

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 June 29, 2015
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on October 9, 2007, by and between ERNEST H.
6 AGATSTEIN, M.D., UROLOGIST, whose address is 11411 Brookshire Avenue, Suite 508,
7 Downey, California, 90241, ("Physician"), and the CITY OF LONG BEACH, a municipal
8 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 the
12 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 rates
18 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.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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 Labor
9 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, current
14 status, and past medical history. The physical examination will document all
15 pertinent positive, negative, and non-physiological findings. For extremity injuries,
16 measurements must be documented bilaterally. Additionally, Physician agrees to:

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

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

24 C. The parties agree that the City is not obligated to pay
25 compensation to the Physician except for agreed upon medical services and care.
26 Failure of Physician to provide a written medical report within thirty (30) days of the
27 date of the exam or the completion of testing, if required, subjects Physician to non-
28 payment for services rendered.

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

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

9 2. TERM:

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

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

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

23 3. INSURANCE:

24 As a condition precedent to the effectiveness of this Agreement, Physician
25 shall procure and maintain at Physician's expense for the duration of this Agreement from
26 insurance companies that are admitted to write insurance in California or from authorized
27 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best
28 Company:

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

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

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

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

Physician shall require that all contractors and subcontractors which

1 Physician uses in the performance of services hereunder maintain insurance in compliance
2 with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

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

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

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

24 4. INDEPENDENT CONTRACTOR:

25 In performing services hereunder, Physician is an independent contractor
26 and not an employee, agent, or representative of the City. Physician acknowledges and
27 agrees that the City will not secure workers' compensation or pay unemployment insurance
28 to, for on Physician's behalf nor provide any of the usual rights, benefits or privileges of

1 City employees.

2 5. INDEMNITY:

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

12 6. AMENDMENT:

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

15 7. LAW:

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

20 8. CONFLICT OF INTEREST:

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

24 9. ENTIRE AGREEMENT:

25 This Agreement including all exhibits constitutes the entire understanding of
26 the parties and supersedes all other agreements, oral or written, with respect to the subject
27 matter herein.

28 10. COSTS:

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

11. WAIVER:

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

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

ERNEST H. AGATSTEIN, M.D., UROLOGIST

July 7, 2015 By [Signature]
Ernest H. Agatstein
Physician
Type or Print Name
"Physician"

CITY OF LONG BEACH, a municipal corporation

November 21, 2015 By [Signature] EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.
City Manager Assistant City Manager
"City"

This Agreement is approved as to form on October 28, 2015.

CHARLES PARKIN, City Attorney

By [Signature]
Principal Deputy

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.



COOPERATIVE OF AMERICAN PHYSICIANS

CERTIFICATE OF COVERAGE AND CLAIMS HISTORY

Coverage through December 31, 2015

Member: Ernest H. Agatstein, MD
Address: 575 E Hardy St Ste 215
Inglewood, CA 90301

This certificate confirms that, on the date below, the above-named physician is a member of the Cooperative of American Physicians, Inc. (CAP) and a participant in the Mutual Protection Trust (MPT). MPT is an unincorporated interindemnity arrangement organized under California Insurance Code section 1280.7. This certificate confers no rights upon the member and does not amend, extend or alter the coverage afforded under the terms, conditions and exclusions of the MPT Agreement.

Table with 4 columns: Membership Number, Medical Specialty, Coverage Date, Retroactive Coverage Date. Includes rows for Subspecialty and Current Limits of Liability.

The member must remain a Member in good standing or arrange for Tail Coverage for any open or potential Claim that may arise during the Coverage Period. Neither CAP nor MPT undertake any obligation to advise any party, other than the named member, of any changes to or termination of this coverage.

Claims History table containing 'No Claims Reported' and a detailed description of the claims history scope.

Cooperative of American Physicians, Inc.

Signature of Hammon P. Acuna

November 18, 2014

Hammon P. Acuna
Vice President, Membership Services
Mutual Protection Trust

Date

APPROVED AS TO EFFICIENCY

Signature of Michael Alce

Signature of IDP/IK

Approved as to Form

Signature of Anne Lattime
Anne LATTIME
Principal Deputy City Atty

OCT 29 2015

Reviewed by:

Signature of Consultant

Risk Management
Consultant 10-13-2015

PL only