, Plaintiff alleges two counts, retaliatory discharge in violation of Section 40.1-27.3 of the Code of Virginia ("Code") and non-payment of wages in violation of Section 40.1-29 of the Code.

B. Legal Argument

1. Plaintiff Agreed to Arbitrate any Claim Arising Out of or Relating to His Employment Agreement

As the Circuit Court explained in *Martino v. Banc of Am. Servs*., "[u]nder federal law and Virginia law, agreements to arbitrate are viewed favorably." 66 Va. Cir. 268, 270 (Charlottesville 2004). In fact, the U.S. "Supreme Court has enunciated a presumption favoring arbitrability and courts are encouraged to resolve disputes in favor of coverage." *Id.* (citing *AT&T Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986)).

In determining whether an arbitration agreement should be invoked, "[t]he Virginia Supreme Court has interpreted the phrase "rising out of or relating to' in an arbitration clause very broadly." *Martino,* 66 Va. Cir. at 271. As the Circuit Court for the City of Charlottesville noted in *Martino,* "broad arbitration clauses do not limit arbitration to the literal interpretation or performance of the contract, but embrace every dispute that has a significant relationship to the contract. . ." *Id.*

In this case, the Arbitration Agreement explicitly covers the claims asserted in Plaintiff's Complaint, i.e. retaliatory discharge, and nonpayment of wages. The Arbitration Agreement defines "Dispute" as:

> "Disputes" includes, without limitation, any claim that arises out of or relates to this Agreement, breach of this Agreement, the employment relationship (including any *wage claim, any claim for wrongful termination*, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, hostile work environment, sexual harassment, civil rights, age, or disabilities), contract claims and tort claims, but not including claims for workers' compensation, administrative charges for unfair labor practices brought before the National Labor Relations Board or any other claims, that, as a matter of law, the parties cannot agree to arbitrate.

See Ex. 1 (emphasis added).

In addition, Plaintiff's claims of retaliatory discharge and nonpayment of wages arise out of his Employment Agreement. The Employment Agreement outlines what constitutes "Termination Without Cause and Termination for Cause":

> **4.1 Termination Without Cause.** Notwithstanding any other provision herein, Employer may terminate this Agreement at any time, without cause, upon thirty (30) days' prior written notice to the other Physician and Physician may terminate this Agreement upon sixty (60) days' prior written notice to Employer. In the event of such notice, Employer may limit Physician's activities during the notice period to treatment of only those patients Physician treated prior to the notice date, or Employer may impose any other restrictions at Employer's sole discretion.
>
> **4.2 Termination For Cause.**
>
> (e) By Employer. Employer may immediately terminate this Agreement upon written notice to Physician for any of the following reasons: […]

See Ex. 1. In addition, Section 3.1 and Exhibit B of the Employment Agreement outline Plaintiff's compensation:

> Physician shall receive compensation for services rendered to or on behalf of Employer in accordance with Exhibit B, attached hereto and incorporated herein by reference. All compensation provided by Employer to Physician under this Agreement shall be paid in accordance with Employer's normal payment practices and shall be subject to all applicable federal, state and local tax withholdings, as are necessary and appropriate as well as other withholdings required by law, court order or decree. The periodic revision of Exhibit B to reflect changes in the compensation provided to Physician shall not be deemed to create a new agreement or otherwise supersede this Agreement except with regard to the terms prescribed by Exhibit B.

See Ex. 1.

Consequently, by executing the Employment Agreement, Plaintiff agreed to arbitrate any claim that arose out of or related to his Employment Agreement, which includes the terms of his employment (e.g. compensation and termination) and all preliminary issues (e.g. arbitrability). *See* Ex. 1.

When plaintiffs fail to initiate arbitration pursuant to arbitration agreements, Circuit Courts consistently grant Pleas in Bar and Demurrers. *See* Aston v. Nissan N. Am., Inc., 71 Va. Cir. 430, 434 (Chesapeake 2005) ("this Court concludes that the arbitration agreement in the instant case is enforceable and is not precluded by the MMWA. Accordingly, the defendant's Plea in Bar to Compel Mediation is sustained and defendant's Motion to Stay the Proceedings is granted."); *First Health Servs. Corp. v. Baruch Defense Mktg., Inc.*, 1995 Va. Cir. LEXIS 1440 (Loudoun Cnty. Jan. 3, 1995) ("To the extent that Count One alleges a breach by FHS of the DABS Agreement, the Demurrer is sustained because any such claim must be submitted to arbitration under the Agreement.").

2. Plaintiff Delegated Exclusive Authority to Resolve Any Disputes Concerning Arbitrability to an Arbitrator

Plaintiff cannot challenge the application of the Arbitration Agreement in this Court because he expressly agreed to delegate any such issues of arbitrability to an arbitrator.

In *Peabody Holding Company, LLC v. United Mine Workers of America*, the Fourth Circuit explained that "[a]rbitrability disputes often necessitate a two-step inquiry." 665 F.3d 96, 101 (4th Cir. 2012). Under the first step, the Court must "determine who decides whether a particular dispute is arbitrable: the arbitrator or the court." *Id.* The U.S. Supreme Court has held that parties may assign the authority to decide questions of arbitrability to an arbitrator. In *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010), the Supreme Court held that a "delegation provision" assigning authority to decide gateway questions of arbitrability to an arbitrator is itself an agreement to arbitrate, and must be treated as valid and enforceable by the Courts.

In applying the decision in *Rent-A-Center*, the Fourth Circuit noted that the Supreme Court "acknowledged matter-of-factly that, to submit the arbitrability determination to an arbitrator, a court must find clear and unmistakable evidence that the parties agreed to arbitrate arbitrability." *Peabody Holding Co.*, 665 F.3d at 102. The Fourth Circuit explained that "the 'clear and unmistakable' test applies only 'to the parties' manifestation of intent, not the agreement's validity.'" *Id.* As a result, "the Court *rejected* the plaintiff's argument that, to submit the merits question to the arbitrator, a court need find a 'clear and unmistakable' absence of unconscionability." *Id.* (emphasis added).

In this case, the Arbitration Agreement specifically provides that "[a]ll decisions of the arbitrator are binding on all parties and […] *constitute the only method of resolving disputes or matters subject to arbitration pursuant to this Agreement.*" *See* Ex. 1 (emphasis added). Therefore, an arbitrator, not the Court, has the exclusive authority to resolve issues of arbitrability. Furthermore, the Arbitration Agreement also incorporates by reference the AHLA Commercial Rules, which states that the arbitrator has the authority to "issue a preliminary award that addresses

whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties." *See* Ex. 2.

In *Kay Jennings Family Ltd. P'ship v. DAMN, L.L.C.*, the Circuit Court denied the Plaintiff's request to stay arbitration because the arbitration agreement incorporated the AAA Rules, which delegated authority to an arbitrator to decide issues of arbitrability. 71 Va. Cir. 348, 349 (Fairfax Cnty 2006). The Circuit Court explained that the arbitration provision "specifically incorporates the rules and regulations of the American Arbitration Association" and provides that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any obligations with respect to the existence, scope or validity of the arbitration agreement." *Id.* at 350. The Circuit Court noted that:

> The federal courts and their subsequent interpretation of the Federal Arbitration Act support the Defendant's proposition. As a general rule, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). However, with regard to the issue of who should decide arbitrability, this presumption is reversed to favor a judicial, rather than an arbitral determination. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). "Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clear and unmistakable' evidence that they did so." *First Options* at 944. However, the federal courts also hold that the parties' explicit incorporation of rules that empower an arbitrator to decide issues of arbitrability is clear and unmistakable evidence of their intent to delegate this issue to the arbitrator. *See Contec Corp. v. Remote Solution Co., Ltd.*, 398 F.3d 205, 208 (2d Cir. 2005); *Terminix Int'l. Co., L.P., v. Palmer Ranch LP*, 432 F.3d 1327, 1332 (11th Cir. 2005); *FSC Sec. Corp. v. Freel*, 14 F.3d 1310, 1312-13 (8th Cir. 1994); *Apollo Computer v. Berg*, 886 F.2d 469, 473 (1st Cir. 1989); *Citifinancial, Inc. v. Newton*, 359 F. Supp. 2d 545, 552 (S.D. Miss. 2005); *Qwest Corp. v. New Access Communications LLC.*, 2004 U.S. Dist. LEXIS 28523, 19-24 (D. Colo. 2004).
>
> Thus, under federal law, it appears clear that the parties' agreement to incorporate the rules and regulations of the American Arbitration

> Association would place jurisdiction of the question of arbitrability in the hands of the arbitrator.
>
> Even if we assume that federal law is not applicable here, this conclusion is not contradicted by Virginia law.

Id. at 350. As a result, the Circuit Court held "because the deed of lease includes clear and unmistakable evidence that the parties intended to submit questions of arbitrability to an arbitrator, the Plaintiff's Motion to Stay Arbitration is denied." *Id.* at 351.

Accordingly, Plaintiff's agreement to delegate to an arbitrator exclusive authority to decide all disputes regarding formation, validity, interpretation, and enforceability of the agreement to arbitrate is permissible under the Act and must be enforced.

3. Plaintiff Is Estopped from Asserting That Non-Signatory Defendants Cannot Rely on The Arbitration Clause

Under the principles of equitable estoppel, a non-signatory to an arbitration agreement may compel a signatory to arbitrate where "the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999); *see also Aggarao v. MOL Ship Mgmt. Co., Ltd*., 675 F.3d 355, 373 (4th Cir. 2012).

In *Aggarao,* the Fourth Circuit affirmed a decision requiring the Plaintiff, who worked on a ship, to arbitrate claims against unrelated non-signatories that owned or chartered the ship, based on equitable estoppel, because: (a) the plaintiff alleged all three companies were his "employer"; (b) the signatory and non-signatories allegedly engaged in "coordinated behavior," "instigating and contributing to one another;" and (c) the claims against all three companies were "based on the same facts," were "inherently inseparable," and fell within the scope of the arbitration clause. *Id.* at 373–74; *see also Khan*, 480 F. Supp. 2d at 341 (applying estoppel to enforce the arbitration

agreement as to non-signatory defendants who allegedly employed plaintiff according to the allegations in his complaint).

Here, Plaintiff alleges that he "was a Physician at, and the Medical Director of, Cumberland Hospital, LLC d/b/a Cumberland Hospital for Children and Adolescents." Compl. ¶4. With regard to the remaining Defendants, who are not signatories to Sharp's Arbitration Agreement, Plaintiff alleges that "Defendant Cumberland is [a] subsidiary of Defendant Universal Health Service, Inc.", "Defendant UHS of Delaware, Inc. is the management company for Defendant Universal Health Services, Inc.", and "Defendant UHS Children Services, Inc. is a subsidiary of Defendant Universal Health Services, Inc." Compl. ¶6-8.

Rather than articulating how each Defendant allegedly contributed to his retaliatory discharge and nonpayment of wages, Plaintiff pleads his allegation against the Defendants collectively. For example, Plaintiff alleges that he "suffered damages, including lost wages, benefits, and other remuneration, because of *Defendants* unlawful actions ..." Compl. ¶32 (emphasis added). Plaintiff also alleges that "*Defendants* unlawfully retaliated against Plaintiff because of his protected conduct by discharging him from employment and otherwise discriminating and retaliating against him regarding compensation, terms, and conditions of employment." Compl. ¶35 (emphasis added). Plaintiff further alleges that "*Defendants* did not make wage payments to Plaintiff on or about October 30, 2020 and November 13, 2020 when due." Compl. ¶35 (emphasis added).

Finally, the claims alleged fall within the scope of the arbitration agreement:

> "Disputes" includes, without limitation, any claim that arises out of or relates to this Agreement, breach of this Agreement, the employment relationship (including *any wage claim, any claim for wrongful termination*, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, hostile work environment, sexual harassment, civil

> rights, age, or disabilities), contract claims and tort claims, but not including claims for workers' compensation, administrative charges for unfair labor practices brought before the National Labor Relations Board or any other claims, that, as a matter of law, the parties cannot agree to arbitrate.
>
> […]
>
> If the mediation process does not resolve the dispute, or if the Parties do not agree to submit to mediation, the dispute shall be submitted for binding individual arbitration by one Party sending a written notice of arbitration to the other Party.

See Ex. 1 (emphasis added).

4. Attorney Costs and Fees

Finally, the Arbitration Agreement provides that if any litigation is commenced "by any Party to enforce its rights under this Agreement against the other Party, all fees, costs and expenses, including, without limitation, reasonable attorney's fees and court costs, incurred by the prevailing Party in such litigation [. . .] shall be reimbursed by the non-prevailing Party." *See* Ex. 1. In this case, rather than request and initiate arbitration as required by the Arbitration Agreement, Plaintiff deliberately commenced this litigation in the Circuit Court for New Kent County. The Arbitration Agreement unequivocally requires that "*the dispute shall be submitted for binding individual arbitration* by one Party sending a written notice of arbitration to the other Party." *See* Ex. 1 (emphasis added). As a result, if the Court grants Defendants' Plea in Bar and Demurrer, the Defendants are entitled to its attorneys' fees and costs associated with defending this matter.

II. <u>In the Alternative, Demurrer</u>

If the Court denies Defendants' Plea in Bar and Demurrer Pursuant to Brett Sharp's Arbitration Agreement, Defendants file this Demurrer in the alternative. If the Court grants Defendants' Plea in Bar and Demurrer Pursuant to Brett Sharp's Arbitration Agreement, Defendants reserve the following arguments for consideration by an arbitrator.

A. Statement of Factual Allegations

1. In April 2020, Plaintiff was hired as a Physician and Medical Director at Cumberland Hospital. Compl. ¶4.

2. On August 19th and 25th, Plaintiff met with Garrett Hamilton, CEO of Cumberland Hospital. Compl. ¶21.

3. During the meeting, Plaintiff alleges that they "met in person to discuss Dr. Sharo's objections to Cumberland's use of protocols and precautions in violation of federal regulations, including 42 C.F.R. § 482.13. Compl. ¶24.

4. During a staff meeting on October 6th, Plaintiff "briefly shut his eyes." Compl. ¶28.

5. According to Plaintiff, "Mr. Hamilton pulled Dr. Sharp from the next meeting and told him to go home and not return, purportedly due to closing his eyes in the meeting." Compl. ¶28.

6. At an unknown date, Plaintiff received a certified letter from Mr. Hamilton, the CEO of Cumberland, notifying him of his termination without cause effective November 7, 2020. Compl. ¶29.

7. Plaintiff further alleges that "*Cumberland* failed to pay Dr. Sharp his wages when due for the pay period between the notice of termination and the effective date of termination on November 7, 2020." Compl. ¶31.

B. Legal Argument

1. Standard of Review for Demurrer

In *Assurance Data, Inc. v. Malyevac*, the Supreme Court of Virginia explained that "[t]he purpose of a demurrer is to determine whether a complaint states a cause of action upon which the

requested relief may be granted." 286 Va. 137, 143, 747 S.E.2d 804, 807 (2013). As a result, "a demurrer tests the legal sufficiency of the plaintiff's claims." *Brown v. Jacobs*, 289 Va. 209, 214, 768 S.E.2d 421, 424 (2015). In response to a complaint, a "demurrer accepts as true all facts properly pled, as well as reasonable inferences from those facts." *Steward v. Holland Family Props., LLC*, 284 Va. 282, 286, 726 S.E.2d 251, 253–54 (2012). However, "it does not admit the correctness of the conclusions of law" nor does it admit the "inferences or conclusions from facts not stated." *Arlington Yellow Cab Co. v. Transportation, Inc.*, 207 Va. 313, 319, 149 S.E. 2d 877, 881–82 (1966).

At this point in the proceeding, "it is not the function of the trial court to decide the merits of the allegations set forth in a complaint, but only to determine whether the factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action." *Friends of the Rappahannock v. Caroline County Bd. of Supervisors*, 286 Va. 38, 44, 743 S.E.2d 132, 135 (2013) (citing *Riverview Farm Assocs. Va. Gen. P'ship v. Bd. of Supervisors of Charles County*, 259 Va. 419, 427, 528 S.E.2d 99, 103 (2000)). "To survive a challenge by demurrer, 'a pleading must be made with 'sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.'" *Id*. (quoting *Eagle Harbor, L.L.C. v. Isle of Wright County*, 271 Va. 603, 611, 628 S.E.2d 298, 302 (2006)). Moreover, the court is not bound to accept conclusory allegations contained within the complaint. *See Ogunde v. Prison Health Servs.*, 274 Va. 55, 66, 645 S.E.2d 520, 527 (2007).

1. Pleading Defendants in the Plurality Does Not Excuse the Pleading Requirement

Throughout the Complaint, Plaintiff fails to plead any facts to support that Defendants Universal Health Services, Inc., UHS of Delaware, Inc., and UHS Children Services retaliated

against him or failed to pay him wages owed. Rather, the allegations in the Complaint are all directed towards Defendant Cumberland Hospital. For example, Plaintiff alleges that:

- he "was a Physician at, and the Medical Director at *Cumberland Hospital LLC*", Compl. ¶4 (emphasis added);
- he met with the *Mr. Hamilton, the CEO of Cumberland Hospital,* on August 19th and 25th "to discuss Dr. Sharp's objections to *Cumberland's* use of protocols and precautions in violation", Compl. ¶24 (emphasis added);
- he was told by *Mr. Hamilton, the CEO of Cumberland Hospital,* "to go home and not return" after Plaintiff "shut his eyes" during a meeting, Compl. ¶28 (emphasis added);
- he received a letter from *Mr. Hamilton, the CEO of Cumberland Hospital,* informing him that his employment would be terminated effective November 7th, Compl. ¶29 (emphasis added); and
- "*Cumberland* failed to pay Dr. Sharp his wages due for the pay periods between the notice of termination and the effective date of the termination, Compl. ¶31 (emphasis added).

Plaintiff explicitly directed each of these allegations at Defendant Cumberland Hospital.

In fact, Plaintiff fails to plead a single allegation of how Defendants Universal Health Services, Inc., UHS of Delaware, Inc., and UHS Children Services contributed to the alleged retaliation or nonpayment of wages. Instead of satisfying the pleading requirement of this Cout, Plaintiff generically pleads all his allegations against Defendants in the plurality. For example, Plaintiff asserts:

- "Dr. Sharp has suffered damages, including lost wages, benefits, and other remuneration, because of *Defendants* unlawful actins described above," Compl. ¶33 (emphasis added);
- "*Defendants* unlawfully retaliated against Plaintiff because of his protected conduct by discharging him from employment and otherwise discriminating against him . . .", Compl. ¶35 (emphasis added); and
- "*Defendants* did not make wage payments to Plaintiff on or about October 30, 2020 and November 13, 2020", Compl. ¶40 (emphasis added).

Unequivocally, Plaintiff's assertions are nothing more than conclusory allegations. Moreover, without specific allegations against the individual Defendants, Plaintiff cannot establish that he suffered an injury-in-fact or that he has standing to sue Defendants Universal Health Services, Inc., UHS of Delaware, Inc., and UHS Children Services.

2. Plaintiff's Retaliatory Discharge Claim Fails as a Matter of Law

To establish a claim under Section 40.1-27.3, Plaintiff must demonstrate that his employer discharged or otherwise retaliated against him because he in good faith reported a violation of any federal or state law or regulation to a supervisor. In the Complaint, Plaintiff asserts that he complained to the Mr. Hamilton, the CEO of Cumberland Hospital, they were violating 42 C.F.R. § 482.13. However, Plaintiff's reliance on 42 C.F.R. § 482.13 is misguided.

In *Margiotta v. Christian Hosp. Ne. Nw.*, the Plaintiff alleged that he was retaliated against because he engaged in protected whistleblowing activity pursuant to 42 C.F.R. § 482.1. 315 S.W.3d 342, 345 (Mo. 2010). Specifically, the Plaintiff asserted that "he was terminated because he continuously reported incidents of safety violations pertaining to patient care to his supervisors." *Id.* The Plaintiff pointed to three incidents to support his claim:

> First, in June or July 2005, he reported to supervisors that patients were being left unattended in the Hospital's hallways. Second, during the fall of 2005, he complained that the Hospital would use only one orderly to transfer a patient from the stretcher to the CT scanning table, which, in one incident, led to a patient being dropped. Third, sometime between July and September 2005, he reported that a pregnant woman underwent a CT scan, a practice he considered unsafe.

Id. Based on these events, the Plaintiff claimed that he was wrongfully discharge for "reporting violations of law or public policy to his superiors, commonly referred to as 'whistleblowing.'" *Id.* at 346-47.

The Missouri Supreme Court explained that for the Plaintiff "to prevail, he must show that he 'reported to superiors or to public authorities serious misconduct that constitutes a violation of the law and of … well established and clearly mandated public policy.'" *Id.* at 347. However, "[t]he mere citation of a constitutional or statutory provision in a [pleading] is not by itself sufficient to state a cause of action for retaliatory discharge, the plaintiff must demonstrate that the public policy mandated by the cited provision is violated by the discharge." *Id.* Unequivocally, "there is no whistleblowing protection for an employee who merely disagrees personally with an employer's legally-allowed policy." *Id.*

Like Sharp, the Plaintiff in *Margiotta* relied on 42 C.F.R. 482.13. *Id.* at 348. Specifically, that "[t]he patient has the right to receive care in a safe setting." *Id.* The Supreme Court of Missouri found that "[t]his regulation clearly empowers *patients* to assert *their* right to safety and reported cases in other jurisdictions recognize this. The regulation is personal to the patient. No textual part grants protection to employees or requires specific conduct by an employee, such as an affirmative duty to report violations." *Id.*

In this case, Plaintiff Sharp took issue with *Cumberland Hospital*'s use of restraints. In the Complaint, Plaintiff alleges:

> An ongoing point of contention during Dr. Sharp's tenure was Cumberland's "anorexia and bulimia protocol" under which if an eating disorder patient refused a meal and a supplement drink they were restrained while a nasogastric tube was tube was placed, and the supplement provided through the tube. The procedure was done regardless of the patient's medical or nutritional status. As an additional level of aversion, the calories provide by the tube feeding were double the calories of a meal.

Compl. ¶40. In support, Plaintiff cites to 42 C.F.R. 482.13. However, as the Supreme Court of Missouri held, 42 C.F.R. 482.1 clearly empowers *patients* to assert *their* right and the regulation is personal to the patient. On this basis alone, Plaintiff's claim fails as a matter of law.

But, in this case, the argument for dismissal is even stronger because 42 C.F.R. 482.13 outlines the use of restraints. In fact, the regulation specifically provides "(4) The use of restraint or seclusion must be - (i) In accordance with a written modification to the patient's plan of care; and (ii) Implemented in accordance with safe and appropriate restraint and seclusion techniques ***as determined by hospital policy*** in accordance with State law." 42 C.F.R. 482.13(e)(4) (emphasis added). The regulation further provides "Physician and other licensed practitioner training requirements must be specified in hospital policy. At a minimum, physicians and other licensed practitioners authorized to order restraint or seclusion by hospital policy in accordance with State law ***must have a working knowledge of hospital policy regarding the use of restraint or seclusion***." 42 C.F.R. 482.13(e)(11) (emphasis added). It is unclear how Cumberland Hospital could violate federal law when the federal law in question defers to the hospital's policy.

Moreover, Plaintiff's own allegations reveal that Plaintiff took issue with *who was setting the policy*. In the Complaint, Plaintiff bolsters his own qualifications by asserting that:

> In the immediate aftermath of the serious allegations and departures at Cumberland, Dr. Sharp was uniquely qualified for the difficult work to be done moving forward. Dr. Sharp is triple board certified in Pediatrics, Psychiatry, and Child Psychiatry and has over thirty (30) years of clinical experience in all aspects of pediatric and child

> psychiatry care including ambulatory pediatrics, hospital pediatrics, pediatric psychiatry consult liaison, outpatient psychiatry, inpatient psychiatry and residential psychiatry.

while simultaneously attacking the qualifications of Mr. Hamilton and his ability to set the Hospital's policy. *See* Compl. ¶33; *but see* Compl. ¶18. With regards to Mr. Hamilton, Plaintiff asserts that "[d]espite not having a medical degree or training, Mr. Hamilton was Dr. Sharp's supervisor at Cumberland and regularly and inordinately inserted himself into patient care discussions and decisions." Compl. ¶18

Since 42 C.F.R. 482.13 is not a proper basis for a retaliatory discharge claim, the Court should dismiss Count I of the Complaint.

III. Conclusion

For the foregoing reasons, Defendant respectfully requests that the Court grant and sustain its Plea in Bar and Demurrer Pursuant to Arbitration Agreement, or in the alternative, sustain its Demurrer.

Dated: June 2, 2021

Respectfully submitted,

CUMBERLAND HOSPITAL, LLC d/b/a CUMBERLAND HOSPITAL FOR CHILDREN AND ADOLESCENTS, et al.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email and regular mail on June 2, 2021, and served upon the following:

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EXHIBIT
A

FmayPHYSICIAN EMPLOYMENT AGREEMENT
THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION

THIS PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of the execution date ("Effective Date"), between Cumberland Hospital ("Employer") and Brett W. Sharp, M.D. ("Physician"). Employer and Physician are referred to as a "Party" or, collectively, as the "Parties."

BACKGROUND

A. Employer operates and/or contracts with healthcare facilities in the United States.

B. Physician is duly licensed to practice medicine in the state in which Employer is located ("State") as well as holds all of the necessary licensure and/or certifications to provide Services in any other State for which Physician provides Services for or on behalf of Employer. Employer desires to employ and retain Physician to provide the services listed on Exhibit A (collectively, the "Services") and Physician agrees to accept such employment to provide the Services.

C. Physician may, in the future, have opportunities to provide the Services to other facilities contracted with Employer ("Contracted Facilities") for professional Services.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter stipulated, the parties agree and covenant as follows:

ARTICLE I
TERM

Subject to Physician's compliance with the qualifications set forth in Article II and unless as otherwise terminated as provided herein, the initial term of this Agreement shall commence on April 20, 2020 ("Commencement Date") and shall continue for an initial term of one (1) year ("Initial Term"); thereafter this Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") unless terminated pursuant to Article IV below. The Initial Term and each Renewal Term, as applicable, are collectively referred to herein as the "Term".

ARTICLE II
PHYSICIAN'S EMPLOYMENT AND DUTIES

2.1. Physician Qualifications. Subject to the terms and conditions of this Agreement, Employer engages Physician to provide the Services, and Physician accepts such employment. Physician's employment is conditioned upon Physician's (i) accurate completion, and Employer's acceptance, of all pre-employment requirements including, but not limited to, criminal background checks, and such other requirements consistent with Employer's policies and procedures in effect from time to time ("Pre-Employment Documentation"), (ii) maintenance of a current license to practice medicine in the State; (iii) obtaining full medical staff privileges at any hospital owned or affiliated with Employer and/or Employer's Contracted Facilities as requested by Employer from

time to time; (iv) maintenance of a DEA certification; and (v) becoming credentialed pursuant to Section 5.3 below.

2.2. Professional Duties. In providing the Services under this Agreement, Physician shall (i) use diligent efforts, professional skills and judgement, act in a manner consistent with Physician's licensure, certification and governing standards, (ii) comply with policies and procedures of Employer, (iii) comply with Employer's and any Contracted Facility's Medical Staff Bylaws, Rules and Regulations, (iv) comply with all applicable policies, procedures and requirements of third party payors, (v) comply with all applicable federal, state and local laws, regulations and accreditation standards including interpretations thereof and (vi) act in a manner consistent with the Principles of Medical Ethics and American Medical Association. Physician shall provide the Services to patients at such places and times as directed by Employer and as more fully specified on Exhibit A. In the event that Physician also provides locum tenens or telemedicine services for Employer or Contracted Facilities, all representations and covenants contained in this Agreement shall apply to Physician related to Services that Physician performs for Employer or any Contracted Facilities. Exhibit A-1 describes telehealth Services ("Telemedicine Services"). Services and Telemedicine Services shall be collectively referred to herein as "Services".

2.3. Representations/Covenants. During the Term, Physician represents and covenants:

(c) Physician has and will maintain a valid and unrestricted license to practice medicine in any State in which Physician performs the Services.

(d) Physician must complete board certification within two (2) years of the Effective Date and/or within two (2) years of eligibility as defined by the applicable regulatory agency. Physician shall also be required to maintain such board certification during the Term of this Agreement.

(e) Physician has and will maintain appropriate medical staff privileges at Employer and such other Contracted Facilities in which Physician performs the Services and such medical staff membership privileges have not been reduced, restricted, suspended or terminated.

(f) Physician has not been disciplined by any professional or peer review organization, governmental agency, or hospital medical staff for any act or omission based on quality of care.

(g) Physician has and will maintain a valid and unrestricted license or registration, including registration with the Drug Enforcement Administration, to prescribe drugs, medications, and controlled substances and any other such corresponding registrations as required by any state where Physician performs the Services.

(h) Physician has and will maintain Physician's status as a participating provider under the Medicare and Medicaid programs and such other third party payor programs determined by Employer from time to time.

(i) Physician's performance of this Agreement is not a violation or breach of any other agreement to which Physician is or was a party.

(j) Physician is not under investigation or otherwise aware of any circumstances which may result in Physician being excluded from participating in any Federal healthcare program.

(k) Physician has disclosed to Employer any and all actions, cases or lawsuits in which Physician was sued for malpractice or negligence.

(l) Physician shall inform Employer of any change to any of the foregoing representations within twenty four (24) hours of such occurrence.

3.1. Compensation. Physician shall receive compensation for services rendered to or on behalf of Employer in accordance with Exhibit B, attached hereto and incorporated herein by reference. All compensation provided by Employer to Physician under this Agreement shall be paid in accordance with Employer's normal payment practices and shall be subject to all applicable federal, state and local tax withholdings, as are necessary and appropriate as well as other withholdings required by law, court order or decree. The periodic revision of Exhibit B to reflect changes in the compensation provided to Physician shall not be deemed to create a new agreement or otherwise supersede this Agreement except with regard to the terms prescribed by Exhibit B.

3.2. Benefits. If Physician is employed on a full-time or part-time basis, Physician will receive paid time off, continuing medical education and other employee benefits in accordance with Employer's benefits policy in effect from time to time and in the same manner as other similarly situated physicians. Per diem employees are not entitled to any benefits.

3.3. Professional Liability Insurance Coverage; Tail Coverage; Settlement of Claims.

(a) Coverage. During the Term, Employer shall maintain professional liability insurance in minimum amounts as required by law or other amounts as determined by Employer, covering Physician solely for his/her acts and omissions in the performance of his/her professional Services hereunder on Employer's behalf (the "Policy"). Such coverage does not include acts or professional services delivered outside the scope of employment or Physician's prior acts.

As a condition of coverage under the Policy, Physician shall participate in performance improvement activities, including but not limited to risk management, quality initiatives and educational activities.

(b) Prior Acts. Physician agrees that as a condition precedent to coverage under the Policy, Physician will advise his/her incumbent insurer of all potential patient care losses, occurrences, accidents or adverse events which may, to the best of Physician's knowledge and upon diligent inquiry, reasonably give rise to a claim and for which he/she would reasonably expect the incumbent insurer's defense and indemnification, to the extent such acts are afforded coverage.

(c) Tail Coverage. If this Agreement terminates, Employer will obtain extended reporting coverage or "tail coverage" in the amount of the Policy for the period covered by the Policy ("Tail Coverage"), including coverage from the retroactive inception date or prior acts coverage date covered by the Policy. The cost of such Tail Coverage shall be borne by Physician. Notwithstanding the foregoing, Employer shall bear the cost of such Tail Coverage in the event that:

(i) Employer terminates the Agreement without cause; or

(ii) Physician's death, retirement (provided Physician provides adequate notice as set forth in Paragraph 4.2(b) or permanent disability.

If Physician fails to pay Employer for Tail Coverage, Employer, in addition to any other available remedy, reserves the right to recover for the costs thereof from Physician, including the right to offset said costs from any amounts due to Physician under this Agreement or any other agreement between Physician and Employer or any affiliate of Employer. Further, to the extent permitted by State law, Physician authorizes Employer to garnish any of Physician's wages until all such amounts related to any tail premiums are paid in full. This Paragraph shall survive the termination of this Agreement.

(d) Settlement of Claims. To the fullest extent permitted by law, Physician hereby delegates to Employer the authority to consent to a settlement of that portion of any claim or legal action for which the liability or any obligation to defend the same is covered by the Policy.

ARTICLE III
TERMINATION

4.1 Termination Without Cause. Notwithstanding any other provision herein, Employer may terminate this Agreement at any time, without cause, upon thirty (30) days' prior written notice to the other Physician and Physician may terminate this Agreement upon sixty (60) days' prior written notice to Employer. In the event of such notice, Employer may limit Physician's activities during the notice period to treatment of only those patients Physician treated prior to the notice date, or Employer may impose any other restrictions at Employer's sole discretion.

4.2 Termination For Cause.

(e) By Employer. Employer may immediately terminate this Agreement upon written notice to Physician for any of the following reasons:

(i) Breach of any of the representations or covenants set forth in Article II;

(ii) The revocation, suspension, restriction, reduction, or surrender of Physician's membership or privileges on the Medical Staff of Employer or other hospital;

(iii) The imposition of any discipline, restrictions or limitations by any governmental authority having jurisdiction over Physician to the extent that he/she cannot engage in the professional practice of medicine;

(iv) Disciplinary action by any professional medical organization or Physician's resignation from such organization under threat of disciplinary action;

(v) Physician is found guilty of unprofessional or unethical conduct by any board, institution, organization or professional society having any privilege or right to pass upon Physician's conduct as related to Physician's ability to practice medicine;

(vi) Physician is arrested, indicted or convicted of, or pleads *nolo contendere* to, any crime;

(vii) Allegations of fraud by the federal or state government are made against Physician;

(viii) Physician commits any dishonest or fraudulent act or engages in willful misconduct, including acts involving moral turpitude, as reasonably determined by Employer;

(ix) Employer determines Physician engaged in professional misconduct or was negligent in the performance of Physician's duties hereunder;

(x) The occurrence of any circumstance that prevents Physician from being insured against professional liability at commercially reasonable rates;

(xi) Physician's becomes a Sanctioned Provider;

(xii) Physician's failure to comply with any Employer rule or policy after thirty (30) days' notice and opportunity to cure, insofar as Physician's breach reasonably can be cured;

(xiii) Physician takes any action or engages in activity that reflects negatively on Physician and/or Employer, as determined by Employer in its sole discretion;

(xv) Any misrepresentations or failure to disclose any pertinent information as required by Employer's Pre-Employment Documentation;

(xvi) Physician takes any action or engages in any activity not covered by (i)-(xv) above that is detrimental to Employer's interests, provided Employer will give Physician ten (10) days to cease the activity and if the activity does not cease within the ten (10) days, Employer may terminate this Agreement immediately; if such action is repeated or continues, Employer may terminate this Agreement immediately without providing a ten (10) day cure period.

(b) Retirement. Physician shall provide Employer of not less than 120 days' notice of Physician's retirement. The termination of this Agreement shall be effective on the 120th day following notice.

(c) Death. This Agreement shall automatically terminate on the date of Physician's death.

(d) Reporting Obligations. Physician has an affirmative obligation as a condition of employment to report to Employer any investigation or inquiry by any regulatory agency, governmental authority, or professional society regarding any item or activity listed in Section 4.2(a).

4.3 Effect of Termination. Upon termination of this Agreement for any reason, except as otherwise provided herein, all of Employer's obligations under this Agreement shall cease and Physician shall be deemed to have resigned from any director or officer or committee position held with Employer and shall deliver such documentation as Employer deems necessary to evidence the same. Physician shall be required to complete documentation in patient charts for Services provided as reasonably requested by Employer. Employer shall pay Physician the compensation due through the date of termination, as full and final satisfaction of the terms of this Agreement. Physician shall have no further claims against Employer for compensation after the effective date of termination.

4.4 Physician's Cooperation Upon Termination. In the event of the expiration or termination of this Agreement for any reason, Physician shall cooperate with Employer to assure the orderly transfer of patients treated by Physician during the course of employment to other physicians employed by Employer or an Affiliate of Employer. Physician's cooperation shall include, without limitation, taking all steps necessary or convenient to enable Employer to effect an orderly transfer of charts, records, and information pertaining to patients that have been treated by Physician during Physician's term of employment. Moreover, Physician shall cooperate with Employer: (a) to complete all administrative tasks necessary for the Employer to seek reimbursement for care rendered during Physician's term of employment; and (b) in the defense of any claims (including litigation) arising out of the performance by Physician of Physician's duties during the Term of this Agreement. For purposes of this Agreement, an "Affiliate" of Employer shall be any entity which controls, is controlled by, or is under common control with Employer. Upon the expiration or termination of this Agreement, Physician shall coordinate with Employer in the sending by Employer of a notice to all patients for whom Physician performed services pursuant to this Agreement, signed by Physician if requested by Employer, informing them: (i) that Physician is no longer employed by Employer, and (ii) the name of the successor physician or physicians who will be available to provide services to such patients. In the event of the expiration or termination of this Agreement for any reason, Physician shall assist in the defense of known or yet to be asserted claims in which Physician rendered care or treatment. Employer agrees to reimburse Physician for reasonable travel and other related expenses, not to include hourly fees.

ARTICLE V
ASSIGNMENT OF RIGHT TO BILL: PAYOR AGREEMENTS AND CREDENTIALING

5.1 Assignment of Right to Bill. As a condition of employment, Physician expressly and irrevocably transfers, assigns and otherwise conveys to Employer all Physician's right, title and interest in and to any professional fees and any current or future right Physician has to bill and receive payment from any third party payor. Physician acknowledges Employer will submit these billings in its own name, and Physician is precluded from billing any third party payor for Physician's professional services under this Agreement unless required by a third party payor, in which event Physician will bill such services and provide all fees generated from such billings to Employer. Physician hereby appoints Employer as Physician's attorney-in-fact for collection or otherwise enforcing Physician's interests therein. If Physician receives any amounts from patients, third party payors or other parties for professional services, Physician shall promptly endorse and deliver such amounts to Employer.

5.2 Payor Agreements. From time to time, Employer may enter into agreements with third party payors, employers, or governmental entities on Physician's behalf. Physician consents to Employer entering into such contracts on Physician's behalf. Physician shall comply with all terms of such agreements applicable to Physician and/or Employer. Physician shall cooperate and fully comply with any documentation requests for credentialing purposes. If required by any payor, Physician shall execute the agreement individually, notwithstanding that all fees generated by such agreement will belong to Employer. Physician has no authority to, and shall not, execute agreements binding Employer unless Physician is a duly authorized officer of Employer. Employer shall have the right to offset Physician's compensation hereunder in the event that Physician's action or inaction related to credentialing for Physician results in Employer's inability to collect third party payors for Physician's services.

5.3 Credentialing. Physician shall promptly provide all credentialing information to Employer upon Physician's execution of this Agreement to enable Employer to credential Physician with all companies with whom Employer contracts. Physician acknowledges the above credentialing process is necessary to enable Employer to bill and collect for all professional services provided by Physician hereunder.

ARTICLE VI
RECORDS

6.1 Medical Records. All records of patients treated by Physician within the scope of employment hereunder, including, but not limited to charts, medical reports, records of billings and payment of fees and all personal records pertaining to compensation and expenses of Physician within the scope of Physician's employment shall at all times be property of Employer.

6.2 Employer Records. Physician understands and agrees that all inventions, trademarks, works of authorship, know-how, ideas, medical records, patient information, business information, financial data, marketing plans, strategic information, and other records, papers, policies, protocols, processes, and documents generated by Physician, Employer, or Employer's employees or agents (collectively, the "Records") are Employer's sole and exclusive property. Physician assigns all right, title and interest to the Records and shall execute any documents Employer requests in connection therewith, to the extent he/she has any ownership interest in any of the Records.

ARTICLE VII
COVENANTS

7.1 Basis of Covenants and Reasonableness. As condition of Employer entering into this new or continued employment relationship with Physician, Physician shall comply with the covenants contained herein and such covenants contained in this Article VII shall survive the termination of this Agreement for any reason.

7.2 Covenants.

(a) During the Term, Physician shall not, directly or indirectly, own, manage, operate, control, contract with, be employed by, or engage in any professional or business activity with any medical practice or healthcare entity or entity that manages, owns or operates a medical practice or healthcare entity, nor engage in the practice of medicine, without Employer's prior written consent, in Employer's sole discretion.

(b) Physician shall also be subject to certain additional restrictions as set forth on Exhibit C; and

(c) Physician shall not make, or cause or encourage any other person or entity to cause or make any disparaging statements or communications (whether written or oral) concerning Employer, its Contracted Entities, or affiliates to the general public.

(d) Without superseding any patient's right to choose a provider of health or medical services, Physician acknowledges that all patients for whom professional medical services are provided are Employer's or Contracted Facility's patients and not Physician's. During the Term and for a period of two (2) years following termination of this Agreement, Physician shall not, for

his/her own account or for the account of others, induce or solicit any patient who received or is receiving health or medical services from Employer or any Contracted Facility for whom Physician provided Services to seek such services from another provider, including Physician, or derive any direct or indirect benefit therefrom. However, this provision does not preclude Physician from making good faith referrals to specialists or other physicians who have experience or better qualifications to address the patient's specific health care needs.

(e) For a period of two (2) years following the date of termination of this Agreement, Physician shall not urge, induce, entice or in any manner solicit Employer or Contracted Facility employees and/or contractors to leave Employer's employ or the employ of any Contracted Facility. In the event of any violation of the provisions of this Paragraph, Physician acknowledges and agrees that the restrictions contained in this Paragraph shall be extended by a period of time equal to the period of such violation, it being the intention of the Parties that the running of the applicable restriction period shall be tolled during any period of such violation.

(f) During the Term and thereafter, Physician shall not make any disparaging remarks to any third party concerning Employer or Contracted Party or any of their respective officers, directors, employees or affiliates or any other comments to any third party which might damage or adversely affect Employer's and/or Contracted Facility's reputation, goodwill, or business or any of its officers, directors, employees or affiliates. The parties agree that any disclosures or reports Physician makes to a government agency, regulatory board, or similar public entity with authority to regulate Employer or Contracted Facility or aspects of Employer's or Contracted Facility's business will not violate this subsection 7.3(f).

(g) To the extent any of the restrictions set forth in this Section 7.2, including exhibits attached to this Agreement are found to be overly broad by a reviewing court (or arbitrator), the reviewing court (or arbitrator) may modify the scope of the restrictions as necessary in its discretion to comply with applicable law.

7.3 Confidential Information. Physician shall keep confidential, and shall not use or to disclose to others during the Term and thereafter, the terms of this Agreement (including Physician's compensation), any confidential technology, proprietary information, Records, or patient lists, of Employer and/or Contracted Facility, or any matter or thing ascertained by Physician through Physician's affiliation with Employer (collectively, "Confidential Information"). Physician shall not take or retain any Confidential Information after termination of this Agreement. If Physician is required by court order or law to disclose any Confidential Information, he/she shall first notify Employer in order for Employer to obtain a protective order or object to the disclosure.

7.4 Remedies / Jurisdiction.

(a) The covenants in Section 7.2 are ancillary to the other provisions of this Agreement, and the existence of any claim or cause of action by Physician against Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to Employer's enforcement of these covenants. Without limiting other possible remedies to Employer for breach of any covenant, Physician agrees that injunctive or other equitable relief is available to enforce the covenants of this Article VII without posting a bond, cash, or otherwise.

(b) Employer and Physician further agree if any restriction contained in this Article VII (including any additional restrictions set forth on Exhibit A-1 for Telemedicine Services, if applicable) is held by any court to be unenforceable or unreasonable, a lesser restriction will be enforced in its place and remaining restrictions contained herein will be enforced independently of each other. Physician agrees to pay his/her own attorneys' fees, court costs, and expenses and those attorneys' fees, court costs, and expenses incurred by Employer in the event that Employer chooses, in its sole discretion, to enforce any provision hereunder.

(c) Notwithstanding the provisions of Article VIII below, the Employer may bring an action to enforce its rights under this Article VII in any court having jurisdiction over Physician.

7.5 **Survival**. This Article VII survives the termination of this Agreement.

ARTICLE VIII
DISPUTE RESOLUTION

8.1 The Parties will engage in good faith negotiations to resolve their Disputes. "Disputes" includes, without limitation, any claim that arises out of or relates to this Agreement, breach of this Agreement, the employment relationship (including any wage claim, any claim for wrongful termination, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, hostile work environment, sexual harassment, civil rights, age, or disabilities), contract claims and tort claims, but not including claims for workers' compensation, administrative charges for unfair labor practices brought before the National Labor Relations Board or any other claims, that, as a matter of law, the parties cannot agree to arbitrate. If the Parties are unable to resolve their disputes by negotiation, either Party may request the dispute be submitted to voluntary mediation before an impartial mediator with costs of mediation split by the parties. The mediation shall be conducted in the County and State of Physician's Primary Service Location pursuant to the applicable rules for mediation then in effect published by the American Health Lawyers Association (the "AHLA"). If the mediation process does not resolve the dispute, or if the Parties do not agree to submit to mediation, the dispute shall be submitted for binding individual arbitration by one Party sending a written notice of arbitration to the other Party. The notice will identify the Parties, state the dispute with particularity and specify the remedy sought. Physician shall submit any demand for arbitration to Employer's Legal Department at 367 South Gulph Road, King of Prussia, PA 19406. **Physician hereby waives Physician's right to file, join or otherwise participate in any class, collective or group arbitration action against Employer with regard to any Dispute.**

8.2 There shall be one arbitrator. If the Parties fail to select a mutually acceptable arbitrator within thirty (30) days after the notice of arbitration, a single arbitrator shall be appointed as soon as possible by the AHLA, or failing such appointment, pursuant to the usual procedure of said association in such cases. To the extent permitted by law, the fee payable to the arbitrator shall be based upon the then current fee schedule of the AHLA and shall be advanced one half by each Party, upon written request of the arbitrator or the AHLA. Each Party will have the right to take the deposition of two individual witnesses and any expert witness designated by another Party, unless additional depositions are ordered by the arbitrator or are agreed to by the Parties.

8.3 Except as set forth in this Article, the arbitrator shall conduct the arbitration according to the AHLA Commercial Arbitration Rules, a copy of which may be obtained from AHLA's website

at www.healthlawyers.org/dr. Arbitration shall take place in the County in which Employer is located, unless the parties otherwise agree. The arbitrator shall base the decision on the express language of this Agreement and applicable law. Within thirty (30) days after the arbitrator is appointed or as soon thereafter as reasonably practicable, the arbitrator will conduct a hearing on the dispute. Each arty may make written submissions to the arbitrator, and each party shall have a reasonable opportunity for rebuttal, but no longer than thirty (30) days. As soon as reasonably practicable, but no later than thirty (30) days after the hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel.

8.4 All decisions of the arbitrator are binding on all parties and (except as provided below) constitute the only method of resolving disputes or matters subject to arbitration pursuant to this Agreement. Judgment may be entered upon such decision in accordance with applicable law in any court having jurisdiction thereof.

8.5 This arbitration clause and all decisions of the arbitrator shall be specifically enforceable in a court of law or the arbitral tribunal. This Article VIII survives the termination of this Agreement.

8.6 Nothing in this Agreement shall be construed to prohibit Physician from filing administrative charges with the Equal Employment Opportunity Commission, the National Labor Relations Board and/or a state agency charged with enforcing state law prohibiting discrimination in the workplace.

8.7 The parties understand and fully agree that by entering into this agreement to arbitrate Disputes, they are giving up their right to litigate Disputes in a court of law or equity, before a judge or jury, except as provided by Section 7.4(c) above and are giving up normal rights of appeal following the rendering of a decision by the arbitrator except insofar as applicable law allows for judicial review of arbitration proceedings. The parties anticipate that by entering into this Agreement, they will gain the benefits of a speedy and less expensive procedure for resolving Disputes.

Physician's acknowledgement: _____

ARTICLE IX
MISCELLANEOUS

9.1 **Assignability**. Employer may assign this Agreement to any affiliate of Employer or a successor in interest to substantially all of Employer's assets. Otherwise, neither party may assign its rights or duties under this Agreement without the prior written consent of the other party. Any purported assignment of rights or delegation of duties by Physician is void.

9.2 **Notice.** Any notice, demand, or communication required, permitted, or desired to be given under this Agreement is effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed to the party at Employer's primary address or, if appropriate, at Physician's residence on file with Employer, or to such other address and to the attention of such other person(s) or officer(s) as either party may designate by written notice.

9.3 Enforceability. If any provision of this Agreement is invalid, unenforceable, or unconstitutional by any governmental body or court of competent jurisdiction, such holding shall not diminish the validity or enforceability of any other provision hereof.

9.4 Governing Law. This Agreement is governed by and interpreted in accordance with the laws of the state of Physician's Primary Service Location defined in Exhibit A.

9.5 Construction. Common nouns and pronouns and all other terms refer to the masculine, feminine, neutral, singular and/or plural, as the identity of the person or persons, firm or association may require in the context.

9.6 Binding Effect. This Agreement including all Exhibits attached hereto inures to the benefit of and is binding upon the heirs, personal representatives, successors, assigns, estates and legatees of each of the parties.

9.7 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof including all Exhibits and supersedes all prior or contemporaneous agreements, understandings, or negotiations of the parties. This Agreement shall not be modified, amended, or supplemented except in a written instrument executed by both parties.

9.8 Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

9.9 Legal Fees and Costs. If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against the other Party, all fees, costs and expenses, including, without limitation, reasonable attorney's fees and court costs, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the non-prevailing Party. If a Party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such Party on an equitable basis.

9.10 Manual Changes. Any manual or handwritten changes made to this Agreement by any party are null and void.

9.11 Discrimination. Physician shall provide services to any patient of Employer regardless of patient's race, color, national origin, religion, gender, sexual orientation, age or disability, or any other class protected by law.

9.12 Promotional Consent for Use of Individual's Image, Voice, and/or Statement

Important note: This form secures your consent and authorization to use your image, voice, and/or statements in a promotional context – please review it carefully.

a) I hereby consent to and authorize UHS of Delaware, Inc., and all of their affiliates (collectively "UHS") to use my image, voice, and/or statements in commercial promotions, advertisements, social media, educational pieces, or in any other manner at UHS' sole discretion. I understand that my image, voice, and/or statements may be recorded in videotapes, audiotapes,

photographs, or interviews, and my consent and authorization applies to any such recording and may be used in whole or in part by UHS at its discretion.

b) I understand and agree that I have no rights to the images or materials generated by UHS in reliance on my consent and authorization, and I waive any rights I may have to prior approval of the use of my image, voice, and/or statements by UHS. I hereby release UHS and all of its respective employees, officers, directors, and agents from liability of any kind based on the use of my image, voice, and/or statement. I further waive any rights to any form of payment or compensation I may have in connection with UHS' use of my image, voice, and/or statements.

c) I understand that I may revoke my promotional consent and authorization at any time by informing UHS of Delaware, Inc., attention Marketing Department, in writing that I am revoking my consent and authorization. I understand that my revocation does not apply to the extent UHS has already used my recording in reliance on this authorization or if immediate revocation would cause additional expense or hardship to UHS in completing its current promotional campaigns.

d) I have had the opportunity to read and consider the contents of this consent and authorization. My signature below indicates that I understand and agree to the terms herein.

9.13 Electronic Signature. Signature below for Physician or Employer's authorized signatory, as the case may be, may be done via electronic signature. Pursuant to the *Electronic Signatures in Global and National Commerce Act (E-SIGN),* S. 761 (106th Congress, 2000) a federal law, effective October 1, 2000, this document is deemed to have the same legal integrity as documents bearing an ink or "wet" signature. All parties to this Agreement acknowledge and represent that the affixed electronic signature carries the same legal weight and authority as the written signature, and Employer represents that the electronic signature has been executed by the individual named below.

9.14 Master Contract Listing. All service agreements between Employer and Physician (or an immediate family member of Physician) are maintained in a master contract listing that is maintained and updated centrally and is available for review upon request by an authorized governmental official.

9.15 Rule of Construction. The parties agree and acknowledge this is a negotiated Agreement and the rule of construction that any ambiguities are construed against the drafting party shall not apply.

9.16 Notices. Notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon personal delivery, certified or overnight delivery or electronic mail to Employer set forth above and to Physician at the address set forth on the signature page to this document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date and year first above written.

Employer
CUMBERLAND HOSPITAL

By: _____
Gay Brooks, CEO

Dated: _____

Physician[1]
BRETT W. SHARP, M.D.

By: _____
Brett W. Sharp, M.D.

Dated: 3/27/2020
Address: 73880 Shadow Mountain Drive,
Apt 201
Palm Desert, CA 92260

EXHIBITS

Exhibit A – Services
Exhibit A-1 – Telemedicine Services
Exhibit B – Compensation
Exhibit C – Restrictive Covenant
Exhibit D – Ownership of Inventions/Return of Property

[1] Physicians are also required to sign an acknowledgement in Paragraph 8.7 of this Agreement

EXHIBIT A
Employed Physician Services

A. **Employment Status:** Physician shall provide the Services to Employer on a full time basis

B. **Physician's Primary Service Location:** 9407 Cumberland Road, New Kent, VA 23124 ("Primary Service Location").

Physician shall provide a full scope professional services to Employer's patients at the Primary Service Location as well as at other places as directed by Employer from time to time. Physician shall perform all duties and services under Employer's general direction, control, and supervision; however, Employer will not impose other employment duties or constraints that require Physician to infringe the ethics of the medical profession, violate any law, or practice outside Physician's Specialty and experience. Physician retains the right to exercise Physician's independent medical judgment in providing care and treatment to patients. Physician shall be courteous and respectful of the rights and dignity of patients with whom he/she comes into contact and shall work cooperatively with Employer's administrative staff. Physician shall abide by all Employer policies and procedures, as adopted and updated from time to time. Physician shall provide services to all patients regardless of their race, sexual preference, religion, gender, or ability or inability to pay and any other class protected by law.

Physician's duties include, but are not limited to, the following:

Clinical Services

Physician shall provide the following additional duties during the Term of this Agreement:

1. Provide on-call services in accordance with Employer's on-call schedule.

2. Accountable to Employer's CEO for all professional activities performed for Employer and its patients.

3. Participate in the development and implementation of service programs at the Contracted Facilities. Such programs shall include a planned and systematic process for monitoring and evaluating the quality and appropriateness of the care and treatment of patients served by the service.

4. Demonstrate behavior that exemplifies the highest standards of conduct on and off the job.

5. Responsible for maintaining the requirements for accurate and timely completion of medical records on a timely basis in accordance with Employer's Medical Staff Bylaws, Rules and Regulations, and the Contracted Facilities. In the absence of any completion time delineation in the Medical Staff Bylaws, Rules and Regulations, timely basis shall constitute a 24-hour period from the time professional medical services were rendered.

6. Demonstrate a willingness and capacity to work effectively with the Needs Assessment Departments and the Utilization Management Departments of the Contracted Facilities in a professional manner.

7. Meet regularly with the CEO, Director of Needs Assessment, and medical staff concerning clinical operation of Employer and/or the Contracted Facilities.

8. Perform such other duties as reasonably assigned by the CEO of Employer.

Medical Directorship Duties

During the Term of this Agreement, Physician shall provide the following administrative services for Employer and/or Contracted Facilities, as appropriate:

1. Leadership and oversight of the Medical Staff

2. Participation and leadership in committees as assigned

3. Oversight of clinical services and operation

4. Development of new or expanded services

5. Assisting in community relations and community education

6. Utilization review support for payor contracting

7. Participation in performance improvement/risk management initiative

8. Performance of such other tasks as reasonably assigned by the CEO.

Exhibit A-1

Telemedicine Services, Physician Qualifications

N/A

Exhibit B

Compensation

1) Base Compensation: Employer shall pay to Physician an annual gross salary equal to Three Hundred Fifty Thousand Dollars ($350,000.00).

   Employer management shall conduct, or cause to be conducted, chart audits to ensure that Physician is adhering to the terms and conditions regarding appropriate record maintenance. Physician agrees that Employer shall have the right to withhold Physician's compensation if the documentation requirements are not met as determined by the chart audit. The amount withheld is to include all salary and wages normally due to Physician under this Agreement. Withheld compensation shall be paid at such time as Employer, or its designee, is able to determine that all patient records have been properly maintained. At no time during the delinquency period shall Physician be permitted to alter Physician's schedule in order to correct the deficiency(ies) nor is Physician permitted to leave premises with the charts. Physician shall also be financially responsible for any and all fines, penalties, including loss or recoupment of collections that may be levied against any Contracted Facility on behalf of Employer as a result of Physician's failure to complete timely and accurate records.

2) Medical Directorship Compensation: An annual gross salary equal to Eighty Thousand Dollars ($80,000.00) for Medical Directorship Services.

   Upon request, Physician shall provide Employer with documentation to justify medical directorship services.

   Employer shall have the right to offset any compensation to Physician in the event that documentation submitted does not meet requirements. This section shall survive the termination of this Agreement for any reason.

3) Sign-on Bonus. Employer shall provide Provider with a Ten Thousand Dollar ($10,000.00) sign-on bonus (from which appropriate payroll deductions will be made) upon full execution of this Agreement ("Sign-on Bonus").

   Notwithstanding the foregoing, in the event that this Agreement is terminated for any reason within twelve (12) months from the payment of the Sign-on Bonus, Employee shall immediately repay to Employer a "pro-rated" value of the Sign-on Bonus. Employer shall have the right to offset any amounts due to Employee under this Agreement or any other agreements between Employer and Employee in connection with Employee's repayment of the Sign-on Bonus. This section shall survive the termination of this Agreement for any reason.

   Notwithstanding the foregoing, in the event that this Agreement is terminated for any reason prior to the first anniversary of the Commencement Date, Physician shall immediately repay to Employer the Relocation Expenses. Employer shall have the right to offset any amounts due to Physician under this Agreement or any other Agreements between Employer and Physician. This section shall survive the termination of this Agreement for any reason.

4) Employer shall reimburse Physician for reasonable expenses (not to exceed Three Thousand Dollars ($3,000.00) per year) for continuing medical education ("CME") and Physician shall be entitled to three (3) days off. Employer shall only reimburse Physician upon Employer's prior approval of such CME and Employer's review and approval of appropriate documentation of such expenses.

Employer shall only reimburse Physician upon Employer's prior approval of such CME and Employer's review and approval of appropriate documentation of such expenses.

Deduction/withholding in compensation:

Employer shall deduct Thirty Dollars ($30) from Physician's compensation for each occurrence of Physician's Failure to complete a patient discharge summary within fifteen (15) days of the date of discharge.

Exhibit C

Restrictive Covenant

VIRGINIA

During the Term and for one (1) year following the termination of this Agreement, Physician shall not, directly or indirectly, own, manage, operate, control, consult, contract with, be employed by, or engage in any professional or business activity, nor engage in the practice of Physician's specialty, whether on Physician's own account or with any business or practice that provides such services within a 25 mile radius of the Primary Service Location (as defined on Exhibit A). In the event that Physician provides Telemedicine Services at any time during Physician's employment, Physician shall be subject to additional restrictions set forth on Exhibit A-1.

In the event of any violation of the provisions of this Exhibit C, Physician acknowledges and agrees that the restrictions contained in this Exhibit shall be extended by a period of time equal to the period of such violation, it being the intention of the parties that the running of the applicable restriction period shall be tolled during any period of such violation.

Exhibit D

Ownership of Inventions/Return of Property.

(a) Physician hereby agrees that any and all inventions (whether or not an application for protection has been filed under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent, copyright, "Moral Right" (defined as any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty), mask work, trademark, trade secret, or other laws, that have been or are developed, generated or produced by Physician, solely or jointly with others, at any time during the Term ("Employer Confidential Information"), shall be the exclusive property of the Employer or its designee, subject to the obligations of this Exhibit D with respect to Employer Confidential Information, and Physician hereby forever waives and agrees never to assert against the Employer or its parent company and affiliated entities (collectively, "Affiliates") or successors or licensees, any ownership, interest, Moral Rights or similar rights with respect thereto. Physician hereby assigns to the Employer (which may in turn assign to a designee of Employer) all right, title and interest to the foregoing inventions, concepts, ideas and materials. This Exhibit D does not apply to any invention of Physician for which no equipment, supplies, facility or Employer Confidential Information of the Employer or its Affiliates was used and that was developed entirely on Physician's own time, unless the invention (a) relates to (i) the business of the Employer or (ii) the Employer's or its Affiliates' actual or demonstrably anticipated research or development, or (b) results from any work performed by Physician for or on behalf of the Employer or its Affiliates. Physician shall keep and maintain adequate and current written records of all inventions, concepts, ideas and materials made by Physician (jointly or with others) during the term of Physician's association or employment with the Employer or its Affiliates. Such records shall remain the property of the Employer at all times. Physician shall promptly and fully disclose to the Employer the nature and particulars of any inventions or research project undertaken on the Employer's or its Affiliates' behalf.

(b) During or subsequent to the Term, Physician shall execute all papers, and otherwise provide assistance, at the Employer's request and expense, to enable the Employer or its nominees to obtain and enforce all proprietary rights with respect to the Employer Inventions (as defined below) in any and all countries. To that end, Physician will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Employer may reasonably request for use in applying for, obtaining, perfecting, defending, evidencing and enforcing any such proprietary rights, and the assignment of any or all of such proprietary rights. In addition, Physician will execute, verify and deliver assignments of such rights to Employer or its designee. Physician's obligation to assist the Employer with respect to such rights shall continue beyond the termination of Physician's association with the Employer.

(c) If, after reasonable effort, the Employer cannot secure Physician's signature on any document needed in connection with the actions specified in the preceding paragraph, Physician irrevocably designates and appoints the Employer and its duly authorized officers and agents as Physician's agent and attorney-in-fact, to act for and in Physician's behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by Physician. The power of attorney set forth in this Exhibit D is coupled with an interest, is irrevocable, and shall survive

the Physician's death, incompetence or incapacity and the termination of this Agreement. Physician waives and quitclaims to the Employer all claims of any nature whatsoever which Physician now has or may in the future obtain for infringement of any proprietary rights assigned under this Agreement or otherwise to the Employer.

(d) Physician acknowledges that all original works of authorship which are made by Physician (solely or jointly with others) during the course of the association with or performance of services for the Employer and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act and any successor statutes. Inventions assigned to the Employer or as directed by the Employer under this Agreement or otherwise are referred to as "Employer Inventions."

(e) For purposes of this Agreement, "Prior Inventions" means all inventions, original works of authorship, developments and improvements which were made by Physician, alone or jointly with others, prior to Physician's employment, association or other engagement with the Employer or any affiliate thereof, including employment under any Prior Agreement. To preclude any possibility of uncertainty, Physician represents that Physician has no Prior Inventions.

(f) Upon termination of Physician's employment for any reason, or upon receipt of written request from the Employer, Physician shall immediately deliver to the Employer all tangible and intangible property (including without limitation computers, computing devices, cell phones, memory devices and any other tangible item), drawings, notes, memoranda, specification, devices, notebooks, formulas and documents, together with all copies of any of the foregoing, and any other material containing, summarizing, referencing, or incorporating in any way or otherwise disclosing any Employer Inventions or Employer Confidential Information of the Employer or any of its Affiliates.

Exhibit E

ADDITIONAL TERMS ADDENDUM

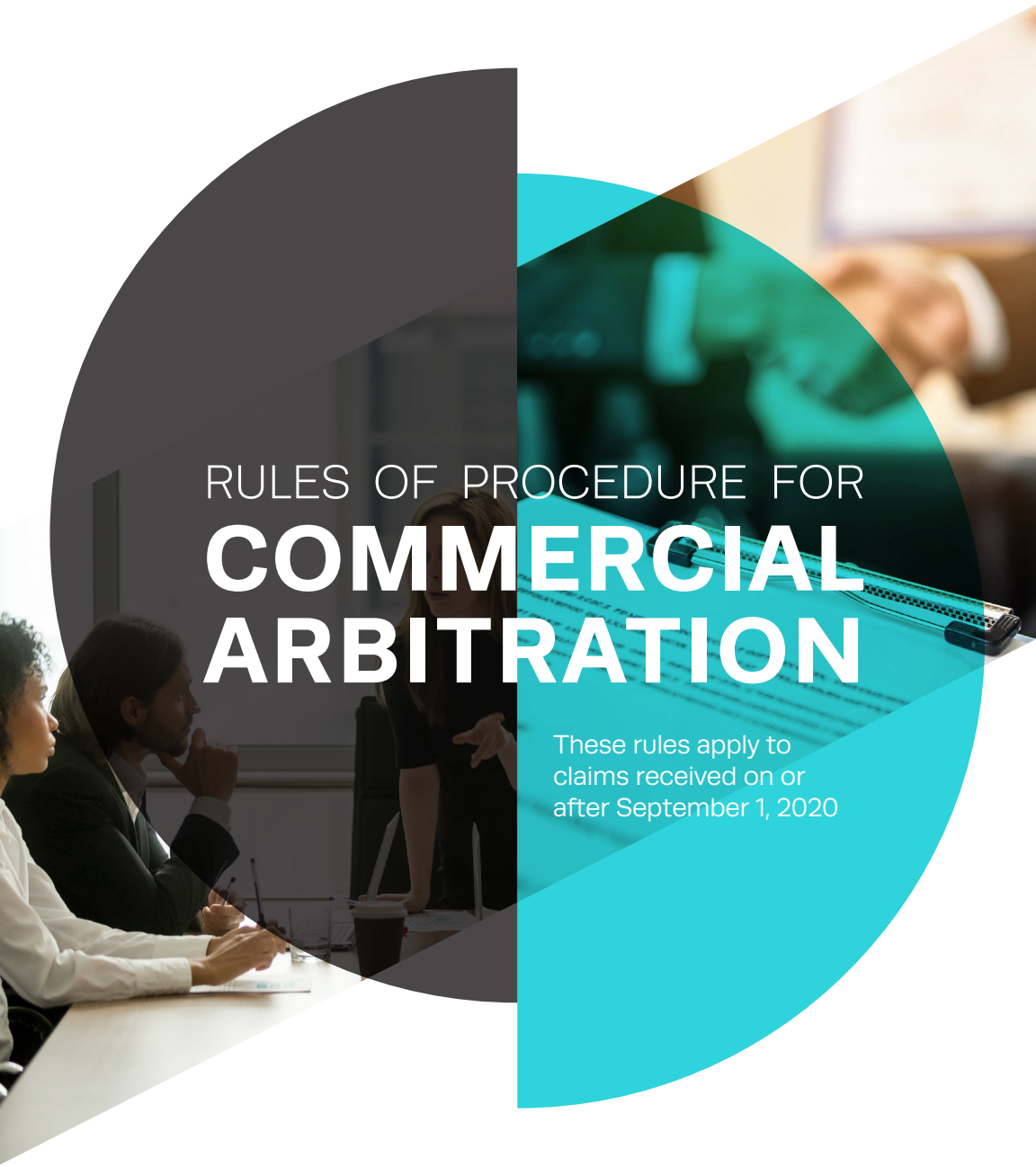
To the extent of any inconsistency between the terms of the Agreement and this Exhibit E, Addendum, this Exhibit E controls.

1. Section **ARTICLE I., COMPENSATION AND BENEFITS, Paragraph 3.3 (c)** shall be amended and restated as of the Effective Date as follows:

"(c) Tail Coverage. Upon termination of the Agreement, Employer will obtain extended reporting coverage or "tail coverage" in the amount of the Policy for the period covered by the Policy ("Tail Coverage"), including coverage from the retroactive inception date or prior acts coverage date covered by the Policy."

3/27/2020

AMERICAN HEALTH LAW ASSOCIATION | Dispute Resolution Service



RULES OF PROCEDURE FOR COMMERCIAL ARBITRATION

These rules apply to claims received on or after September 1, 2020

EXHIBIT B

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TOC

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Introduction

Arbitration is a centuries-old way for industries to promote commerce through self-regulation. It is particularly well suited for disputes involving health care because of the complex nature of the health care marketplace and its highly regulated nature. Disputes are best resolved by arbitrators who understand the laws and regulations governing the delivery of health goods and services and the context in which they are provided.

Disputes impede the close cooperation needed to deliver quality health care. By resolving claims quickly, arbitration helps the health care system maintain its focus on promoting wellness and treating patients.

For further information about these rules or our dispute resolution program, please contact:

Administrator
American Health Law Association
Dispute Resolution Service
1099 14th Street, N.W., Suite 925
Washington, D.C. 20005

drs@americanhealthlaw.org
Phone: 202-833-0762

Section 1: Policies

1.1 Applicable Version of Rules

A claim will be arbitrated in accordance with the version of these rules (Rules) posted on the website of the American Health Law Association (AHLA) on the date a claim is filed. Any reference to the Rules of the American Health Law Association Dispute Resolution Service will be deemed to be a reference to such version of the Rules.

These Rules apply to any contract that invokes arbitration under the Rules of the American Health Law Association unless the claim constitutes a Consumer Case, as that term is defined in the Rules of Procedure for Consumer Arbitration, or an Employment Case, as that term is defined in the Rules of Procedure for Employment Arbitration.

1.2 Electronic Case Management System

(a) APPLICABILITY. Parties, party representatives, the Administrator (defined in Section 1.6), and the arbitrator (once appointed), will transmit written messages and documents regarding a case through AHLA's Electronic Case Management System (ECM).

(b) NOTICE. A message is deemed to have been received by the person(s) to whom it is addressed on the next business day after it is sent through the ECM. A party or party representative is deemed to have notice of the contents of any message sent to it through the ECM.

(c) FILING. A document is deemed to have been filed on the day it is transmitted (uploaded) to the ECM.

(d) SERVICE. A document is deemed to have been served one business day after notice is sent to a party at the email address listed for this party in the ECM.

(e) OPTING OUT. A party or party representative may opt out of using the ECM if it agrees to pay all the additional direct and indirect costs associated with communicating through hard copy documents. AHLA will provide a price list upon request, and will consider claims of indigence in applying and/or adjusting such price list.

1.3 Representation

Parties may designate a representative. The claimant should designate its representative on the claim form. Any party may designate a primary representative, designate additional representatives, change its representative, or withdraw a

representative by completing the Designation of Representative Form. Unless otherwise required by law, a representative need not be an attorney so long as the individual is an officer of the party or an agent properly designated to act on behalf of the party.

1.4 Counting of Days

Unless otherwise indicated, "days" means business days, which do not include Saturdays, Sundays, United States Postal Service holidays, or any other day on which the AHLA main office is officially closed.[1] Prior to the appointment of an arbitrator, the Administrator has discretion to extend the deadlines set forth in the Rules for good cause shown or upon the request of all parties.

1.5 Disclaimer

AHLA and its employees, Board members, agents, volunteers, and arbitrators are not liable for any loss, liability, or damages arising out of an act or omission in connection with any arbitration under the Rules.

1.6 Administrator

"Administrator," as used in these Rules, means the American Health Law Association and any AHLA employee designated by AHLA to serve as the Administrator or Acting Administrator.

1 AHLA is closed on the Friday after Thanksgiving and on Christmas eve. AHLA is closed whenever federal government offices are closed in the Washington D.C. area.

Section 2: Filing a Claim

2.1 Requirements

To file a claim, a party must complete and submit the claim form on the AHLA website, pay the applicable fees listed in **Exhibit 3** and on the form, provide a statement describing the issue(s) to be arbitrated, and either provide a copy of an agreement to arbitrate or a court order requiring arbitration of the claim under the Rules or cite a statute or regulation authorizing or requiring arbitration under the Rules.

2.2 Service

The Respondent must receive notice of the claim as set forth below.

(a) CASE MANAGEMENT SYSTEM. If the Claimant furnishes a valid email address for the Respondent or its representative, the Administrator will invite the Respondent or representative to create an account in the ECM and access the case site. If the respondent or representative accepts this invitation, and thereby gains access to the case site, no further notice is necessary since the statement of claim, and all information provided on the claim form, is available on the case site.

(b) ALTERNATIVE MEANS. If, for any reason, neither the Respondent nor a person representing the Respondent gains access to the case site, the Claimant must serve the claim on the Respondent and must inform the Administrator, in writing, when service on the respondent has been effected.

Section 3: Appointment of an Arbitrator

3.1 Criteria

If the filing party (Claimant) produces a document that arguably requires arbitration of the claim under the Rules, the Administrator will appoint an arbitrator pursuant to the process described in this Section. After receiving appropriate evidence and argument, the arbitrator, once appointed, shall have the power to determine his or her jurisdiction and any issues of arbitrability.

3.2 Appointment Process

The appointment process begins after the requirements in Section 2 have been met. Unless the parties agree otherwise in writing, the Administrator will appoint a single, neutral arbitrator through the process set forth in the Rules.

(a) NUMBER OF CANDIDATES. In its Demand for Arbitration, the filing party may request and pay for:

5 candidates with each party having the right to strike 1 candidate;
10 candidates with each party having the right to strike up to 2 candidates;
12 candidates with each party having the right to strike up to 3 candidates; or
15 candidates with each party having the right to strike up to 5 candidates.

If the filing party initially requests fewer than 15 candidates, then prior to the due date for rankings (see subsection (f) below), any party may expand the number of candidates by paying the difference between the filing fee applicable to the number of candidates it is requesting and the fee already paid by the filing party.

(b) CANDIDATE LIST. The Administrator will provide a list of candidates based on information provided by the Claimant in the Demand for Arbitration and any additional information a responding party may choose to provide.

(c) CANDIDATE PROFILES. The Administrator will provide the parties with the profiles and resumes of all candidates. Profiles and resumes are completed by candidates. AHLA does not verify the information in profiles and resumes and does not warrant that they are accurate, current, or complete.

(d) REVIEW OF CANDIDATES. In ranking candidates, parties should carefully assess the candidates' qualifications and experience. Parties may contact candidates directly to inquire about their suitability and their availability for appointment. Such contacts must be in writing, and a copy of any such communication must be provided to the other party(ies). When corresponding with candidates, parties may disclose the general nature of the question in dispute in the case, but may not discuss its merits.

(e) INELIGIBLE CANDIDATES. A candidate is ineligible to arbitrate a claim only if it would be unethical or impossible for him or her to do so. If a party believes a single candidate is ineligible, it should strike him or her. If a party believes two (2) or more candidates are ineligible, it may petition the Administrator to replace them with eligible candidates and provide a new Ranking Sheet. The Administrator will grant such a petition only if it is clearly established, in the sole discretion of the Administrator, why the candidate(s) to be replaced would be ineligible.

(f) RANKING CANDIDATES. Within ten (10) days after AHLA posts the list of candidates and their profiles on the case site, parties must rank the candidates sequentially in order of preference. The most highly desired candidate should be ranked "1," the second choice should be ranked "2," etc. The number of permitted strikes is set forth in Rule 3.2(a). If a party fails to timely submit rankings in accordance with these rules, the Administrator shall send notice that, if the party fails to submit rankings within five (5) days of the posting of the notice, the Administrator will appoint an arbitrator or panel based upon whatever rankings it has received by that date.

(g) SELECTION PROCESS. After removing any candidate struck from the list by a party, the Administrator will select the candidate with the lowest combined score from Ranking Sheets completed on time. The process used in the event of a tie score is illustrated in **Exhibit 1**.

3.3 Acceptance of Appointment

Within five (5) days after receiving an offer of appointment from the Administrator, a candidate who has been selected must complete the Arbitration Disclosure Checklist and decide whether or not to accept the appointment. The Administrator may grant a reasonable extension of time.

A candidate accepts an appointment by completing an Arbitrator's Acceptance Form in the ECM. If a candidate does not accept the appointment within the five (5) day period, and no extension has been granted, the Administrator will offer it to the candidate with the next lowest ranking. The Administrator will repeat this process until an arbitrator is appointed.

3.4 Appointment Date

The Appointment Date is the date on which an arbitrator's acceptance of appointment is uploaded to the ECM. If a panel has been appointed, the Appointment Date

is the date on which the third arbitrator's acceptance of appointment is uploaded to the ECM.

3.5 Arbitration Panels

(a) DEFAULT PROCESS. Parties may agree to appoint a panel of three (3) arbitrators. Unless they specify otherwise, parties will each select a single arbitrator from a list of five (5) or ten (10) candidates provided by the Administrator, and these two (2) arbitrators will select a third arbitrator from this same list of candidates. If the parties designate the same candidate as their top choice, this candidate becomes the panel chair (Chair), and the parties' second choices become the other two panel members.

(b) PRESUMPTION OF NEUTRALITY. If the two (2) selected arbitrators cannot agree on a third arbitrator, the Administrator will appoint a third from the list of candidates. All three (3) arbitrators shall be neutral unless, prior to the appointment date, the Administrator receives a written agreement stating that the party-appointed panelists will not be neutral.

(c) PANEL CHAIR. The third arbitrator (or consensus choice, as determined under Section 3.5(a)) will serve as the Chair. The Chair manages the arbitration process and presides at the hearing. The panel will decide all matters by majority vote except to the extent that the parties agree to have the Chair serve as the sole arbitrator of procedural and/or evidentiary issues.

3.6 Alternative Selection Processes

If the parties agree in writing to an alternative process for selecting an arbitrator, and the validity and interpretation of such agreement are not in dispute, the Administrator will not permit a party to delay or avoid arbitration by failing to abide by the agreement.

Illustration: Party A and Party B agree to appoint an arbitrator directly (on their own) from a list of ten (10) candidates provided by AHLA, and they agree that their direct appointments will select a third arbitrator from this list. Party A fails to appoint an arbitrator within the prescribed period.

The Administrator will offer appointments to the arbitrators as ranked 1 and 2 by Party B. These two arbitrators will select the third.

Section 4: Arbitrators

4.1 Conduct

(a) POWERS AND DUTIES. An arbitrator has the power to:

(1) determine his or her powers and duties under an arbitration clause;
(2) interpret the Rules to the extent that they relate to his or her powers or duties;
(3) sanction parties for failing to comply with any orders of the arbitrator or any obligations under the Rules;
(4) stay or dismiss proceedings for good cause, which may include agreement of the parties; and
(5) take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.

(b) ETHICS. Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes.

(c) SETTLEMENT AND MEDIATION. Arbitrators should encourage parties to discuss settlement on their own or with the assistance of a mediator. However, arbitrators should not pressure parties to settle, express a point of view on settlement, or participate in settlement discussions. An arbitrator may mediate only as provided in the *Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)* set forth in **Exhibit 2**.

4.2 Ex Parte Communication

(a) GENERAL RULE. Except as provided in paragraphs (b) and (c) below, once an arbitrator is appointed he or she may not communicate with a party unless all other parties participate in the conversation or exchange of written messages.

(b) NON-NEUTRAL ARBITRATORS. Parties who have agreed to the use of non-neutral arbitrators may agree to permit *ex parte* communications with such non-neutral arbitrators. Arbitrators are regarded as non-neutral when all parties expect them to be predisposed toward the party appointing them.

(c) FAILURE TO PARTICIPATE. If, after receiving notice, a party fails to participate in a teleconference or video conference or fails to appear at a hearing, an arbitrator may communicate with the participating parties despite that party's absence.

4.3 Case Management

(a) DEFAULT TIMEFRAME. Except as provided below, an arbitrator should use reasonable efforts to issue a Final Award within twelve (12) months after the Appointment Date. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.

(b) EXPEDITED REVIEW. If the parties jointly request expedited review, the arbitrator should make best efforts to issue a final award within ninety (90) days after the Appointment Date.

(c) EXCEPTIONAL CASES. If an arbitrator determines that a case is unusually complex, or that a delay is necessary for other reasons, the arbitrator may allow more time for either pre-hearing proceedings or a hearing. However, arbitrators should exercise their discretion sparingly to permit further delay.

(d) TIMEFRAMES. The arbitrator may extend any timeframe for good cause but should endeavor to do so sparingly. Failure of the arbitration to adhere to any timeframe specified herein shall not result in loss of jurisdiction or invalidate an arbitration award.

4.4 Review Board

(a) PURPOSE. The Review Board (RB) and its designated Review Panel(s) will rule on petitions to remove an arbitrator under Rule 4.5.

(b) APPOINTMENT. When the Review Board is initially constituted, the President of AHLA will appoint two (2) Senior Arbitrators to serve two-year terms; two (2) to serve three-year terms; and one (1), who will be appointed as the Review Board Chair (RB Chair), to serve a four-year term. Thereafter, the President will fill vacancies by appointing Senior Arbitrators, including the RB Chair, to three-year terms. Non-chairs serving on the Review Board will be eligible for appointment to serve as RB Chair. Individuals will be eligible to serve multiple terms on the Review Board, provided that three (3) years have elapsed since their last term of service ended.

*Prior to June 28, 2017, Senior Arbitrators were required to have sat as an arbitrator in at least twenty cases.

(c) QUALIFICATIONS. All Senior Arbitrators must have significant experience in the arbitration, litigation, or mediation of health law disputes.*

(d) REVIEW PANELS. When the Administrator notifies the RB Chair that a petition under Rule 4.5(c) requires review, the RB Chair will designate a panel of three (3) Senior Arbitrators drawn from the current RB. This panel may or may not include the RB Chair. In deciding which Senior Arbitrators to select, the RB Chair may take into account their availability, expertise, actual or perceived conflicts of interest, and any other factors relevant to ensuring a well-reasoned and impartial decision. If the RB Chair is not a member of the panel, the RB Chair will designate a Senior Arbitrator as the lead panelist. The lead panelist will preside and perform all administrative functions. The panel will decide substantive matters by majority vote.

(e) COMPENSATION. Senior Arbitrators will receive no compensation for reviewing petitions under Rule 4.5 (Removing an Arbitrator).

(f) ETHICS. When serving on a Review Panel, Senior Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes.

4.5 Removing an Arbitrator

A party who believes an arbitrator is unfit to serve because of a conflict of interest, a mental or physical impairment, or conduct that calls his or her fairness or impartiality into question, may pursue the following options:

(a) UNANIMOUS CONSENT. If all of the parties request an arbitrator to withdraw, the arbitrator must do so. (Code of Ethics, Canon II (G)).

(b) WITHDRAWAL. A party may request an arbitrator to withdraw in writing, served upon the Administrator, the arbitrator and all other parties. In responding to such a request, an arbitrator should be guided by Code of Ethics Canon II (G) (2).

(c) REMOVAL. A party may file a petition with the Administrator requesting the Review Board to remove the arbitrator. Other parties may file a response with the Administrator within fifteen (15) days of service. If the petitioner so requests, neither the Review Panel nor any party may inform the arbitrator of the petition. In ruling on the petition, however, the Review Panel will consider the arbitrator's lack of opportunity to respond. If the Review Panel grants a petition, it will inform the arbitrator why he or she was removed. The Review

Board will not assess costs and expenses for reviewing a petition for removal unless it determines the petition was frivolous.

4.6 Exigent Circumstances

A party may petition the Administrator to have the proceedings suspended while a petition for removal is being reviewed in accordance with Rule 4.5 (c), if delay is likely to cause irreparable harm. Neither the Review Panel nor any party may inform the arbitrator of this petition.

4.7 Replacing an Arbitrator

If an arbitrator is removed pursuant to Rule 4.5, or an arbitrator becomes unable or unwilling to serve, the Administrator will replace the arbitrator as follows:

(1) If the arbitrator being replaced was chosen from a list of ranked candidates (see Rule 3.2), the Administrator will appoint the candidate with the next lowest combined score, and, if necessary, use the tie-breaking procedures set forth in Exhibit 1.

(2) If the arbitrator being replaced was not chosen from a list of ranked candidates and the parties cannot agree on a replacement, either party may request a list of candidates to review and rank in accordance with Rule 3.2(a) and the fee schedule set forth in Exhibit 3 to these rules.

(4) Generally, a replacement arbitrator will conduct an arbitration de novo. However, the parties may agree to alternative arrangements.

Section 5: Pre–Hearing Process

5.1 Objections, Answers, and Counterclaims

A responding party may: (i) object to arbitration of a claim, (ii) file an answer, and (iii) file a counterclaim and/or third party claim, if any, within fifteen (15) days after the Appointment Date (see Rule 3.4). The arbitrator (or arbitration panel) may extend this deadline for good cause. The filing fee for a counterclaim and/or third party claim shall be the same as the filing fee paid by the claimant. No party shall be required to pay more than one filing fee per claim.

5.2 Preliminary Awards

(a) ARBITRABILITY. Once appointed, the arbitrator may issue a preliminary award that addresses whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties.

(b) INTERIM RELIEF. An arbitrator may issue interim relief, including an injunction, to maintain the status quo in the dispute until a Final Award is issued. Interim relief will not prejudice the rights of the parties or affect the final determination of the dispute. An interim award may assess costs, fees, and interest associated with the relief awarded.

5.3 Deposits

(a) REQUESTS. The Administrator may require the parties to deposit in advance sufficient funds to cover the costs of the arbitration, including the arbitrator's fees and expenses. The Administrator may require the parties to provide additional funds whenever the amount on deposit appears to be insufficient to cover the costs of the arbitration, including the arbitrator's fees and expenses.

(b) DELAYED PAYMENT. If the Administrator does not receive the required amount, the arbitrator may suspend proceedings pending receipt of these funds. The arbitrator may also sanction a party for non-payment unless the party can prove to the arbitrator's satisfaction that paying the deposit would cause financial hardship. A party may lift the suspension by depositing the amount due from another party, and may request the arbitrator to take this additional payment into account in the award.

(c) NON-PAYMENT. If the arbitrator concludes that the parties are not going to provide the required deposit, he or she may terminate proceedings.

5.4 Status Conference

Once appointed, an arbitrator will schedule a status conference with the parties as quickly as possible. This conference may be held in person, by telephone, or by video conference. During the conference the arbitrator will discuss:

(1) challenges to the arbitrator's jurisdiction;
(2) discovery and motions;
(3) the hearing schedule and format;
(4) witnesses and exhibits;
(5) the treatment of confidential information and documents;
(6) the scope and form of the Final Award; and
(7) any other matters the arbitrator deems appropriate to consider.

The arbitrator will post a scheduling order within five (5) days after the status conference.

5.5 Discovery

To promote speed and efficiency, the arbitrator, in his or her discretion, should permit discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim. Expert discovery shall be specifically addressed and the disclosure of expert witnesses shall be sequenced in a fashion that will allow fair discovery to proceed.

5.6 Motions

(a) IN GENERAL. The arbitrator may allow motions, including motions for summary adjudication, motions in limine and other motions, which the Arbitrator, in his or her sole discretion, determines will add to the fair and efficient resolution of the case.

Illustration: In the status conference, Party B makes a strong argument that several of Party A's claims can be resolved without an evidentiary hearing. The arbitrator may permit Party B to move for summary judgment on these claims.

(b) CONSOLIDATION. Unless the parties agree otherwise: A party may move to consolidate two or more claims separately filed with AHLA; the motion will be heard by the arbitrator (or panel) appointed to the first claim filed; and, if the motion is granted, the claims will be decided by this arbitrator (or panel).

5.7 Hearing Format

(a) The arbitrator may receive evidence in-person, by videoconference, in writing, or through a combination of these methods.

(b) The arbitrator should solicit input from all party representatives on their preferred hearing format and strive to reach consensus on a hearing plan to the greatest extent possible.

(c) If the parties cannot agree on a hearing format, then in determining how the hearing will be conducted, the arbitrator should strike an appropriate balance between all relevant concerns including, but not limited to, the extent to which:

1) scheduling all or part of the hearing in person may:

a) be critical for the fair and adequate presentation of evidence and argument, and for the fair and adequate evaluation of evidence and argument;

b) be unsafe or inconvenient for representatives or witnesses to attend; or

c) cause prejudicial delay to one or more parties;

2) controlling costs is important to one or more parties (e.g., because the amount in controversy is small) and receiving some or all evidence in writing or by videoconference would be less expensive; and

3) concerns about video conferencing can be addressed through training, technical support, equipment, or other means.

5.8 Subpoenas

(a) ISSUANCE. To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena.

(b) OBJECTIONS. A subpoenaed person may object to the issuance of a subpoena. An arbitrator will promptly rule on an objection by weighing the burden on the objector of complying with the subpoena against the potential value of the subpoenaed witness or documents to ensuring a fair hearing.

5.9 Inspection or Investigation

If all parties agree or an arbitrator determines that an inspection or investigation of a physical site is necessary, the arbitrator will provide the parties with twenty (20) days advance notice of the date, time, and location of the inspection or investigation. All parties and representatives have the right to attend. An inspection or investigation must comply with all applicable laws regarding privacy and confidentiality.

Section 6: Hearings

6.1 Exchange of Information

At least twenty (20) days prior to the hearing, the parties must exchange copies of all exhibits they intend to introduce at the hearing and furnish a list of all witnesses they intend to call. The arbitrator may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. An arbitrator may exclude evidence that a party fails to exchange in a timely manner.

6.2 Transcript

If a party wishes to obtain a record of the hearing, it must inform the arbitrator and the other parties of its intention to hire a reporter no less than ten (10) days prior to the hearing.

The arbitrator may designate a transcript as the official record of the hearing if:

(1) The parties agree to share the costs of producing a transcript, including a copy for the arbitrator;
(2) The parties authorize the arbitrator to allocate the costs of producing the transcript, including a copy for the arbitrator, in the award; or
(3) One party agrees to bear the costs of producing the transcript, including copies for the arbitrator and the other parties.

6.3 Attendance

Arbitrations are not public forums. Generally, only the parties, their authorized representatives, and the reporter (if any) may attend a hearing. Subject to the arbitrator's approval, the parties may agree to allow other participants, and the arbitrator may permit others to attend if their presence would promote the fairness or integrity of the hearing.

If a party so requests, an arbitrator may permit witnesses to attend only while testifying and may forbid them from discussing their testimony with other witnesses until the hearing is closed.

6.4 Oaths

The arbitrator may require witnesses to testify under an oath administered by the arbitrator or another person qualified to administer oaths.

6.5 Conduct of Hearings

The arbitrator will afford all parties an equal and adequate opportunity to present their case. Generally, the Claimant will present evidence to support claims (and refute any counterclaims), and the Respondent (the party upon which the claim has been filed) will present evidence to refute these claims (and support any counterclaims). Witnesses will be subject to both direct and cross examination and to questioning by the arbitrator.

The arbitrator may vary the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the dispute.

6.6 Evidence

The parties may offer whatever evidence the arbitrator regards as relevant and material to the dispute. The arbitrator may order the parties to produce additional information he or she regards as necessary to understand the dispute and reach a full and fair resolution.

In determining what evidence to admit, the arbitrator need not follow rules applicable in court proceedings, but should generally permit evidence to be introduced that is relevant, material, and will allow for a fair adjudication of the matter. Unless the parties agree otherwise, the arbitrator should not allow them to introduce information that is determined to fall within an applicable evidentiary privilege.

6.7 Failure to Appear

If a party or a party's authorized representative who has been notified of a hearing fails to appear, or fails to request and receive a postponement, the arbitrator must take evidence from whichever parties and representatives are present.

6.8 Close of Hearing

(a) GENERAL RULE. Except as provided in paragraph (b) below, when the parties indicate that they have no further evidence to present, or the arbitrator determines that the record is complete, the arbitrator will declare the hearing is closed.

(b) POST-HEARING BRIEFS. If the arbitrator sets a schedule for the submission of post-hearing briefs or other documents, the arbitrator will declare that the hearing is closed as of the final due date for such submissions.

Section 7: Final Awards

7.1 Deadline

An arbitrator must issue an award within thirty (30) days after the hearing is closed unless the arbitrator and all parties agree to extend this deadline. The Administrator may extend the time for issuing an award in unusual or extenuating circumstances.

7.2 Basis

Except as provided in Rules 7.3 and 7.4, the Final Award must be based on evidence presented at a hearing. If a party fails to attend the hearing its evidence need not be considered.

7.3 Consent Award

If the parties settle a case before a Final Award is issued, they may request the arbitrator to issue the terms of the agreement in the form of a Consent Award. The Consent Award must set forth how costs and fees associated with the arbitration will be paid, including but not limited to attorneys' fees and the arbitrator's fees and expenses.

7.4 Failure to Prosecute

If, prior to the close of the hearing, a party fails to pursue a claim or counterclaim, the arbitrator may issue a Final Award dismissing all or part of a case either with or without prejudice.

7.5 Scope of Relief

An arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract.

7.6 Fees and Expenses

(a) BY AGREEMENT: If the parties have agreed on the allocation of the arbitrator's fees and expenses, and/or the parties' attorney fees, an arbitrator must implement their agreement unless it is contrary to applicable law.

(b) STANDARD ALLOCATION: Except as is set forth in paragraph (c) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:

(1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and

(2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

(c) MISBEHAVIOR: An arbitrator may require a party to pay the fees and expenses incurred by the arbitrator and/or the attorney fees of other parties, or any portion thereof, as a result of the party's lack of cooperation or abuse of the process.

7.7 Form

An award must be in writing and signed by the arbitrator, in compliance with applicable state and federal law.

7.8 Reasoning

An arbitrator should provide a concise statement of the reasons supporting his or her award unless the parties agree prior to the completion of the arbitration hearing that a reasoned award is not required.

7.9 Corrections

Within fifteen (15) days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have fifteen (15) days to respond to this request. The arbitrator must respond within thirty (30) days after receiving the request. An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

7.10 Effect and Use

A Final Award or a Consent Award fully and finally resolves all claims and counterclaims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case. The Administrator and the arbitrator shall maintain the confidential nature of the arbitration proceeding and any award, except as necessary in connection with a judicial challenge to or enforcement of an award, or unless as otherwise required by law.

Section 8: Post–Award Proceedings

8.1 Final Accounting

After an award is issued and the arbitrator provides a final invoice, the Administrator will provide the parties a statement listing all costs deducted from the amounts deposited. The Administrator will promptly return any funds on deposit that are not required to cover costs. If the arbitrator's fees or expenses as approved by the Administrator, exceed the amount on deposit, the Administrator may invoice whichever party or parties are responsible for paying those costs.

8.2 Release of Documents

The AHLA will not release documents from a case file, including an award, unless:

(1) it is required to do so by a valid court order or other valid legal process; or
(2) a party requests the Administrator to provide copies (certified or not) of documents in its possession and pays appropriate fees.

8.3 Judicial Proceedings

Neither AHLA nor an arbitrator it appoints is a necessary party to any judicial proceedings related to arbitration under the Rules.

Section 9: Emergencies

9.1 Request for Emergency Relief

To request emergency relief, a claimant must file: (a) a claim form along with the appropriate filing fee; (b) a petition requesting emergency relief and explaining the basis for this request; and (c) proof that it has notified all parties of the petition or has made a good faith attempt to notify them.

9.2 Emergency Appointment

The Administrator will nominate an arbitrator to arbitrate the petition for emergency relief as quickly as possible based on the information provided by the Claimant in the claim form and any additional input other parties may choose to provide.

Based on the claim form, the petition, and any other documents the parties may have provided, the nominee will determine within one (1) day whether to accept this limited appointment.

9.3 Standard of Review

In determining whether to award emergency relief, the arbitrator should determine whether the Claimant: (i) is likely to succeed on the merits and (ii) will suffer irreparable harm without emergency relief, and, if so, should balance that against the burden such relief would impose on the Respondent. Whenever it is practical to do so, the arbitrator will provide the Respondent an opportunity to respond orally and in writing before ruling on the petition. However, in exigent circumstances, the arbitrator may act on the petition without receiving argument from both sides.

9.4 Deposit

The Administrator shall immediately require an advance deposit equal to eight (8) hours of the arbitrator's time and may require additional deposits in accordance with Rule 5.3 before an arbitrator rules on a petition for emergency relief.

9.5 Relief

Rules 7.5-7.9 apply to an award of emergency relief, and Rule 7.2 applies to an award for emergency relief to the extent deemed feasible by the arbitrator.

9.6 Extension of Appointment

After an arbitrator rules on a petition, the parties may agree to extend the arbitrator's appointment for the duration of the case. If the parties do not agree on an extension, or the arbitrator declines to accept it, the Administrator will appoint an arbitrator in accordance with Rule 3.2.

Section 10: Class Arbitrations

If the parties have agreed to arbitrate a class action under the Rules, or a court orders class arbitration, the arbitrator will apply procedures based on appropriate court rules and legal standards, including the Federal Rules of Civil Procedure.

Exhibit 1: Arbitrator Selection Process

As is stated in Rule 3.2(g), the Administrator appoints the candidate with the lowest combined score from the parties' Ranking Sheets (see Illustration 1). In the event of a tie, the Administrator appoints the candidate ranked most similarly by the parties (see Illustration 2). If this tie-breaking procedure fails to produce a winner, the Administrator appoints the candidate whose last name comes first in alphabetical order if the case number is odd, and in reverse alphabetical order if the case number is even (see Illustration 3).

Illustration 1: Lowest Combined Score

Party A's rankings are:

1. Smith
2. Jones
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Johnson
2. Smith
3. Murphy
4. Jones
5. Brown

Smith has the lowest combined score (2+1=3) and is therefore appointed as the arbitrator.

Illustration 2: Most Similar Rankings

Party A's rankings are:

1. Jones
2. Smith
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Murphy
2. Smith
3. Jones
4. Johnson
5. Smith

Both Jones and Smith have the lowest combined score of three (3). Because there is no difference between Smith's scores (2-2=0) and a two (2) point difference between Jones's scores (3-1=2), Smith is appointed.

Illustration 3: Alphabetical Order

Party A's rankings are:

1. Jones
2. Smith
3. Johnson
4. Brown
5. Murphy

Party B's rankings are:

1. Smith
2. Jones
3. Brown
4. Johnson
5. Murphy

Both Jones and Smith have the lowest combined score of four (4) and the difference between their rankings is the same (one (1)). Jones will be selected if the case number is odd; Smith will be selected if the case number is even.

MULTI-PARTY CASES

To provide each side equal input into the selection of an arbitrator, the Administrator averages the rankings of parties with common interests into a single score (see Illustration 1). If Claimants or Respondents have conflicting interests, their scores are weighted separately (see Illustration 2).

Illustration 1: Common Interests

General Hospital claims Dr. Young and Dr. Restless violated their recruiting agreement when they established Group Practice with three other physicians. The parties' rankings are:

General Hospital

1. Murphy
2. Johnson
3. Brown
4. Jones
5. Smith

Dr. Young

1. Smith
2. Brown
3. Johnson
4. Jones
5. Murphy

Dr. Restless

1. Smith
2. Murphy
3. Brown
4. Johnson
5. Jones

Because Dr. Young and Dr. Restless are similarly situated, their scores are averaged into one:

Smith 1
Brown.....2.5
Johnson 3.5
Murphy.....3.5
Jones.....4.5

Murphy has the lowest combined score (1 + 3.5) and is appointed as the arbitrator.

Illustration 2: Competing Interests

Dr. Young seeks compensation for unpaid bills from General Hospital and Medical Insurance for surgeries performed at General Hospital. Medical Insurance refused to pay because General Hospital provided false and incomplete information. General Hospital denies these allegations. The parties' rankings are:

Dr. Young

1. Murphy
2. Johnson
3. Brown
4. Jones
5. Smith

General Hospital

1. Smith
2. Brown
3. Johnson
4. Jones
5. Murphy

Medical Insurance

1. Smith
2. Murphy
3. Brown
4. Johnson
5. Jones

Because all three parties are at odds with each other, their rankings receive equal weight. Smith has the lowest combined score (5 + 1 + 1) and is appointed as the arbitrator.

Exhibit 2: Guidelines for Mediation–Arbitration (Med–Arb) and Arbitration–Mediation (Arb–Med)

Introduction

A key advantage of resolving disputes privately is the freedom to customize the process. These guidelines explain how to successfully combine mediation and arbitration. If an agreement does not conform to these guidelines, the Administrator may refuse to accept the case.

Definitions

In "Mediation-Arbitration" or "Med-Arb" a Neutral assists parties in negotiating an agreement to resolve a legal dispute, and, if no agreement is reached, resolves the dispute by holding an evidentiary hearing and issuing a binding award.

In "Arbitration-Mediation" or "Arb-Med" a Neutral holds an evidentiary hearing on a legal dispute and, before issuing an award, assists the parties in negotiating an agreement to resolve the dispute. If no agreement is reached, the Neutral resolves the dispute by issuing a binding award.

Guidelines

1. PREREQUISITES. Prerequisites for initiating arbitration or mediation must be clearly articulated. In other words, if certain events must occur before parties become obligated to mediate or arbitrate, the agreement must clarify what those events are and how a Neutral can determine whether these events have occurred.

2. TRANSITIONS. The agreement must provide that, at any given point in time, the Neutral serves in only one role—as either a mediator or an arbitrator. The agreement must clearly delineate when the Neutral transitions from one role to another.

3. MED-ARB. A Med-Arb agreement must:

   (a) state that information shared with the Neutral in mediation may form the basis for an award in arbitration; and
   (b) waive the parties' right to contest the award because ex parte communications took place in mediation caucuses.

4. ARB-MED. An Arb-Med agreement must indicate whether the arbitrator is going to seal the award before mediation begins in order to foreclose the possibility that the award will be based on information shared in confidence in mediation. If the award is not sealed, the agreement must comply with Guidelines 3(a) and 3(b) above.

Exhibit 3: Fee Schedule

The filing fee is based on the number of candidates provided to review and rank and the number of separate parties who are reviewing and ranking them:

Base fees for a claim involving two parties:
Parties select an arbitrator by agreement.....$900
List of 5 candidates to rank.....$1100
List of 10 candidates to rank.....$1300
List of 12 candidates to rank.....$1500
List of 15 candidates to rank.....$1700
Surcharge for each additional Claimant or Respondent: $200.

The Respondent may expand the list by paying the fee for the desired number of candidates less the amount already paid by the Claimant (e.g., $200 to increase from 5 to 10 candidates).

In claims under either the consumer rules or the rules pertaining to mandatory employment agreements, either party may expand the list by paying the fee for the desired number of candidates less the $1100 fee generally furnished by the health care provider or employer.

Counter-Claim Fee

To file a counterclaim, a party generally must pay the same amount furnished by the filing party to submit the claim. Exceptions are noted in Consumer Rule 5.1 and Employment Rule 5.1.

Late Fee for Deposits

A deposit is due 30 days after a party receives an invoice through the case management system. A late fee of 1.5% per month applies to deposits that are not paid on time.

Closing Fee

AHLA deducts $250 from unused funds in excess of $1000 returned to a party to compensate for the administrative costs associated with closing out a case.

Inactive Case Fee

The Claimant(s) must pay a $400 administrative fee per case, per year, for matters that remain inactive for more than 12 months. If the Claimant(s) fails to pay within 30 days of receiving an invoice, AHLA will close the case.

Administrative Fee

AHLA retains a percentage of the amount billed and collected on behalf of arbitrators. The parties are not billed for this fee.

All fees are non-refundable. No exceptions.

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