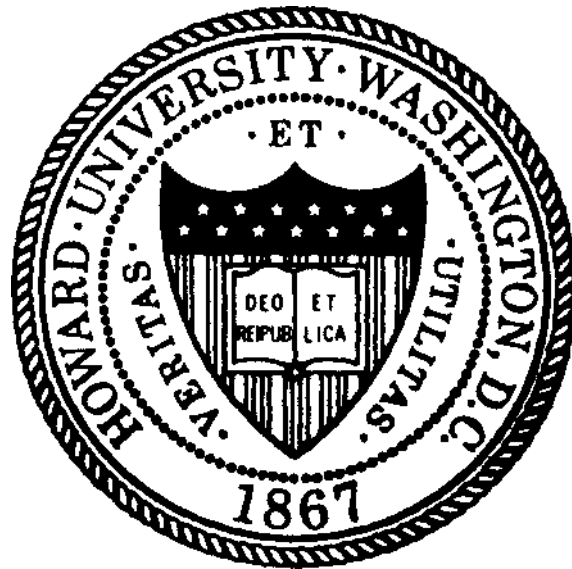


THE HOWARD UNIVERSITY MANUAL

FACULTY HANDBOOK SECTION



EMPLOYMENT AND TENURE POLICIES

GOVERNING FACULTY POSITIONS

**HOWARD UNIVERSITY
MEMBER PRACTICE AGREEMENT
BETWEEN
THE HOWARD UNIVERSITY
d/b/a
HOWARD UNIVERSITY COLLEGE OF MEDICINE
and**

THIS MEMBER PRACTICE AGREEMENT is made and effective as of the Effective Date by and between the physician licensed to practice medicine in the District of Columbia who has signed this AGREEMENT on the signature page below and The Howard University, a non-profit corporation chartered by an Act of Congress.

WHEREAS, the University operates the Howard University College of Medicine through which the University engages qualified physicians as Faculty Members of the College of Medicine to provide the Academic Services, as defined below;

WHEREAS, it is an essential component of furnishing the Academic Services that all Faculty Members of the College of Medicine provide Professional Services, as defined below, so that Members remain current in diagnostic and treatment techniques and skills, and have an active patient caseload, both for purposes of teaching and demonstration;

WHEREAS, the performance of **Professional Services is necessary to allow** the University to further its charitable objectives, including the provision of medical education for physicians, and in particular African-American physicians, and medical treatment for economically disadvantaged persons in medically **underserved urban areas**;

WHEREAS, the performance of Professional Services is a material component of, and a condition of, Member's appointment and retention as a **Faculty** Member of the College of Medicine, and the failure to provide Professional Services in accordance with the terms and conditions of this Agreement would be a violation of the terms and conditions of such faculty appointment;

WHEREAS, Member is desirous of providing, and is trained and qualified to provide, such Academic Services and Professional Services under the terms and conditions of this Agreement;

WHEREAS, the Member's ability and willingness to furnish Professional Services in accordance with the terms and conditions of this Agreement is a material consideration in the University's appointment of Member as a **Faculty Member of the College of Medicine**; and

WHEREAS, the University is desirous of employing Member as a Faculty Member to perform the Academic Services and the Professional Services for the College of Medicine under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which constitute part of this Agreement, and of the respective terms, covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. Definitions

Capitalized terms used herein shall have the meanings set forth in Exhibit 1.

2. Scope of Services

2.1 Employment. The University hereby engages Member, and as a material part and condition of Member's appointment as a Faculty Member of the College of Medicine, Member **hereby** accepts engagement, as an employee of the University to furnish the Academic Services and the Professional Services as described below and in Exhibit 1. Member hereby agrees to provide Professional Services through and otherwise to participate in the Plan, as from time to time amended in the University's sole discretion. Member agrees to provide the Professional Services hereunder and to participate in the Plan as the only duly authorized faculty practice plan associated with the University. During the Term, Member may not furnish, contract for the furnishing of, or submit or collect bills for the furnishing of, Professional Services except through this Agreement. Member shall devote his/her full-time professional best efforts to providing the Services hereunder and shall dedicate such hours per week as is customary for other similarly situated full-time physician employees of the University.

2.2 Academic Services. Member shall furnish the Academic Services solely according to the terms and conditions of this Agreement and the Academic Policies.

2.3 Professional Services. Member shall furnish the Professional Services solely according to the terms and conditions of this Agreement.

2.4 Conflicting Documents. Consistent with the policy enunciated in Section 2.1 of the Howard University Faculty Handbook, in case of any conflict between this Agreement, the Howard University Faculty Handbook, any other the Academic Policies or any other employment agreement, express or implied, this Agreement shall control.

3.0 Responsibilities

3.1 Member responsibilities. During the Term, Member shall at all times:

3.1.1 have and maintain in good standing and without material qualification a license to practice medicine in the District of Columbia, a state controlled substance registration, a federal Drug Enforcement Agency registration, and, as required by the Plan, appropriate board certification(s) and eligibility;

3.1.2 have and maintain in good standing and without material qualification staff privileges at the Hospital, and at such other hospitals as the University may from time to time direct;

3.1.3 be and remain in good standing as a Faculty Member;

3.1.4 have and maintain eligibility to provide services on a reimbursable basis to beneficiaries and enrollees of Third Party Payors with which the University contracts:

3.1.5 inform the University promptly of any event or occurrence that could adversely affect Member's license(s), staff privileges at the Hospital, status as a Faculty Member, or eligibility to provide services on a reimbursable basis to beneficiaries and enrollees of any Third Party Payors with which the University contracts;

3.1.6 promptly and accurately prepare and cause to be filed in the medical records of all of his or her patients, progress notes, reports of examinations, procedures, and operations, and consultative and referral notes, that accurately reflect the patient's diagnosis and treatment, in accordance with the standards, policies and procedures set forth in the medical staff bylaws of the Hospital, whether or not the patient is a Hospital patient;

3.1.7 promptly cause to be delivered to other physicians participating in a patient's care consultative and referral notes as described in Section 3.1.6 in accordance with the standards, policies and procedures set forth in the medical staff bylaws of the Hospital, whether or not the patient is a Hospital patient;

3.1.8 promptly and accurately prepare such reports and other information as may be required by the University and the Hospital to prepare or

support claims for reimbursement from Third Party Payors for all Hospital services and Professional Services provided by Member or under Member's supervision or plan of treatment;

3.1.9 cooperate with the University in all aspects of the contracting, billing, and collection processes, and execute such documents as may be necessary to enable the University to fulfill its responsibilities under this Agreement and under any agreements with Third Party Payors;

3.1.10 provide the Professional Services only through the Plan at and only at practice sites that are authorized hereunder or approved by the Dean of the College of Medicine;

3.1.11 maintain and respect patient confidentiality;

3.1.12 during and after the Term and despite the Agreement's expiration or termination for any reason, refrain from making any oral or written comment to any third party that is derogatory concerning the University, the College of Medicine, the Hospital, the Plan, or any of their physicians or services, and that is reasonably likely to affect adversely the University's, the College of Medicine's, the Hospital's or the Plan's reputation or business;

3.1.13 determine, based on Member's best medical judgment, the proper course of treatment for Member's patients;

3.1.14 provide care under, be bound by and comply with all terms of any agreements between the University and Third Party Payors;

3.1.15 take any and all actions requested by the University to become credentialed by any Third Party Payor specified by the University;

3.1.16 commit to and participate fully in the University's patient care and quality improvement programs, including efforts to improve patient satisfaction;

3.1.17 be free from the influence of unlawful controlled substances at all times, and of alcohol or lawful controlled substances during hours when the Physician is providing or on call to provide any Professional Services;

3.1.18 provide such a level of indigent care as is consistent with the Plan's and the Hospital's policies and with good medical practice;

3.1.19 comply with all standards necessary for receiving professional liability insurance through, and participate in, the Howard University approved

program of professional liability insurance or self insurance, as required pursuant to the provisions of 6.1;

3.1.20 participate in training as directed by the Hospital and/or the Dean of the College of Medicine, including without limitation training with respect to billing and coding for services for which reimbursement is sought and with respect to compliance with legal requirements, and including such training as may be reasonably required prior to the Effective Date;

3.1.21 notify the University promptly upon the occurrence of any event that would cause Member to be out of compliance with the requirements of this Section 3.1; and

3.1.22 with respect to any and all of the above, comply with (a) all applicable federal, state, and local laws and regulations, including without limitation those of the District of Columbia, the Internal Revenue Service, and the Health Care Financing Administration, (b) the University's, the College of Medicine's, the Plan's, and the Hospital's rules, policies, and procedures, including without limitation the Academic Policies and the Plan Policies and Procedures, (c) all applicable requirements of Third Party Payors, (d) all applicable professional ethical and good medical practice standards, and (e) such clinical practice standards as may be established from time to time by the University. Member shall maintain documentation of such compliance in a form satisfactory to the University, and shall provide such documentation to the University upon request.

3.2 University responsibilities. During the Term, the University shall:

3.2.1 establish fee schedules for the Professional Services performed by Member during the Term;

3.2.2 negotiate any and all agreements with Third Party Payors and other non-University entities for the Professional Services to be provided by Member during the Term;

3.2.3 bill, or arrange for the billing of, Third Party Payors and patients for all Professional Services provided by Member and in accordance with documentation supplied to the University by Member;

3.2.4 make all reasonable efforts to collect all Professional Income assigned by Member to the University pursuant to this Agreement;

3.2.5 provide all facilities, equipment, supplies, support personnel and other items deemed necessary by the University, in consultation with Members as appropriate, for Member's provision of the Services hereunder; and

3.2.6 provide and manage all billing, collection, and revenue management and accounting activities under this Agreement in accordance with federal, state, and local law and with the University's and the Plan Policies and Procedures.

4. Compensation

4.1. Member's annual compensation. As compensation for the Services provided hereunder, the University shall pay Member, and Member shall accept as payment in full, the amount set forth in Exhibit 2 attached hereto and incorporated by reference herein. Such compensation shall be calculated on the basis of the number of days of Services provided by Member during the compensation year, and all payments shall be made to Member through the regular payroll system of the University, in accordance with the University's customary procedures for payment of similarly situated employees. On an annual basis, the University may revise Exhibit 2 to reflect Member's new compensation, if any, or shall provide Member with notice of adjustment of compensation, if any, in Member's annual personnel recommendation, in accordance with the terms of the Plan. The Parties acknowledge that Member's compensation will contain a component related to the Academic Services and a component related to the Professional Services. The University shall withhold all applicable taxes and shall pay the employer portions of taxes attributable to the compensation provided for in this Agreement as provided by law.

4.2 Member's benefits. Member shall receive those employee benefits that the University provides to all similarly situated Faculty Members pursuant to the University's policies and procedures and the Plan Policies and Procedures as they may be amended or promulgated from time to time.

4.3 University as exclusive agent for negotiation of professional fees. For the Term, Member hereby appoints the University as Member's exclusive agent to negotiate fees for Professional Services.

4.4 Assignment of Professional Income. Member hereby assigns to the University all of Member's rights, title, and interest (to the extent legally assignable) to Professional Income generated pursuant to this Agreement during the Term. Member agrees to execute such other documents as may be necessary from time to time to perfect this assignment and to cooperate with the University in the University's dealings with Third Party Payors and patients to ensure that all Professional Income earned by Member pursuant to this Agreement is paid to the University. All fees for Professional Services furnished hereunder shall be billed through the University. Member agrees not to charge, bill for, or receive remuneration for Professional Services other than as provided herein, and to notify the University of, and to hold in trust for and remit to the University any remuneration received for such services, whether or not the University makes a

demand or request therefor. Member hereby grants the University an irrevocable power of attorney to take any and all actions necessary and appropriate to collect and retain any Professional Income generated by Member.

4.5 Audit. Member hereby consents to any audit deemed necessary by the University to verify compliance with this Section 4, including, but not limited to, consenting to have the University contact any and all Third Party Payors directly to verify that all payments for Member's Professional Services are made or remitted to the University.

4.6 Liquidated damages for violation of assignment. Without limiting any other remedy that may be available for such violation, if the University determines through audit or otherwise that Member has knowingly billed for and received income for providing Professional Services in violation of the terms of this Agreement, the University may reduce Member's compensation from any other University source by twice the sum of any income received by Member for Professional Services provided in violation of this Agreement. Member acknowledges and agrees that this reduction in compensation represents liquidated damages provided to compensate the University for its expenses incurred in auditing Member and recovering amounts improperly paid to Member in violation of this Agreement.

4.7 Rights of University with respect to Professional Income obtained in violation of the Agreement. With respect to any Professional Income obtained by Member in violation of this Agreement, Member acknowledges and agrees that the University is entitled to all rights and remedies of a secured party under Article 9 of the District of Columbia Uniform Commercial Code, or any successor or replacement statute to enforce its rights under Section 4.6 above.

5. Records and Confidentiality

5.1 Medical records. All records of patients attended by Member are and shall remain, as applicable, in the University's or the Hospital's custody. Copies of patient records shall be furnished only to appropriate parties in accordance with applicable law or at the direction of a patient or his/her personal representative. If this Agreement terminates or expires, the University or the Hospital, as applicable, shall retain custody of the medical records pertaining to the Professional Services provided by Member during the Term; provided, however, that the University shall provide Member with such access to such medical records as the patient has consented to and as Member may require to defend against any claim of malpractice or negligence which may be brought with respect to such Professional Services, or as otherwise provided by law.

5.2 Confidential Information of University. Member recognizes that in the course of performing this Agreement, Member will have access to

Confidential Information of the University. Member shall exercise the same diligence in protecting the confidentiality of the University's Confidential Information as Member uses in protecting his or her own confidential information. Member may not reveal such Confidential Information to a non-Party except as may be compelled by law. Member shall not use Confidential Information of the University for his or her own commercial advantage without the express written consent of the University. Should any person who is not bound by this Agreement request or demand, whether by subpoena, discovery request, or otherwise, that Member provide the requester with access to any Confidential Information of the University, Member shall immediately notify the University. Member shall take all reasonable steps necessary to avoid any waiver of any applicable rights and privileges that may protect the confidentiality of the communication or information to which access is requested or demanded.

6. Professional Liability and Tail Coverage

6.1 Participation in professional liability^y program. Subject to Section 6.2, Member agrees to participate in a program of professional liability insurance or self insurance satisfactory to the University and arranged for Member by or through the University and to bear the cost thereof as an expense of Member's clinical practice. Member agrees to cooperate fully with the University and its agents, including any actuary and any underwriter of such insurance or self insurance in the underwriting or actuarial risk analysis of such insurance or self insurance coverage. the conduct of any risk management or similar program established by or through the University. and the defense of any claim brought against Member. the University, or their insurer(s) based in whole or in part on the Professional Services or related activities of Member. Member acknowledges and agrees that underwnting or actuarial risk analysis standards may include a risk or insured loss experience component that may affect the costs of such insurance.

6.2 Member's failure to meet underwritin^g or actuarial risk Analysis requirements. If Member fails to meet the underwriting or actuarial risk analysis requirements of the University's professional liability insurance or self insurance program, or if the University determines, after consultation with Member, that alternative professional liability insurance arrangements best protect the University's interests, then Member agrees to arrange for and maintain such alternative professional liability insurance coverage as is satisfactory to the University, and to bear the costs thereof.

6.3 Tail coverage obligation.

6.3.1 If this Agreement terminates, (a) the University may require Member to obtain, at the University's expense, Tail Coverage in amount, duration, form, and content satisfactory to the University covering claims incurred during the

period this Agreement was in effect, or (b) the University, at its election and expense, may arrange directly for such Tail Coverage for Member.

6.3.2 If at the time of execution of this Agreement, Member is not already a member of the University approved program of professional liability insurance or self insurance, (a) Member shall provide the University evidence of Tail Coverage covering claims made after the execution of this Agreement in respect of liabilities alleged to have been incurred prior to the execution date of this Agreement, or (b) the University may require Member to obtain, at the University's expense, such Tail Coverage in amount, duration, form, and content satisfactory to the University, or (c) the University, at its election, may arrange directly for such Tail Coverage for Member at University's expense.

7. Other Understandings of the Parties

7.1 No competition.

7.1.1 Without the University's prior written consent, Member shall not (a) except in an emergency or other exceptional and non-recurring circumstances, directly or indirectly, be employed by, or be an officer, director, partner, principal, agent, representative, consultant of or otherwise associated with, or establish, acquire, own, manage, operate, control, finance, participate in, or be connected in any manner with the ownership, management, operation, control or financing of, any business or practice engaged in or about to be engaged in any activity which relates to or competes with the Plan or the Hospital at any location within a three (3) mile radius of the main campus of the University; (b) directly or indirectly solicit any Faculty Member's patient who resides within the Washington D.C. Metropolitan Area, provided, however, that Member may make announcements about new offices or practice affiliations (which new offices or practice affiliations do not violate clause (a) above) to the general public in newspapers, periodicals, and mass mailings; or (c) hire, offer to hire, entice away or in any other manner persuade or attempt to persuade any employee, Faculty Member, or agent of the University to discontinue his/her relationship with the University. The restrictive covenants set forth in this Section 7.1, shall apply during the Term of this Agreement, and for one (1) year after this Agreement's termination if this Agreement was in effect for one (1) year or less, or for two (2) years after this Agreement's termination if this Agreement was in effect for more than one (1) year; provided, however, that the restrictions set forth in this Section 7.1 shall not apply after this Agreement's termination if such termination is due to the University's decision to not renew the Agreement without cause.

7.1.2 Member acknowledges that these restrictive covenants are necessary to protect the interests of the University and the patients it serves. Member recognizes that in the event of a breach of this Section 7.1, the University shall be entitled to bring legal action for injunctive relief and such other relief *as*

the University may deem appropriate, including recovery of damages from Member. If any court shall determine that the duration, geographical limit, or any other aspect of the restrictive covenants set forth in this Section is unenforceable, it is the Parties' intention that the restrictive covenants shall not be terminated but shall be deemed amended to the extent required to render them valid and enforceable, such amendment to apply only with respect to the operation of this Section in the jurisdiction of the court that has made the adjudication.

7.2 Release. Member hereby releases, waives and compromises any and all rights, claims and causes of action that Member has or had, or at any time in the future may have, against the University or against or arising out of any previous faculty practice plan to which Member belonged, including without limitation Howard University Physicians, Inc., or any present, former or future officer, director, member, trustee, manager, employee, agent, attorney, accountant, financial advisor or consultant of the University or any previous faculty practice plan to which Member belonged, including Howard University Physicians, Inc., with respect to or arising in any way in connection with or as a result of (a) Member's employment with any previous faculty practice plan, including without limitation Howard University Physicians, Inc., (b) base and/or bonus compensation related to the provision of professional medical services provided prior to the date hereof on behalf of any previous faculty practice plan to which Member belonged, including Howard University Physicians, Inc., (c) taxes or penalties determined to be due and owing in connection with Member's participation in any previous faculty practice plan to which Member belonged, including Howard University Physicians, Inc., or (d) any and all other rights, claims and causes of action against the University or any previous faculty practice plan to which Member belonged. including Howard University Physicians, Inc., that Member has or had **as** of the date of this release; provided that this does not release any of Member's rights, claims and causes of action arising under or **as** a result of **any breach by the University of the provisions of this Agreement.**

7.3 Indemnity. The University agrees to indemnify, defend and hold Member harmless from and against any and all expenses reasonably incurred by Member and liabilities **actually** and necessarily imposed on Member in connection with any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals) to which Member may be or is made a party by reason of his or her performance of services (or failure to perform services) as a physician in the course of **his or her employment** by the University or by Howard University Physicians, Inc.; subject to the limitation, however, that there shall be no indemnification in relation to matters as to which Member shall be **adjudged** in such claim, action, suit, or proceeding to be guilty of a criminal offense or liable for damages arising out of Member's own negligence or misconduct in the performance of a duty.

7.4 Clinical decisionmaking. The parties acknowledge and agree that nothing in this Agreement shall be construed to give the University, and the University does not have, any control over Member's clinical decisionmaking.

7.5 Patient consent and notification. Prior to the Effective Date, Member or Member's previous faculty practice plan or other employer shall have provided the University with evidence reasonably satisfactory to the University that Member or Member's previous faculty practice plan or other employer has (a) notified Member's patients about Member's new employment by the University to provide the Professional Services and (b) received any required approvals from such patients concerning the transfer of the patients' medical records. The content of any notice provided to patients hereunder shall be subject to prior review and approval of the University.

8. Term and Termination.

8.1. Term and renewal. Subject to earlier termination or suspension as provided below, the Term of this Agreement shall commence on the Effective Date and shall continue for one year thereafter. Thereafter, the Agreement automatically will renew for subsequent one (1) year terms, each of which shall be considered part of the Term, unless either Party has notified the other at least sixty (60) days in advance that it does not wish to renew the Agreement; provided, however, that the compensation due hereunder shall be subject to annual adjustment pursuant to Section 4.1 hereof.

8.2. Automatic suspension: termination. This Agreement automatically shall be suspended, and Member immediately shall cease providing the Professional Services for the University, if Member fails to: (a) hold a currently valid license that, in the sole opinion of the University, is not subject to material limitation or qualification to practice medicine in the District of Columbia, state controlled substance registration, or federal Drug Enforcement Agency registration; (b) maintain board eligibility or board certification in the appropriate specialty, if such eligibility or certification is required under the Plan; (c) maintain in good standing and without material qualification staff privileges at the Hospital; (d) maintain in good standing an academic appointment from the University as a Faculty Member; or (e) maintain eligibility to provide services on a reimbursable basis to beneficiaries and enrollees of federal, state, and local government health care programs and of other Third Party Payors with which the University contracts; provided, that Member shall work with the University to assure the continuity of all patient care. If, within thirty (30) days, Member fails to cure the reason for the University's suspension of the Agreement, then the University, at its sole option, shall have the right to terminate this Agreement upon ten (10) days prior written notice to Member.

8.3 Discretionary suspension: termination. The University may suspend operation of this Agreement immediately, at any time if, in its sole discretion, the University determines that such suspension is necessary in the best interests of patient care or safety; or in the event that Member materially fails to perform Member's responsibilities under Section 3.1 above. If, within thirty (30) days, Member fails to cure the reason for the University's suspension of the Agreement, then the University, at its sole option, shall have the right to terminate this Agreement upon ten (10) days prior written notice to Member. Notwithstanding the foregoing, the University shall have the right to immediately terminate this Agreement (without prior suspension) if the University determines that the Member has failed to comply with his or her obligations under Sections 3.1.12, 3.1.17 or 3.1.22 of this Agreement.

8.4 Termination in Event of Resignation of Faculty Appointment. In the event Member resigns his or her appointment to the College of Medicine faculty, this Agreement shall automatically terminate.

8.5 Rights upon termination. If this Agreement is terminated for any reason, Member waives all rights, other than for any compensation due and owing as of the termination date and for any vested retirement benefits, to any future payments from the University after the date of termination. Member's obligations to the University also shall terminate except as otherwise provided herein. Member expressly acknowledges that any accounts receivable or unbilled charges for the Professional Services rendered prior to the date of termination shall be the University's property. and Member has, and shall assert, no claim thereto.

8.6 Effect of termination on academic appointment. If Member is a non-tenured and non-probationary Faculty Member, termination of this Agreement shall result in the simultaneous, automatic termination of Member's appointment to the College of Medicine faculty, except as otherwise permitted by the University in its sole discretion. If Member is a tenured faculty Member, termination of this Agreement may result in termination of Member's appointment to the College of Medicine faculty as provided pursuant to the terms of Member's faculty appointment with the College of Medicine. Any termination of this Agreement pursuant to Section 8.2 or Section 8.3 above also shall constitute neglect of duty and just cause for discharge under Sections 2.7.7.1 and 2.8.5 of the Howard University Faculty Handbook; provided that, Member acknowledges and agrees that, in the event of a conflict between the dispute resolution provisions set forth in Section 9.4 of this Agreement and the provisions set forth in the Howard University Faculty Handbook, the provisions set forth in this Agreement shall control, as provided in Section 2.1 of the Howard University Faculty Handbook .

9. **Miscellaneous Provisions.**

9.1. **Complete agreement.** This Agreement, along with its Exhibits, constitutes the entire understanding and agreement between the Parties and supersedes all agreements that Member heretofore may have had with the University.

9.2. **Amendment.** This Agreement may be amended only by subsequent written agreement between the Parties; provided, however, that if Exhibit 2 hereto shall be revised annually by the University, such revised Exhibit shall be appended hereto and become a part hereof without re-execution of this Agreement.

9.3. **Binding agreement.** This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective heirs, personal representatives, successors, and permitted assigns.

9.4 **Governin^g law: dis^pute resolution.** This Agreement shall be governed by the laws of the District of Columbia, without regard to choice of law rules thereof. If any Dispute arises between the Parties with respect to the enforcement or interpretation of any term or provision of this Agreement, or with respect to whether an alleged breach hereof has or has not occurred, or with respect to any other matter related to or arising out of this Agreement, or the relationship contemplated hereby, the aggrieved Party shall give written notice to the other Party setting forth the nature of the Dispute. Member and the University (through the Dean of the College of Medicine or his designee) shall meet and confer in an attempt to resolve the Dispute in good faith within thirty (30) days of the non-notifying Party's receipt of the Dispute notice. The Parties shall meet at such dates and times as are mutually convenient to each Party within such thirty (30) day period. No Party shall file any claim in a court of law or equity prior to the failure of the Parties, after good faith negotiation for thirty (30) days, to resolve the Dispute. The Parties irrevocably consent to venue in any federal or state court of competent jurisdiction in the District of Columbia with respect to any Dispute arising hereunder. In the event of a conflict between the dispute resolution provisions set forth in this Agreement and the provisions set forth in the Howard University Faculty Handbook, the provisions of this Agreement shall control, as provided in Section 2.1 of the Howard University Faculty Handbook.

9.5 **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, certified or registered first-class postage prepaid, or transmitted by confirmed facsimile followed by first class mail, postage prepaid, or sent by recognized overnight courier at the address set forth on the signature page below or to such other address or addresses as Member or the University have designated by notice to the other in writing. All notices shall be deemed to have been duly given (a) upon receipt if delivered in person, (b) one (1) business day after

having been delivered to a recognized overnight courier service, (c) five (5) business days after having been deposited in the mail as set forth above, or (d) on the same day as sent if delivered by facsimile followed by first class mail, postage prepaid.

9.6 Assignment. The Parties acknowledge that the Services to be performed by Member pursuant to this Agreement are personal. Member may not assign his or her rights under this Agreement; however, the University may assign this Agreement without Member's consent.

9.7 Waiver. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or another provision of this Agreement.

9.8 Severability. The Parties have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one of the terms, covenants, and conditions in this Agreement will be binding upon and inure to the benefit of each Party. Accordingly, except as set forth in Section 7.1, if any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement or the application of this Agreement to any person or circumstance shall be adjudged to any extent invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, such provision shall be as narrowly construed as possible, and each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement or their application to other persons or circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. To the extent this Agreement is in violation of applicable law, then the Parties consent and agree to negotiate in good faith to amend the Agreement, to the extent possible consistent with its purposes, to conform to law.

9.9 Counterparts. This Agreement, any Exhibit, and any amendment hereof may be executed and delivered in multiple, counterpart copies. Each multiple copy shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

9.10 No third party beneficiaries. It is the explicit intention of the Parties hereto that no person or entity other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the Parties hereto, and that the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto and their respective successors and assigns as permitted hereunder.

9.11 Survival. Except as otherwise provided in this Agreement, the rights and obligations of the parties set forth in Sections 3.1.11, 3.1.12, 4.2.1, 4A,

§A, 5.2, fia, IL 1a, 8.5, fA, 9.4, and any other rights and obligations that by their terms are so-intended, shall survive the termination of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the Parties has signed this Agreement to be effective as of the Effective Date.

MEMBER

NAME:

[Please print]

SIGNATURE: _____

NOTICE ADDRESS:

Fax: _____
Phone: _____

THE HOWARD UNIVERSITY

BY:

Henry G. Jackson
Treasurer

Acknowledged:

BY: _____

Floyd J. Malveaux, M.D., Ph.D.
Dean
College of Medicine

NOTICE ADDRESS:

Fax: _____
Phone: _____
Attn: _____

HOWARD UNIVERSITY MEMBER PRACTICE AGREEMENT

EXHIBIT 1 DEFINITIONS

The following terms used in the Agreement shall have the meanings set forth in this Exhibit 1:

"Academic Services" means the duties prescribed by the University that are related to teaching and collateral activities associated with Member's appointment as a Faculty Member, including but not limited to duties set forth in the Howard University Faculty Handbook, the Howard University Code of Ethics and Conduct, faculty workload policies, and other policies and procedures of the University as they currently exist and as they may be amended or promulgated from time to time. Academic Services shall include, without limitation, advising and supervising students, residents, and fellows, undertaking clinical educational activities, furnishing community services and serving on academic and clinical committees.

"Academic Policies" means the Howard University Faculty Handbook, the Howard University Code of Ethics and Conduct, faculty workload policies, and other policies and procedures of the University as they currently exist and as they may be amended or promulgated from time to time.

"Agreement" means this Howard University Member Practice Agreement made and effective as of the Effective Date by and between The Howard University and the physician licensed to practice medicine in the District of Columbia who has signed the signature **page hereof**.

"College of Medicine" means The Howard University College of Medicine.

"Confidential Information" means any and all data, documents, agreements, reports, studies, materials or other information (whether in oral, written or electronic form) concerning the professional and/or business practices of the University. "Confidential Information" shall **not** include information that (i) is or becomes generally available to the public other than as a result of a voluntary disclosure or release by Member, or (ii) was available to the Member on a nonconfidential basis prior to the time the information was disclosed directly or indirectly to Member by the University or otherwise obtained by Member from the University, or (iii) is lawfully obtained by Member from a third party under no duty of confidentiality to the disclosing party.

"Dispute" means a disagreement, dispute or claim.

"Effective Date" means _____ 2003, the date this Agreement is effective.

"Faculty Member" means a physician who is appointed as a full-time faculty member of the College of Medicine pursuant to the University's faculty appointment policies and procedures.

"HHS" means the United States Department of Health and Human Services.

"Hospital" means Howard University Hospital.

"Member" means the physician who has signed this Agreement on the signature page hereof.

"Party" or "Parties" means the University or..Member individually, or collectively.

"Plan" means the Howard University Faculty Practice Plan.

"Plan Policies and Procedures" means the policies, procedures and rules adopted by the University for operation of the Plan. including but not limited to its governance and Faculty Member compensation.

"Professional Income" means all revenue generated by the Professional Services performed by Member regardless of where such services are performed, and includes, by way of example and not by way of limitation, the following:

1. fee-for-service and contract patient care revenues from patients, Third Party Payors, clinics. hospitals. laboratories, governmental agencies and other institutions, programs. or facilities;

2. clinical consultation fees, sponsorships, and retainers for professional services provided to for-profit commercial enterprises on a regular or contract basis; and

3. except as excluded under (e) below, fees for medically-related matters provided on a regular or contract basis including, but not limited to, expert witness fees, honoraria for visiting lectureships, academic review courses, and other similar professional services.

"Professional Income" does not include:

(a) compensation for Academic Services;

(b) income from clinical practice or other professional services of Member during an official leave of absence from the University during which time Member is not being compensated by the University for Professional Services;

(c) prizes recognizing meritorious accomplishments;

(d) consultation fees not related to direct patient care from non-profit national and international agencies, both private and governmental;

(e) expert witness fees, honoraria for visiting lectureships, academic review courses, and other occasional professional consultations that are not subject to an annual regular program or contract, whether or not officially sponsored by the University, provided that, (i) Member has complied with University rules and regulations pertaining to such activities, and (ii) such income is considered "incidental income" within the meaning of OMB Circular A-21;

**(f) passive or investment income unrelated to the Member's clinical practice;
or**

(g) grant and research generated funds.

Any dispute over the interpretation of the term "Professional Income" shall be decided by the Dean of the College of Medicine.

"Professional Services" means professional medical services and related clinical patient care activities with respect to which Member assumes responsibility in relation to a patient's medical care or treatment, including without limitation services furnished by others under the supervision of Member.

"Services" means the Academic Services and the Professional Services.

"Tail Coverage" means insurance for claims made after the Closing Date in respect of acts or omissions occurring on or prior to the Closing Date.

"Term" means the period of time this Agreement is in effect, including the initial one year period and any renewals as provided in Section 8.1.

"Third Party Payors" means any and all persons, other than patient consumers of health care services, obliged by virtue of insurance or otherwise to pay for the Professional Services provided by Member, including by way of illustration and without limitation, federal, state, and local government health care programs (such as Medicare, Medicaid, TRICARE, etc.), health maintenance organizations, preferred provider organizations, other types of managed care plans, self-insured employers, and employer group health plans.

"University" means The Howard University.

"Washington D.C. Metropolitan Area" means the District of Columbia, Montgomery County and Prince George's County, the City of Alexandria, Arlington County, City of Fairfax, Fairfax County and Frederick County.

2.8.2

Grievance Matters

A grievance is a complaint that action has been taken that involves the faculty member's personnel status or terms and conditions of employment, and that is a violation of academic freedom, arbitrary and capricious (i.e., an act that is unsupported by the record presented to support the action taken), or a violation of established rules and procedures.

Specific actions that may be considered under grievance procedures are the following:

- (a) Departmental, school, or administrative recommendation of dismissal for cause;
- (b) Demotion or suspension;
- (c) Administrative recommendation of revocation of tenure and dismissal because of financial exigency, [only in cases in which other tenured faculty members in the same department or program are retained];
- (d) Departmental, school, or administrative recommendation of reduction in academic rank;
- (e) Departmental, school, or administrative recommendation of reduction in individual salary;
- (f) Denial of sabbatical leave; and
- (g) Denial of tenure, promotion, or reappointment where such denial allegedly involves a violation of academic freedom.

Follow Procedures

2.8.3

General Procedures for Resolution of a Faculty Grievance

2.8.3.1

Faculty Grievance Commission

The FGC shall be elected at large by the Senate from the tenured university faculty. No administrative officer or department chair may serve on the commission. The FGC shall consist of seven faculty members. In addition, a Hearing List of 30 tenured faculty members representing all schools and colleges shall also be elected. Members of the Hearing List will be selected to serve on a Hearing Panel if formal procedures are invoked.

The members of the FGC shall be elected to 2-year terms. Members of the Hearing List shall also be elected for 3-year terms, and the appointments shall be arranged so that the terms of approximately one-third of the members shall expire each year.

The commission shall elect a chair from among the seven members and the chair shall serve as the presiding officer of grievance hearings.

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There shall be an independent legal officer to assist the commission in its operations. The legal officer's professional responsibility shall be to the Senate, and the terms and conditions of employment shall be determined by the Senate.

2.8.3.2

Preliminary Procedures

A good faith attempt must be made to mediate any disputes between the faculty member and the administrative officer at the department or school/college level before filing a formal complaint. Failing to receive satisfaction, the faculty member may take steps to formalize the complaint by filing with the FGC.

2.8.3.3

Formal Complaints

All petitions and complaints shall be made in writing by the faculty member to the chair of the FGC within 2 weeks after the faculty member has received written notice of action from the administration. A grievance may be based on prior as well as recent or continuing events. However, the grievance, where feasible, should be focused on recent and continuing events or conditions.

- A. The petition or complaint shall
 - (1) Detail the nature of the grievance and provide any factual or other pertinent data; and
 - (2) State against whom the grievance is directed (administrative officer).

- B. Upon receipt of the written petition or complaint and within 30 days, the FGC will decide whether or not the grievance merits detailed investigation:
 - (1) The FGC may choose not to handle the grievance (i.e., dismissal of the complaint because it does not fit criteria).
 - (2) If it accepts, the FGC must attempt to mediate and resolve the complaint informally.
 - (3) If the FGC is unable to resolve the complaint informally, then it must proceed with a formal hearing.

2.8.3.4

Formal Hearing

Within 3 weeks of the recommendation of the FGC regarding its inability to resolve the matter informally and the need for a formal hearing, the chair of the FGC will convene an ad hoc Hearing Panel of five faculty members selected from the Hearing List to conduct formal hearings regarding the complaint.

- A. The grievant and administrator shall each select two candidates respectively from the elected Hearing List for the Hearing Panel. Members of the Hearing List deeming themselves disqualified because of personal bias or

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conflict of interest will remove themselves from consideration, either at the request of either party or on their own initiative. The final decision with respect to whether a member should hear the grievance rests with the remaining panel members. The four panel members shall select a fifth who shall act as chair. Members of the commission with current complaints against the university shall be disqualified automatically.

- B. The chair of the FGC shall serve as chair of the Hearing Panel. If the chair of the FGC should be a member of the department of the grievant or the respondent, or has a current grievance or formal complaint pending, the chair shall be excused. A replacement shall be selected from the remaining members of the commission as agreed on by the members of the FGC and both parties.
- C. The Hearing Panel shall conduct its hearings within 8 weeks (except in extraordinary circumstances as recognized by the chair of the Senate) and report its recommendations in writing to the FGC no later than 30 days after the conclusion of the hearings.
- (1) The chair of the Hearing Panel shall notify all parties in writing of the time and place of the hearing. The Hearing Panel, in consultation with both the grievant and the respondent, will exercise its judgment as to whether the hearings should be public or private. A transcript of the hearings will be taken and a copy will be made available upon request to both parties without cost.
 - (2) The decision on the merits of a grievance will be made by the panel after hearings in which the grievant and the respondent have the opportunity to present their cases. The grievance hearing is not a formal judicial proceeding. Its purpose is to provide a fair evaluation of the allegation that a right or privilege has been violated.

The Hearing Panel may receive any relevant evidence that is not privileged and may decline to consider evidence when its probative value is outweighed by considerations of unfair prejudice, confusion of the issues, undue delay, or needless presentation of cumulative evidence. Arguments, oral and documentary evidence, and witnesses may be presented by the grievant, the respondent, or the Hearing Panel. The university will make a reasonable effort to facilitate the appearances of witnesses.

The grievant may have the assistance of an academic advisor and counsel in the preparation and presentation of his/her case to the panel. Such a colleague should normally have academic qualifications in the grievant's field of study and therefore be able to provide expert assistance in the case.

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(3) The recommendation of the Hearing Panel shall be based solely on evidence and argument presented in the hearings. The written report shall state the committee's findings on all parts of the complaint and may include recommendations as to disposition of the case. The report shall be transmitted to the grievant, respondent, dean, appropriate vice president, and the FGC. If no appeal is filed, the recommendation is forwarded to the president for decision and action; if the president is a party to the action, the report shall go to the Board of Trustees. The president's decision shall be made and communicated in writing to the chair of the Faculty Grievance Commission, the grievant, and the respondent within 30 days from the date the transcript of the hearing is prepared. In the event the president declines to implement the recommendations, the written communication shall include detailed reasons, and it shall be sent to the chair of the Senate.

D. The recommendations of the Hearing Panel may be appealed to the FGC by either party. The notice of appeal must be filed with the chair of the commission within 15 days after receipt of the recommendation of the Hearing Panel.

The members of the FGC who were not members of the Hearing Panel and would meet the criteria regarding qualifications for the panel shall hear the appeal. Evidence not introduced in the hearing may not be considered in the appeal. The commission shall decide by majority vote and render a recommendation in writing—sustaining, modifying, or remanding the decision of the Hearing Panel. The commission's recommendation shall be forwarded to the president for decision and action. The president's decision shall be made and communicated in writing to the FGC chair, the grievant, and the respondent within 30 days. In the event the president declines to implement the recommendations, the written communication shall include reasons, and it shall be sent to the chair of the Senate.

2.8.4

Appeal of a Negative Decision Regarding Probationary Reappointment, Tenure, Career Status, and Promotion at the University Level

A. If the dean's or school/college APT Committee's final decision is negative, the candidate or the department, or the candidate and the department in concert, may appeal the decision. The appeal must be filed in writing with the dean of the school/college and the Faculty Grievance Commission within 3 weeks of notification of the dean's decision, and it must state the specific reasons for the appeal. The reasons must be based on one or more of the grounds listed below. Failure to raise a particular reason may be treated as a waiver of such a claim in this or any subsequent procedure.

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- B. The grounds for an appeal shall be limited to
- (1) Violations of established procedures;
 - (2) Decisions unsupported by the record submitted by the candidate;
 - (3) Consideration of factors unrelated to performance in carrying out professional responsibilities; and
 - (4) Actions violative of academic freedom.

If a grievance is sustained by the FGC, the file will be returned to the appropriate level of review for reconsideration.

- C. In its deliberations and findings, the Faculty Grievance Commission and Hearing Panel shall respect the following principles and restrictions:
- (1) The Faculty Grievance Commission's review shall be limited to determining whether any one of the four possible grounds for appeal has been established.
 - (2) The Hearing Panel shall recognize the central role of peer judgment in tenure decisions. Hence, the committee shall not substitute its assessment of the appellant's professional qualifications for those of the department and the experts outside the department who have been asked to submit evaluations. The committee's role in judging professional merit shall be limited to determining whether the recommendations of the department and the dean were arbitrary and capricious or based on improper considerations.
 - (3) Comparisons with other tenure review cases may be used by the Hearing Panel. However, the committee shall recognize the right and duty of the departments to improve their quality or take into account different departmental needs, so long as this is not done as a pretext. A weak previous tenure appointment shall not by itself be taken to define the departmental standard; however, there should have been justification for such a decision.

2.8.5

Suspension or Termination of Faculty for Just Cause

- A. Discharge or suspension proceedings may be instituted on, but not limited to, the following grounds:
- (1) Professional incompetence;
 - (2) Continued neglect of academic duties despite oral and written warnings;
 - (3) Serious personal misconduct;
 - (4) Deliberate and serious violation of the rights and freedom of fellow faculty members, administrators, or students;
 - (5) Admission or conviction of a felony or misdemeanor involving moral turpitude;
 - (6) Serious failure to follow the canons and professional ethics of one's discipline;

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- (7) Falsification or misrepresentation of credentials and experience;
- (8) Failure to follow the standards of the institution in respect to guidelines within this handbook after oral and written warning; or
- (9) Loss of required professional certification or licensure.

Discharge for cause, in normal circumstances, should be preceded by a written admonition by the appropriate administrative officer describing the alleged problem and warning that the faculty member's employment status is in jeopardy. The warning also must stipulate a period of time within which correction of the alleged problem is expected. If the faculty member does not contest the allegation and corrects the problem or fulfills his/her obligations, the matter is settled. If the faculty member fails to correct the problem, dismissal procedures may be initiated or a lesser sanction may be applied.

Recommendations for dismissal will be made by the dean to the vice president of the division after consultation with the department chair. Deans and department chairs should seek the advice and assistance of faculty peers.

- B. Upon receipt from a dean of a request to initiate dismissal procedures, the vice president, if he/she concurs, will do the following:
 - (1) Provide written notice to the faculty member that a recommendation for dismissal for cause will be made to the president. This notice shall contain a statement of the grounds upon which the recommendation is to be made and a summary of information supporting such grounds.
 - (2) Provide a reasonable opportunity for the faculty member to meet with the dean and vice president to present his/her defense to the dismissal recommendation.
- C. Depending on the circumstances, the president may elect to impose a disciplinary action short of outright discharge, such as suspension for a period of time with total or partial discontinuance of salary, denial of promotion and suspension of all salary increments, temporary suspension or withdrawal of faculty privileges, and/or demotion.

In any case involving dismissal for cause, the burden of proof that just cause exists shall be on the university. Proof shall be by the preponderance of the evidence on the record considered as a whole.

The dean also will inform the faculty member that he/she may file a formal grievance according to the procedures described in section 2.8. However, faculty members who are disciplined or terminated because they have falsified or misrepresented their credentials or experience are not entitled to the grievance hearing procedures. Pending the results of any grievance hearing and a final decision by the president, the faculty member may be suspended or assigned to other duties in lieu of suspension. Salary may continue during the period of suspension pending the final decision.

TERMS AND CONDITIONS OF FACULTY EMPLOYMENT

- D. Formal proceedings of suspension or termination of a member of the faculty shall be preceded by discussions between the faculty member and appropriate university academic administrative officers looking toward a mutually agreeable settlement. The Faculty Grievance Commission may be used for this purpose.

2.8.5.1

Procedures for Suspension or Termination for Just Cause

Procedures for determining the existence of just cause for suspension or termination of a member of the faculty are described below.

- A. Action to suspend or terminate the appointment of a faculty member shall be initiated by a member of the university administration, who shall normally be the dean responsible for the budget in which the faculty member is carried but who may, in unusual circumstances, be the president or vice president. The dean and the president may act personally or through a delegate.
- B. Should a question arise concerning possible suspension or termination, the dean or the president will normally interview the faculty member in the presence of the department chair concerned, if any, and will afford opportunity for informal adjustment of the matter. Thereafter, the dean or the president may initiate the proceedings for suspension or termination if
- (1) The matter is not adjusted informally; or
 - (2) He/she has conducted an investigation of the matter and has consulted with members of the faculty concerned to aid in determining whether there is substantial reason to believe that just cause exists for suspension or termination.
- C. The matter shall be referred to the appropriate vice president if a faculty of a school/college has by resolution requested its dean to examine a question concerning possible suspension or termination and within 2 months following the date of such resolution was adopted
- (1) The dean has not initiated proceedings for suspension and termination;
 - (2) The dean has not reported to the faculty on the matter or has reported that proceedings for suspension or termination will not be initiated; and
 - (3) The reasons, if any, given by the dean for not initiating such proceeding are not deemed adequate by the faculty.
- D. A faculty member shall not be suspended during the above-mentioned proceedings unless immediate harm to himself/herself or others is threatened by continuance. Any such suspension may be with salary.