

**THE BOARD OF DIRECTORS
NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT
RESOLUTION 07-02**

THE BOARD OF DIRECTORS of Northern Inyo County Local Hospital District (“the District”), meeting in regular session this 17th day of January, 2007, having considered the facts set forth below does, after discussion and consideration and good cause appearing, determine and resolve as follows:

WHEREAS, the District operates Northern Inyo Hospital, an acute care general hospital serving the communities located in said District, at Bishop, California and,

WHEREAS, operation of said hospital and the provision of adequate health care to the communities served by the District requires the availability and services of at least two qualified general surgeons and

WHEREAS, the District has been, at all relevant times, served by two general surgeons, one of whom, STEPHEN A. KOBAYASHI, M.D., has announced his intention to retire from active practice, and

WHEREAS, ROBBIN CROMER-TYLER, M.D., is a physician and surgeon licensed to practice in the State of California, and a member of the American College of Surgeons, and desires to locate her practice of general surgery in Bishop, California,

NOW, THEREFORE, BE IT RESOLVED that this Board finds that it will be in the best interests of the public health of the communities served by the District, and necessary to obtain a licensed physician and surgeon who is qualified and board-certified

to practice general surgery, to enter into that certain agreement entitled "NORTHERN INYO COUNTY LOCAL HOSPITAL PRIVATE PRACTICE PHYSICIAN INCOME GUARANTEE AND PRACTICE MANAGEMENT AGREEMENT", A COPY OF WHICH IS MARKED Exhibit "A", attached hereto and by this reference incorporated herein as though set forth fully and at length.



PETER WATERCOTT, President
NICLHD Board of Directors

Attest:



PATRICIA CALLOWAY
NICLHD Board Secretary

EXHIBIT A
NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT
PRIVATE PRACTICE PHYSICIAN
INCOME GUARANTEE AND PRACTICE MANAGEMENT
AGREEMENT

This Agreement is made and entered into on this 18th day of December 2006 by and between Northern Inyo County Local Hospital District ("District") and Robbin Cromer-Tyler, M.D. ("Physician").

RECITALS

- A. District, which is organized and exists under the California Local Health Care District Law, *Health & Safety Code section 32000, et seq.*, operates Northern Inyo Hospital ("Hospital"), a general acute care hospital serving northern Inyo County, California, including the communities of Bishop and Big Pine.
- B. The District Board of Directors has found, by Resolution No. 07-02, that it will be in the best interests of the public health of the aforesaid communities to obtain a licensed physician and surgeon who is a board-certified/eligible specialist in the practice of General Surgery, to practice in said communities, on the terms and conditions set forth below.
- C. Physician is a physician and surgeon, engaged in the private practice of medicine, licensed to practice medicine in the State of California, and a member of the American College of Surgeons. Physician desires to relocate her practice ("Practice") to Bishop, California, and practice Surgery in the aforesaid communities.

IN WITNESS WHEREOF, THE PARTIES AGREE AS FOLLOWS:

I.
COVENANTS OF PHYSICIAN

Physician shall relocate her Practice to medical offices ("Offices") provided by District at a place to be mutually agreed upon in Bishop, California and shall, for the term of this Agreement, do the following:

- 1.01. Services.** Physician shall provide Hospital with the benefit of her direct patient care expertise and experience, and shall render those services necessary to enable Hospital to achieve its goals and objectives for the provision of Surgical Services. The scope of services to be performed by Physician is described in Exhibit A attached hereto and incorporated by reference herein. Physician shall provide Hospital with patient medical record documentation of all direct patient care

services rendered hereunder; such documentation shall be submitted to Hospital on an ongoing basis, and shall be in the form, and contain the information, requested by the Hospital such that a complete medical record can be assembled.

- 1.02. **Limitation on Use of Space.** No part of any offices provided by the District either by lease or other arrangement shall be used at any time by Physician as anything other than the private practice of SURGICAL medicine unless specifically agreed to, in writing, by the parties.
- 1.03. **Medical Staff Membership and Service:** Physician shall:
- a) Apply for and maintain Provisional or Active Medical Staff ("Medical Staff") membership with Surgical privileges sufficient to support a full time SURGICAL practice, for the term of this Agreement.
 - b) Provide on-call coverage to the Hospital's Emergency Services within the scope of privileges granted to her by Hospital and as required by the Hospital Medical Staff. Physician shall not be required to provide more than fifty percent (50%) of the annual call in weekly increments unless otherwise agreed upon from time to time. Physician shall be solely responsible for call coverage for her personal private practice.
 - c) Maintain books, records, documents, and other evidence pertaining to all costs and expenses incurred, and revenue acquired, pursuant to this Agreement to the extent, and in such detail, as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature, for which she may claim payment or reimbursement from the District. Physician acknowledges and agrees that any federal office authorized by law shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of Physician which are relevant to this Agreement, at all reasonable times for a period of four (4) years following the termination of this Agreement, during which period Physician shall preserve and maintain said books, documents, papers, and records. Physician further agrees to transfer to the District, upon termination of this Agreement, any books, documents, papers or records which possess long-term [*i.e.*, more than four (4) years] value to the Hospital. Physician shall include a clause providing similar access in any sub-contract she may enter with a value of more than Ten Thousand Dollars (\$10,000) or for more than a twelve (12) month period, when said sub-contract is with a related organization.
 - d) At all times comply with all relevant policies, rules and regulations of the Hospital, subject to California and federal statutes governing the practice of medicine.
 - e) District expressly agrees that said services might be performed by such other qualified physicians as the Physician may employ or otherwise provide so long as each such physician has received proper training, is properly licensed, has been granted privileges by the Hospital Medical Staff, and has received approval in writing from the Hospital.

II.
COVENANTS OF THE DISTRICT

2.01. Hospital Services.

- a) Space. Hospital shall make the Offices available for the operation of Physician's Practice either through a direct let at no cost to the physician or through an arrangement with a landlord, also at no cost to the physician, other than the fees retained by the hospital (3.05).
- b) Equipment. In consultation with Physician, Hospital shall provide all equipment as may be reasonably necessary for the proper operation and conduct of Physician's practice. Hospital shall repair, replace or supplement such equipment and maintain it in good working order.

2.02. General Services. District shall furnish ordinary janitorial services, maintenance services, and utilities, including telephone service, as may be required for the proper operation and conduct of Physician's Practice.

2.03. Supplies. District shall purchase and provide all supplies as may be reasonably required for the proper treatment of Physician's Practice patients. Physician shall inform Hospital of supply needs in a timely manner and shall manage the use of supplies in an efficient manner that promotes quality and cost-effective patient care.

2.04. Personnel. District shall determine the initial number and types of employees required for the operation of the Practice and place them in the Practice initially. Physician and Hospital will mutually agree to subsequent staffing requirements. Physician shall not be required to maintain any personnel that she does not feel is appropriate for the practice.

2.05. Business Operations. District shall be responsible for all business operations related to operation of the Practice, including personnel management, billing and payroll functions. Physician will provide the appropriate billing codes, which will be used unless changed by mutual consent of the Physician and Hospital. Hospital will incur and pay all operating expenses of the Practice.

2.06. Hospital Performance. The responsibilities of District under this Article shall be conditional upon and subject to District's discretion and its usual purchasing practices, budget limitations and applicable laws and regulations.

2.07. Practice Hours. The District desires, and Physician agrees, that Physician's Practice shall operate on a full-time basis, maintaining hours of operation in keeping with the full time practice of one GENERAL surgeon while permitting a surgery schedule sufficient to serve the patients of the Practice. Specific shifts

will be scheduled according to normal operating procedures of the Practice and will be mutually agreed upon with Physician.

III.

COMPENSATION

- 3.01. **Compensation**. During the term of this agreement, District shall guarantee Physician an annual income of \$299,997, payable to Physician at the higher of 50% of fees collected for services rendered in Section II or the rate of \$11,500 every two (2) weeks, adjusted quarterly to reflected 50 % of fees collected so that payments will not exceed the minimum guarantee unless 50% of the fees exceed the guarantee on an annualized basis. All payments shall be made on the same date as the District normally pays its employees.
- 3.02. **Malpractice Insurance**. Physician will secure and maintain her own malpractice insurance with limits of no less than \$1 million per occurrence and \$3 million per year. District will reimburse Physician eighty percent (80%) of the premiums for said insurance paid for by Physician.
- 3.03. **Health Insurance**. During the first year of the term of this Agreement, and no longer, Physician will be admitted to the Hospital's self-funded Medical Dental Vision Benefit Plan and be provided the benefits contained therein as if she were an employee of District.
- 3.04. **Billing for Professional Services**. Subject to section 2.05 above, Physician assigns to District all claims, demands and rights of Physician to bill and collect for all professional services rendered to Practice patients, for all billings for surgical services, for all billings consulting performed or provided by the Physician. Physician acknowledges that Hospital shall be solely responsible for billing and collecting for all professional services provided by Physician to Practice patients at Practice and for all surgical services performed at the Hospital, and for managing all Practice receivables and payables, including those related to Medicare and MediCal beneficiaries. Physician shall not bill or collect for any services rendered to Practice patients or Hospital patients, and all Practice receivables and billings shall be the sole and exclusive property of Practice. In particular, any payments made pursuant to a payer agreement (including co-payments made by patients) shall constitute revenue of the Practice. In the event payments are made to Physician pursuant to any payer agreement, Physician shall promptly remit the payments directly to District.
- 3.05. **Retention**. Hospital will retain 50% of all fees collected from the activities of physician/practice in exchange for the services rendered in II above.

IV.

TERM AND TERMINATION

4.01. **Term.** The term of this Agreement shall be three (3) years beginning on the Monday next following the day upon which Physician is granted clinical privileges at Hospital and provisional membership on the Active Medical Staff of Hospital. The Agreement may be renewed, by written instrument signed by both parties, no later than 120 days before its expiration date.

4.02. **Termination.** Notwithstanding the provisions of section 4.01, this Agreement may be terminated:

- a) By Physician at any time, without cause or penalty, upon one hundred and eighty (180) days' prior written notice to the District;
- b) Immediately by District in its sole discretion if Physician fails to maintain the professional standards described in Article V of this Agreement;
- c) Immediately upon closure of the Hospital or Practice;
- d) By either party upon written notice to the other party in the event that any federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect that prohibits, restricts, limits or in any way substantially changes the arrangement contemplated herein or which otherwise significantly affects either party's rights or obligations under this Agreement; provided that in such event, District must give notice to Physician equal to that provided to District by the relevant federal, state or local government or agency. If this Agreement can be amended to the satisfaction of both parties to compensate for any such prohibition, restriction, limitation or change, this clause shall not be interpreted to prevent such amendment; or
- e) By either party in the event of a material breach by the other party and, in such event, the non-breaching party shall have the right to terminate this Agreement after providing thirty (30) days' written notice to the breaching party, explaining the breach, unless such breach is cured to the satisfaction of the non-breaching party within the thirty (30) days.

4.03. **Rights Upon Termination.** Upon any termination or expiration of this Agreement, all rights and obligations of the parties shall cease except those rights and obligations that have accrued or expressly survive termination.

V.

PROFESSIONAL STANDARDS

5.01. **Medical Staff Membership.** It is a condition precedent of District's obligation under this Agreement that Physician obtain Provisional or Active Medical Staff membership on the Hospital Medical Staff with appropriate clinical privileges and maintain such membership and privileges throughout the term of this Agreement.

5.02. **Licensure and Standards.** Physician shall:

- a) At all times be licensed to practice medicine in the State of California;
- b) Comply with all policies, bylaws, rules and regulations of Hospital, Hospital Medical Staff, and Practice, including those related to documenting all advice to patients and proper sign-off of lab and X-ray reports;
- c) Be a member in good standing of the Provisional or Active Medical Staff of Hospital;
- d) Maintain professional liability coverage in an amount required for membership on the Active Medical Staff of Hospital;
- e) Participate in continuing education as necessary to maintain licensure and the current standard of practice; and
- f) Comply with all applicable laws, rules and regulations of any and all governmental authorities, and applicable standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations.
- g) At all times conduct herself, professionally and publicly, in accordance with the standards of the medical profession, the American College of Surgeons, the Hospital Medical Staff, and the District. Further, she shall not violate any law which prohibits (1) driving a motor vehicle under the influence of alcohol or prescription drugs or the combined influence of such substances, (2) unlawful use of controlled substances, (3) being intoxicated in a public place in such a condition as to be a danger to herself or others, and/or (4) conduct justifying imposition of an injunction prohibiting harassment of Hospital employees in their workplace. Entry of any injunction, judgment, or order against Physician based upon facts which constitute any of the above offenses shall be a material breach of this Agreement.

VI.

RELATIONSHIP BETWEEN THE PARTIES

6.01. Professional Relations.

- a) Independent Contractor. No relationship of employer and employee is created by this Agreement. In the performance of Physician's work and duties, Physician is at all times acting and performing as an independent contractor practicing the profession of medicine. District shall neither have nor exercise control or direction over the methods by which Physician performs professional services pursuant to this Agreement; provided, however, that Physician agrees that all work performed pursuant to this Agreement shall be in strict accordance with currently approved methods and practices in Physician's professional specialty and in accordance with the standards set forth in this Agreement.
- b) Benefits. Except as specifically set forth in this Agreement, it is understood and agreed that Physician shall have no claims under this Agreement or

otherwise against Hospital for Social Security benefits, worker's compensation benefits, disability benefits, or any employee benefit of any kind. In addition, Hospital shall have no obligation to reimburse Physician for any costs or expenses associated with Physician's compliance with continuing medical education requirements.

- 6.02. **Responsibility for Own Acts.** Each party will be responsible for its own acts or omissions and all claims, liabilities, injuries, suits, demands and expenses for all kinds which may result or arise out of any malfeasance or neglect, caused or alleged to have been caused by either party, their employees or representatives, in the performance or omission of any act or responsibility of either party under this contract. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, both parties shall have the right to take any and all actions they believe necessary to protect their interest.

VII. **GENERAL PROVISIONS**

- 7.01. **No Solicitation.** Physician agrees that she will not, either directly or indirectly, during and after the term of this Agreement, call on, solicit, or take away, or attempt to call on, solicit, or take away any patients or patient groups with whom Physician dealt or became aware of as a result of Physician's past, present or future affiliation with Hospital and Practice.
- 7.02. **Access to Records.** To the extent required by Section 1861(v)(i)(I) of the Social Security Act, as amended, and by valid regulation which is directly applicable to that Section, Physician agrees to make available upon valid written request from the Secretary of HHS, the Comptroller General, or any other duly authorized representatives, this Agreement and the books, documents and records of Physician to the extent that such books, documents and records are necessary to certify the nature and extent of Hospital's costs for services provided by Physician.

Physician shall also make available such subcontract and the books, documents, and records of any subcontractor if that subcontractor performs any of the Physician's duties under this Agreement at a cost of \$10,000.00 or more over a twelve (12) month period, and if that subcontractor is organizationally related to Physician.

Such books, documents, and records shall be preserved and available for four (4) years after the furnishing of services by Physician pursuant to this Agreement. If Physician is requested to disclose books, documents or records pursuant to this subsection for purposes of an audit, Physician shall notify Hospital of the nature

and scope of such request, and Physician shall make available, upon written request of Hospital, all such books, documents or records. Physician shall indemnify and hold harmless Hospital in the event that any amount of reimbursement is denied or disallowed because of the failure of Physician or any subcontractor to comply with its obligations to maintain and make available books, documents, or records pursuant to this subsection. Such indemnity shall include, but not be limited to the amount of reimbursement denied, plus any interest, penalties and legal costs.

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

- 7.03. **Amendment.** This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by both parties.
- 7.04. **No Referral Fees.** No payment or other consideration shall be made under this Agreement for the referral of patients, by Physician, to Hospital or to any nonprofit corporation affiliated with District.
- 7.05. **Repayment of Inducement.** The parties stipulate and agree that the income guaranteed to Physician under this Agreement, and the covenants of the District to provide office space, personal, equipment, and certain other benefits, are the minimum required to enable Physician to relocate herself to Bishop, California; that she is not able to repay such inducement, and no such repayment shall be required.
- 7.06. **Assignment.** Physician shall not assign, sell, transfer or delegate any of the Physician's rights or duties, including by hiring or otherwise retaining additional physicians to perform services pursuant to this Agreement, without the prior written consent of Hospital.
- 7.07. **Attorneys' Fees.** If any legal action or other proceeding is commenced, by either party, to enforce rights, duties, and/or responsibilities under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. As used in this Section 7.07, the term "prevailing party" shall have the meaning assigned by Section 1032(a)(4) of the California Code of Civil Procedure.
- 7.08. **Choice of Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

- 7.09. **Exhibits.** All Exhibits attached and referred to herein are fully incorporated by this reference.
- 7.10. **Notices.** All notices or other communications under this Agreement shall be sent to the parties at the addresses set forth below:

Hospital: Administrator
Northern Inyo Hospital
150 Pioneer Lane
Bishop, CA 93514

Physician:

Notice may be given either personally or by first-class mail, postage prepaid, addressed to the party designated above at the address designated above, or an address subsequently specified in writing by the relevant party. If given by mail, notice shall be deemed given two (2) days after the date of the postmark on the envelope containing such notice.

- 7.11. **Records.** All files, charts and records, medical or otherwise, generated by Physician in connection with services furnished during the term of this Agreement are the property of Practice. Physician agrees to maintain medical records according to Practice policies and procedures and in accordance with community standards. Each party agrees to maintain the confidentiality of all records and materials in accordance with all applicable state and federal laws. Hospital agrees to permit Physician to have access, during or after the term of the Agreement, to medical records generated by Physician if necessary in connection with claims, litigation, investigations, or treatment of patients.
- 7.12. **Prior Agreements.** This Agreement represents the entire understanding and agreement of the parties as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to the matters contained in this Agreement. This Agreement may be modified only by a writing signed by each party or his/its lawful agent.
- 7.13. **Referrals.** This Agreement does not impose any obligation or requirement that Hospital shall make any referral of patients to Physician or that Physician shall make any referral of patients to Hospital. The payment of compensation pursuant to section 3.01 is not based in any way on referrals of patients to Hospital.
- 7.14. **Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and the remaining provisions shall remain enforceable between the parties.

- 7.15. **Waiver.** The failure of either party to exercise any right under this Agreement shall not operate as a waiver of that right.
- 7.16. **Gender and Number.** Use of the masculine gender shall mean the feminine or neuter, and the plural number the singular, and vice versa, as the context shall indicate.
- 7.17. **Authority and Executive.** By their signature below, each of the parties represent that they have the authority to execute this Agreement and do hereby bind the party on whose behalf their execution is made.
- 7.18. **Construction.** This Agreement has been negotiated and prepared by both parties and it shall be assumed, in the interpretation of any uncertainty, that both parties caused it to exist.

NORTHERN INYO COUNTY
LOCAL HOSPITAL DISTRICT

PHYSICIAN

By _____
Peter J. Watercott, President
District Board of Directors

By _____
Robbin Cromer-Tyler, M.D.

APPROVED AS TO FORM:

Douglas Buchanan
District Legal Counsel

EXHIBIT A

SCOPE OF DUTIES OF THE PHYSICIAN

POSITION SUMMARY

The Physician is a Member of the Northern Inyo Hospital Active Medical Staff. Physician provides direct primary medical diagnosis and treatment to Practice and Hospital patients. The Physician will provide services commensurate with the equivalent of a full time Surgical Practice. Full time shall mean regularly scheduled office hours to meet the service area demand and performance of surgeries as may be required. Full time shall also mean the provision of no more than four (4) weeks of vacation and two (2) weeks of time to acquire CME credits, if needed, as well as all recognized national holidays. All time off will be coordinated with Call coverage such that scheduled time off will not conflict with the Physician's call requirement.

Specifically, the Physician will:

1. Provide high quality primary medical care services.
2. Direct the need for on-going educational programs that serve the patient.
3. Evaluate and develop treatment plans to facilitate the individual healthcare needs of each patient.
4. Work with all Practice personnel to meet the healthcare needs of all patients.
5. Assess, evaluate, and monitor on-going health care and medication of Practice patients.
6. Manage all medical and surgical emergencies.
7. Participate in professional development activities and maintain professional affiliations.
8. Participate with Hospital to meet all federal and state regulations.
9. Accept emergency call as provided herein.