

1 AGREEMENT PURSUANT TO WORKERS' COMPENSATION

2 ALTERNATIVE DISPUTE RESOLUTION PROGRAM FOR CITY OF LONG BEACH

3 THIS AGREEMENT is made and entered, in duplicate, as of July 1, 2012
4 for reference purposes only, pursuant to a minute order adopted by the City Council of
5 the City of Long Beach at its meeting on October 9, 2007, by and between RICHARD
6 FEDDER, M.D., ORTHOPEDIC SURGEON whose address is 415 North Crescent Drive,
7 Suite 300, Beverly Hills, California 90210, ("Physician"), and the CITY OF LONG BEACH,
8 a municipal corporation ("City").

9 WHEREAS, the City requires independent and experienced physicians to
10 provide Independent Medical Evaluations with respect to workers' compensation claims
11 filed by Long Beach Police Officers and Firefighters injured while in the employment of
12 the City of Long Beach; and

13 WHEREAS, the City of Long Beach wishes to reduce the delays inherent in
14 the workers' compensation system which lead to increased costs and the unacceptable
15 treatment of injured workers; and

16 WHEREAS, the above mentioned Physician is willing and able to
17 expeditiously provide said Independent Medical Evaluation required by the City at the
18 rates indicated in Exhibit "A";

19 NOW, THEREFORE, in consideration of the mutual terms, covenants and
20 conditions herein, the parties agree as follows:

21 1. SCOPE OF WORK OR SERVICES:

22 A. The Physician shall provide the following medical services to
23 the City at the rates shown on Exhibit "A" attached hereto and incorporated herein
24 by this reference:

- 25 i. AOE - COE EXAMS, (exams for the determination of
- 26 industrial causation).
- 27 ii. Evaluation for necessity of appropriate medical
- 28 treatment.

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333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 iii. Assessment of employee's present ability to return to
2 work, whether full duty or modified.

3 iv. Advise on condition of maximum medical improvement
4 status.

5 v. Determine nature and extent of permanent disability,
6 including factors of apportionment and need for future medical care.

7 vi. Resolve utilization review disputes.

8 vii. Determine the need for spinal surgery pursuant to
9 Labor Code section 4062(b).

10 B. Physician shall perform the evaluation in full accordance with
11 the standards defined by the Division of Worker's Compensation of the State of
12 California and the AMA Guides to the Evaluation of Permanent Impairment, Fifth
13 Edition. This requires a report of the injury, prior status, clinical chronology,
14 current status, and past medical history. The physical examination will document
15 all pertinent positive, negative, and non-physiological findings. For extremity
16 injuries, measurements must be documented bilaterally. Additionally, Physician
17 agrees to:

18 i. Provide that medical exams will be set within thirty (30)
19 days of the date of appointment request, and

20 ii. Prepare a written report of medical findings within thirty
21 (30) days of the date of exam or evaluation and provide a copy to the
22 parties within said time frame. If testing is required to complete the report,
23 the testing shall be completed within fourteen (14) days of the date of the
24 exam and the report shall issue within thirty (30) days of the completion of
25 testing.

26 C. The parties agree that the City is not obligated to pay
27 compensation to the Physician except for agreed upon medical services and care.
28 Failure of Physician to provide a written medical report within thirty (30) days of the

1 date of the exam or the completion of testing, if required, subjects Physician to
2 non-payment for services rendered.

3 D. Physician billing shall conform to the requirements listed in
4 Section 9795 of Title 8 of the California Code of Regulations. Charges for services
5 rendered will be reviewed in accordance with Section 9795 to determine
6 appropriate level of service.

7 E. City shall pay Physician pursuant to Exhibit "A" within forty-
8 five (45) days following receipt from Physician of invoices for services rendered
9 and for which payment has not previously been made, provided that: Physician
10 shall submit all invoices within ninety (90) days after the date of service.

11 2. TERM:

12 A. The term of this Agreement shall be for the duration of the
13 Labor-Management Workers' Compensation Supplemental Dispute Resolution
14 Agreement ("Dispute Resolution Agreement").

15 B. Either party hereto may terminate this Agreement at any time
16 by giving to the other party written notice thereof at least thirty (30) days prior to
17 the effective date of such termination. Physician agrees that withdrawal from this
18 agreement is conditioned upon completion of all work in progress.

19 C. Any notices required or desired to be given hereunder shall be
20 in writing and personally served or deposited in the U.S. Postal Service, first class,
21 postage prepaid to: Jamelle Peck, Claims Manager, 333 West Ocean Boulevard,
22 8th Floor, Long Beach, California 90802. Notice shall be deemed given on the
23 date deposited in the mail or on the date personal delivery is made, whichever
24 occurs first.

25 3. INSURANCE:

26 As a condition precedent to the effectiveness of this Agreement, Physician
27 shall procure and maintain at Physician's expense for the duration of this Agreement from
28 insurance companies that are admitted to write insurance in California or from authorized

1 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M.

2 Best Company:

3 (a) Commercial general liability insurance equivalent in scope to ISO
4 form CG 00 01 11 85 or CG 00 01 1093 in an amount not less than One
5 Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars
6 (\$2,000,000.00) general aggregate. Such coverage shall include but not be
7 limited to broad form contractual liability, cross liability independent
8 contractors liability, and products and completed operations liability. The
9 City, its officials, employees and agents shall be named as additional
10 insured by endorsement on the City's endorsement form or on an
11 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26
12 11 85, and this insurance shall contain no special limitations on the scope
13 of protection given to the City, its officials, employees and agents.

14 (b) Workers' Compensation insurance as required by the Labor
15 Code of the State of California and employer's liability insurance in an
16 amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

17 (c) Professional (Medical Malpractice) or errors and omissions
18 liability insurance in an amount not less than One Million Dollars
19 (\$1,000,000.00) per claim.

20 Any self-insurance program, self-insured retention, or deductible must be
21 separately approved in writing by City's Risk Manager or designee and shall protect City,
22 its officials, employees and agents in the same manner and to the same extent as they
23 would have been protected had the policy or policies not contained retention or
24 deductible provisions. Each insurance policy shall be endorsed to state that coverage
25 shall not be reduced, non-renewed or canceled in coverage except after thirty (30) days
26 prior written notice to City, and shall be primary and not contributing to any other
27 insurance or self-insurance maintained by City, its officials, employees and agents.
28 Physician shall notify the City in writing within five (5) days after any insurance required

1 herein has been voided by the insurer or cancelled by the insured.

2 Physician shall require that all contractors and subcontractors which
3 Physician uses in the performance of services hereunder maintain insurance in
4 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
5 designee.

6 Prior to the start of performance hereunder, Physician shall deliver to City
7 certificates of insurance and required endorsements, including any insurance required of
8 Physician's contractors and subcontractors, for approval as to sufficiency and form. The
9 certificates and endorsements for each insurance policy shall contain the original
10 signature of a person authorized by that insurer to bind coverage on its behalf. In
11 addition, Physician shall, within thirty (30) days prior to expiration of the insurance
12 required hereunder, furnish to City certificates of insurance and endorsements evidencing
13 renewal of such insurance. City reserves the right to require complete certified copies of
14 all said policies of Physician and Physician's contractor and subcontractors at any time.
15 Physician shall make available to City all records and other information relating to the
16 insurance coverage required herein during normal business hours.

17 Any modification or waiver of the insurance requirements herein shall only
18 be made at the request of the City department administering this Agreement and with the
19 written approval of the City's Risk Manager or designee. Not more frequently than once
20 a year, the City's Risk Manager or designee may require that Physician, Physician's
21 contractors and subcontractors change the amount, scope or types of coverages required
22 herein if, in his or her sole opinion, the amount, scope, or types of coverages are not
23 adequate.

24 The procuring or existence of insurance shall not be construed or deemed
25 as a limitation on liability relating to Physician's performance of services or as full
26 performance of or compliance with the indemnification provisions of this Agreement.

27 4. INDEPENDENT CONTRACTOR:

28 In performing services hereunder, Physician is an independent contractor

1 and not an employee, agent, or representative of the City. Physician acknowledges and
2 agrees that the City will not secure workers' compensation or pay unemployment
3 insurance to, for on Physician's behalf nor provide any of the usual rights, benefits or
4 privileges of City employees.

5 5. INDEMNITY:

6 Physician shall defend, protect, indemnify and hold the City, its officials,
7 employees, and agents harmless from and against any and all claims, suits, causes of
8 action, losses, damages, demands, liabilities, costs and expenses including reasonable
9 attorney's fees, whether or not reduced to judgment or paid through settlement, which
10 may be asserted against City, its officials, employees and agents attributable to or
11 caused directly or indirectly by Physician, its employees or agents in the performance of
12 this Agreement, or caused by any alleged negligent or intentional act, omission or
13 misrepresentation by Physician, its employees or agents, which act, omission or
14 misrepresentation is connected in any way with performance of this Agreement.

15 6. AMENDMENT:

16 This Agreement, including all exhibits, shall not be amended nor any
17 provision or breach thereof waived except in writing signed by the parties.

18 7. LAW:

19 This Agreement shall be governed by and construed according to the laws
20 of the State of California. Physician shall comply with all laws, ordinances, rules and
21 regulations of and obtain such permits, licenses, and certificates required by all federal,
22 state, and local governmental authorities.

23 8. CONFLICT OF INTEREST:

24 Physicians who act as an employee's independent medical examiner
25 ("IME") under this agreement shall not act as the same employee's treating physician for
26 the injury in dispute, unless otherwise mutually agreed by the City and the employee.

27 9. ENTIRE AGREEMENT:

28 This Agreement including all exhibits constitutes the entire understanding of

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1 the parties and supersedes all other agreements, oral or written, with respect to the
2 subject matter herein.

3 10. COSTS:

4 In the event that there is any legal proceeding between the parties to
5 enforce or interpret this Agreement or to protect or establish any rights or remedies
6 hereunder, the prevailing party shall be entitled to its costs and expenses, including
7 reasonable attorney's fees.

8 11. WAIVER:

9 The acceptance of any services or the payment of any money by the City
10 shall not operate as a waiver of any provision hereof, or of any rights or remedies
11 hereunder. The waiver of any breach of any provision of this Agreement shall not
12 constitute a waiver of any other or subsequent breach.

13 IN WITNESS WHEREOF, the parties have caused this document to be duly
14 executed with all formalities required by law on the date first stated above.

15 RICHARD FEDDER, M.D., ORTHOPEDIC SURGEON

16 7/18/2012 By [Signature]
17 _____, 2012
18 Richard Fedder
19 Physician
20 Type or Print Name

21 "Physician"

22 CITY OF LONG BEACH, a municipal corporation

23 9.20 By [Signature] **Assistant City Manager**
24 _____, 2012
25 City Manager
26 "City" **EXECUTED PURSUANT
27 TO SECTION 301 OF
28 THE CITY CHARTER.**

This Agreement is approved as to form on 7/23, 2012.

ROBERT E. SHANNON, City Attorney

By [Signature]
ANNE C. LATTIME, Principal Deputy City Attorney

EXHIBIT A FEE SCHEDULE

AOE-COE Exam

In the case of a simple AOE-COE examination for the determination of Industrial causation, reimbursement will be at the basic rate with a modifier of 1.35. This would equal \$675.00. Conditions anticipated in this category would be hearing loss, skin cancer, hernia, conjunctivitis, eye strain and dermatitis. This may not include all types in this category.

A more complex exam that involves review of records, tests and expert opinion will be reimbursed at the ML 103 with the 1.35 modifier. This would be at \$1,012.50. It is anticipated this would include new vs. old injuries, internal exams, orthopedic exam with prior injuries or non-industrial conditions, cardiovascular cases, respiratory conditions, pneumonia, bronchitis, blood born pathogens, overuse syndromes and any CT type claim.

TREATMENT AND TEMPORARY DISABILITY ISSUES

When there is an issue on treatment or the employee's ability to perform some modified duty and an exam is not necessary the reimbursement would be at the ML 102 with the 1.35 modifier. This would be \$675.00. If an exam is needed to resolve the issue the payment would be \$1012.50. This would include issues regarding spinal surgery.

PERMANENT AND STATIONARY (MMI)

All Permanent and Stationary exams will be at the \$1012.50 level. If the parties agree the exam will reach a ML 104 the reimbursement will be at rate of \$350.00 per hour. The factors needed to support the ML 104 are outlined in Cal. Code of Regulations 9795.

DEPOSITION FEE

The hourly rate for depositions will be \$350.00, payable in quarter hours.

REVIEW OF RECORDS

The hourly rate for review of records will be \$350.00, payable in quarter hours.



malpractice
Insurance
Coverage

CERTIFICATE OF INSURANCE	Issue Date: 07/17/2012
Effective Date: 04/01/2012	A Claims-Made Professional Liability Policy
First Named Insured: Richard I Fedder MD 415 North Crescent Dr Ste 300 Beverly Hills, CA 90210	IMPORTANT NOTICE: This document demonstrates coverage in force on the Effective Date listed. It is issued as a matter of information and does not confer rights to any recipient. This document is not binding, is not part of the Policy described below, and does not change or extend the coverage provided by that Policy.

Protected Party: Richard I Fedder MD
Specialty: SUR01 Surgical Spec-Office Min Surg and Procedures Only

Policy Number:	Policy Period:	Retroactive Date:
0049530	From: 04/01/2012 To: 04/01/2013	07/01/1982

The Protected Party above is: <input checked="" type="checkbox"/> A Named Insured <input type="checkbox"/> A Locum Tenens <input type="checkbox"/> An Additional Protected Party	Agency and Address: The Doctors Company Insurance Services P.O.Box 2900 185 Greenwood Road Napa, CA 94558 (800) 328-8831
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<u>LIMITS OF LIABILITY</u>	
Claim Limit:	\$1,000,000
Aggregate Limit:	\$3,000,000

- I. Locum Tenens and Additional Protected Parties share Limits of Liability with the applicable Named Insured.
- II. Individuals who occupy a "slot" share Limits of Liability with all others who occupy the same "slot" during the Policy Period.
- III. Photocopies of this document are deemed as valid as the original.
- IV. The policy, including endorsements, determines the coverage provided. Some claims may not be covered by the terms of the policy, or may be subject to restrictions such as lower Limits of Liability.
- V. If the policy, or coverage for any person, is canceled for any reason or if the terms of the policy are changed, we will notify the First Named Insured only. Coverage is not in effect unless and until all payments are received when due.