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15 ARIZONA SUPERIOR COURT

16 MARICOPA COUNTY

17 Dr. Richard Frye,

18 Plaintiff,

19 v.

20 Phoenix Children's Hospital; and John  
21 Does I-X,

22 Defendants.

No. CV2024-019664

**COMPLAINT**

23 For his Complaint against Defendant Phoenix Children's Hospital ("PCH" or the  
24 "Hospital") and John Does I-X, Plaintiff Dr. Richard Frye ("Dr. Frye") alleges as follows:

25 **PARTIES, JURISDICTION, AND VENUE**

- 26 1. Dr. Frye is a medical doctor who resides in Phoenix, Arizona.
- 27 2. PCH is a private, for-profit hospital located and doing business in Maricopa  
28 County, Arizona.
3. Does I-X are parties whose identities are unknown at this time but who will  
be identified in subsequent amendments.
4. This Court has jurisdiction pursuant to Article VI, § 14 of the Arizona  
Constitution and A.R.S. § 12-123.
5. Venue is proper in Maricopa County under A.R.S. § 12-401.



**GENERAL ALLEGATIONS**

6. Dr. Frye is a Child Neurologist with expertise in neurodevelopmental and neurometabolic disorders. After completing his residency in Child Neurology and a Fellowship in Behavioral Neurology and Learning Disabilities at Children's Hospital in Boston, he began specializing in Autism Spectrum Disorder ("ASD"). Over the years, Dr. Frye has become a national leader in ASD research. He also has treated ASD patients for 20 years.

7. In 2017, Dr. Frye accepted a position as Chief of Neurodevelopmental Disorders at PCH. As of 2017, Dr. Frye was a world-renowned expert in his field with an impeccable academic, research and clinical record. It was his intention to continue his research and clinical practice at PCH.

8. In order to lure Dr. Frye to PCH (and independent of his employment relationship), the Hospital promised, among other things, that it would support his ASD research, ASD patient population and academic appointment at the University of Arizona College of Medicine ("U of A").

9. PCH made these promises to Dr. Frye orally and in writing, including by letter dated July 24, 2017.

10. Dr. Frye relied on these promises.

11. After joining PCH, Dr. Frye began building a successful clinical and research program at the Hospital, obtaining over \$4 million in research funding for both clinical trials and basic research. Dr. Frye also led three national multicenter trials on leucovorin calcium for the treatment of ASD as funded by certain granting agencies and private foundations. Dr. Frye was the Principal Investigator ("PI") and Sponsor with respect to each of these studies.

12. In connection with each such research grant, the Hospital promised, orally and in writing, to fully support the study.

13. Dr. Frye relied on these promises.

14. The Hospital received financial and other benefits from these studies.

1           15. On Friday, July 1, 2022, at approximately noon and without any prior  
2 warning, PCH provided Dr. Frye with a ninety-day, without-cause termination notice with  
3 respect to his employment at PCH.

4           16. Following the termination notice (and notwithstanding PCH's continued  
5 promises to work with Dr. Frye to support the transfer of his studies), PCH interfered with  
6 Dr. Frye's efforts to contact the research staff that had been working with him on his  
7 studies.

8           17. Dr. Frye was cut-off from any access to PCH and U of A resources,  
9 including email communications and contacts, study documents such as protocols and all  
10 resources as FDA Sponsor.

11           18. He was unable to access FDA documents integral to his studies and could  
12 not oversee the patients in active treatment in his capacity as site PI, study PI and FDA  
13 Sponsor.

14           19. He was denied access to his professional email, clinical, personal and  
15 research documents and to his personal belongings.

16           20. Indeed, PCH circulated emails to staff and to Dr. Frye's collaborators  
17 advising that they should not share data with him, even though such data related to studies  
18 on which Dr. Frye was the PI and Sponsor.

19           21. PCH also interfered with Dr. Frye's relationships with his ASD patient  
20 population, causing certain patients to feel abandoned by Dr. Frye.

21           22. Following Dr. Frye's termination, PCH directed its staff to electronically  
22 sign Dr. Frye's name on documents relating to his patients, research projects and clinical  
23 projects without any prior approval from Dr. Frye and in violation of FDA regulations  
24 and the regulations of the Office for Human Research Protections in the Department of  
25 Health and Human Services.

26           23. After Dr. Frye was terminated, he spoke with the Vice President for  
27 Research at PCH to confirm that Hospital site patients in the leucovorin clinical studies  
28

1 would be transferred to his new clinical trial site, which was at a nearby facility that Dr.  
2 Frye had established.

3 24. Dr. Frye sought confirmation that his study patients would be transferred in  
4 light of the Hospital's prior promises to support his ASD research.

5 25. PCH expressly agreed that it would transfer the patients.

6 26. When a study Sponsor moves to a new facility it is a common and accepted  
7 medical practice to transfer patients in active studies to the new facility to allow the  
8 research to continue uninterrupted. There was no reason not to do so in the case of the  
9 leucovorin studies.

10 27. Notwithstanding this accepted practice and in violation of its prior promises  
11 to Dr. Frye, however, PCH decided not to transfer the leucovorin study patients. As three  
12 of the four of the clinical trials were multicenter trials, PCH advised each outside clinical  
13 trial site that the studies were closing down and it instructed that early termination visits  
14 should be scheduled for the patients. PCH also advised each site not to contact Dr. Frye  
15 about this matter.

16 28. PCH did not consult with Dr. Frye prior to communicating its unilateral  
17 decision to terminate the site studies, rather than transfer the patients. Dr. Frye did not  
18 learn of this decision until July 28, 2022.

19 29. Thereafter, Dr. Frye received a report on the early termination visits  
20 indicating that (i) 70% of the patients were allowed to decline the early termination visit  
21 and did not return to PCH, and (ii) clinical end-point data was not collected on these  
22 patients. Dr. Frye later learned that many study participants were allowed to dispose of  
23 the drug product without any drug accountability, a clear violation of Good Clinical  
24 Practice ("GCP") and FDA guidance.

25 30. When Dr. Frye protested this conduct and also made demands for access to  
26 study documents, PCH responded (incorrectly) that PCH was the study Sponsor with the  
27 right to control administration of the studies.

28

31. PCH's mishandling of the clinical trials in breach of its promises to Dr. Frye caused significant damage to the studies and Dr. Frye personally. PCH halted the clinical trials at a critical time period. The trials had been delayed during the COVID pandemic, and recruitment levels had finally recovered. Seventy percent of the study patients did not participate in an early termination visit. As a consequence, new patients had to be recruited and treated for 24 weeks. As a result of this conduct alone, the timeline for completion of the studies was set back over eighteen (18) months.

32. Following his termination, PCH initially promised to transfer study data to Dr. Frye, but then refused to do so. This conduct further delayed and impaired the studies and damaged Dr. Frye's ability to conduct and publish research, as well as his professional reputation.

33. In addition, PCH's failure to submit required reports to a funding agency and other delays and misconduct led to the agency decision to close the study with over \$1M left unspent in the budget.

**COUNT ONE**

**(Breach of Contract)**

34. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.

35. PCH's promises to Dr. Frye that it would, among other assurances, support his research studies and the ASD patient population are valid promises that created binding contractual obligations.

36. Dr. Frye satisfied all of his obligations to PCH.

37. By engaging in the conduct described above, PCH has breached its contractual promises and obligations.

38. Dr. Frye has suffered and will continue to suffer damages as a result of PCH's breaches.

39. Dr. Frye is entitled to damages for PCH's breaches in an amount to be proven at trial, plus pre-judgment and post-judgment interest.

40. As this cause of action arises out of contract, Dr. Frye is entitled to recover his costs and attorneys' fees under A.R.S. §§ 12-341 and 12-341.01.

**COUNT TWO**

**(Breach of Contract)**

41. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.

42. The covenant of good faith and fair dealing is implied in every contract in Arizona, including the agreements identified above, and prohibited PCH from acting in such a way as to deprive Dr. Frye of the benefits and entitlements of the agreements.

43. Dr. Frye is entitled to the benefits and entitlements of PCH's obligations.

44. With respect to these contractual promises to Dr. Frye, PCH acted to deprive Dr. Frye of his reasonably expected benefits of the bargain and breached the implied covenant of good faith and fair dealing by engaging in the conduct described above.

45. Dr. Frye has suffered and will continue to suffer damages as a result of PCH's breach of the covenant of good faith and fair dealing.

46. To the extent that legal remedies are inadequate, Dr. Frye also is entitled to an order requiring specific performance of PCH's obligations.

47. The anticipated benefit of an order of specific performance to Dr. Frye would outweigh any hardship that specific performance would impose upon PCH.

48. As this cause of action arises out of contract, Dr. Frye is entitled to recover his costs and attorneys' fees under A.R.S. §§ 12-341 and 12-341.01.

**COUNT THREE**

**(Promissory Estoppel)**

49. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.

50. Arizona has adopted the doctrine of promissory estoppel set out in Section 90(1) of the Restatement (Second) of Contracts.

51. Dr. Frye has performed his obligations in justifiable reliance on PCH's many promises, as alleged above.

52. Dr. Frye satisfied all of his obligations to PCH.

53. PCH has failed to perform, to Dr. Frye's detriment.

54. Dr. Frye has suffered and will continue to suffer damages as a result of PCH's misconduct.

55. PCH's promises must be enforced to prevent an injustice upon Dr. Frye.

**COUNT FOUR**

**(Declaratory Judgment)**

56. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.

57. A dispute exists as to whether PCH must comply with its previously promised obligations. Despite the parties' agreements and PCH's repeated assurances, PCH now disputes the scope of its obligations.

58. Pursuant to A.R.S. section 12-1831 and Rule 57 of the Arizona Rules of Civil Procedure, Dr. Frye seeks an order from the Court declaring that PCH must comply with its obligations, including the obligations to transfer (i) study data as necessary for Dr. Frye to conduct his clinical trials, observational studies and ongoing research, and (ii) all other personal and research-related materials belonging to Dr. Frye or as to which he has a right of possession.

59. Dr. Frye requests a speedy hearing to address its claim for a declaratory judgment, as the Court may order under Rule 57.

60. As this cause of action arises out of contract, Dr. Frye also is entitled to recover his costs and attorneys' fees pursuant to A.R.S. sections 12-341 and 12-341.01.

**COUNT FIVE**

**(Tortious interference with Advantageous Relations and Business Expectancy)**

61. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.

1           62. Dr. Frye had business expectancies and/or established contractual  
2 relationships with the government agencies and private foundations that funded his  
3 leucovorin clinical trials.

4           63. Dr. Frye also had business expectancies and/or established contractual  
5 relationships with his patients, including the patients in his clinical trials.

6           64. PCH knew of these relationships.

7           65. PCH knew that its refusal to honor its promises to Dr. Frye would  
8 significantly damage such business expectancies, relationships, and related interests.

9           66. PCH has intentionally interfered with Dr. Frye's relationships with these  
10 funding sources and patients, which caused a breach or termination of those relationships.

11           67. PCH's interference was improper in motive and/or means.

12           68. Dr. Frye has suffered damages as a result of PCH's wrongful interference.

13           WHEREFORE, Dr. Frye respectfully requests that judgment be entered in his  
14 favor and against PCH as follows:

15           a. Ordering damages in a sum to be determined at trial, plus pre-judgment  
16 and post-judgment interest;

17           b. Ordering specific performance as set forth above;

18           c. Declaring that Dr. Frye is entitled to PCH's promised performance;

19           c. Ordering that PCH pay Dr. Frye all of his reasonable costs and attorneys'  
20 fees and costs under A.R.S. §§ 12-341 and 12-341.01; and

21           d. Ordering such other and further relief as the Court may deem just and  
22 equitable.

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DATED this 24th day of July, 2024.

OSBORN MALEDON, P.A.

By /s/ Jeffrey B. Molinar  
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This document was electronically filed  
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system this 24<sup>th</sup> day of July, 2024.

/s/ Lauren Dwyer  
10470968

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14 Attorneys for Plaintiff

15 ARIZONA SUPERIOR COURT

16 MARICOPA COUNTY

17 Dr. Richard Frye,

18 Plaintiff,

19 v.

20 Phoenix Children's Hospital; and John  
21 Does I-X,

22 Defendants.

No. CV2024-019664

**FIRST AMENDED COMPLAINT**

23 For his First Amended Complaint against Defendant Phoenix Children's Hospital  
24 ("PCH" or the "Hospital") and John Does I-X, Plaintiff Dr. Richard Frye ("Dr. Frye")  
25 alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

- 26 1. Dr. Frye is a medical doctor who resides in Phoenix, Arizona.
- 27 2. PCH is a private, for-profit hospital located and doing business in Maricopa  
28 County, Arizona.
3. Does I-X are parties whose identities are unknown at this time but who will  
be identified in subsequent amendments.
4. This Court has jurisdiction pursuant to Article VI, § 14 of the Arizona  
Constitution and A.R.S. § 12-123.

5. Venue is proper in Maricopa County under A.R.S. § 12-401.

## GENERAL ALLEGATIONS

6. Dr. Frye is a Child Neurologist with expertise in neurodevelopmental and neurometabolic disorders. After completing his residency in Child Neurology and a Fellowship in Behavioral Neurology and Learning Disabilities at Children's Hospital in Boston, he began specializing in Autism Spectrum Disorder ("ASD"). Over the years, Dr. Frye has become a national leader in ASD research. He also has treated ASD patients for 20 years.

7. In 2017, Dr. Frye accepted a position as Chief of Neurodevelopmental Disorders at PCH. As of 2017, Dr. Frye was a world-renowned expert in his field with an impeccable academic, research and clinical record. It was his intention to continue his research and clinical practice at PCH.

8. In order to lure Dr. Frye to PCH (and independent of his employment relationship), the Hospital promised, among other things, that it would support his ASD research, ASD patient population and academic appointment at the University of Arizona College of Medicine (“U of A”).

9. PCH made these promises to Dr. Frye orally and in writing, including by letter dated July 24, 2017.

10. Dr. Frye relied on these promises.

11. After joining PCH, Dr. Frye began building a successful clinical and research program at the Hospital, obtaining over \$4 million in research funding for both clinical trials and basic research. Dr. Frye also obtained, on the basis of his credentials and experience, funding for three national multicenter trials on leucovorin calcium for the treatment of ASD. These clinical studies included: (1) a study funded by Autism Speaks, a private foundation, entitled "Treatment of Social and Language Deficits with Levoleucovorin for Young Children with Autism," (2) a study funded by the Department of Defense ("DOD") entitled "Early Treatment of Language Impairment in Young Children with Autism Spectrum Disorder with Levoleucovorin," and (3) a study funded

1 by the National Institutes of Health (“NIH”) entitled “Leucovorin for the Treatment of  
2 Language Impairment in Children with Autism Spectrum Disorder” (the “Leucovorin  
3 Studies”). Dr. Frye obtained these study grants, and it was his submissions, credentials,  
4 prior research and relationships that caused the studies to be funded. Dr. Frye was the  
5 Principal Investigator (“PI”) and Sponsor with respect to each of these studies.

6 12. In addition to the Leucovorin Studies, Dr. Frye obtained funding for  
7 numerous other clinical trials including: “Effect of a Wide Spectrum Nutritional  
8 Supplement on Mitochondrial Function in Children with Autism Spectrum Disorder  
9 (ASD)” funded by The Brain Foundation; “Treating Gastrointestinal and Autism  
10 Symptoms in Adults with Autism Using Microbiota Transfer Therapy” funded by the  
11 DOD; “An Open-Label Extension Study to Assess the Long-Term Safety and Tolerability  
12 of ZYN002 Administered as a Transdermal Gel to Children and Adolescents with Fragile  
13 X Syndrome – CONNECT-FX Open Label Extension (OLE) – Clinical study of  
14 Cannabidiol in Children and Adolescents with Fragile X (CONNECT-FX OLE) ZYN2-  
15 CL-017” funded by Zynerba Pharmaceuticals, Inc. (“Zynerba”); and “A Randomized,  
16 Double-Blind, Placebo-Controlled Multiple-Center, Efficacy and Safety Study of  
17 ZYN002 Administered as a Transdermal Gel to Children and Adolescents with Fragile X  
18 Syndrome – Clinical study of Cannabidiol in Children and Adolescents with Fragile X  
19 (CONNECT-FX)” funded by Zynerba.

20 13. Dr. Frye also obtained funding for the following observational studies:  
21 “High-Frequency Oscillation as a Biomarker of Mitochondrial Dysfunction associated  
22 with Epilepsy in Autism” funded by The Brain Foundation; “Transcriptomic blood  
23 biomarkers for ASD diagnosis and precision medicine prognosis” funded by the United  
24 States – Israel Binational Science Foundation; “The FXCRC FORWARD Registry and  
25 Database: Study to Explore Early Development (SEED) Follow-up Study” funded by the  
26 Centers for Disease Control and Prevention (“CDC”); “Health Information Technology  
27 to Support Autism Spectrum Disorders (ASD) Risk Assessment for Early Diagnosis”  
28 funded by the National Institute of Mental Health; “Autism Learning Health Network”

1 funded by Autism Speaks; “Mitochondrial disease and dysfunction in neurological and  
2 neurodevelopmental disorders: Measurement of mitochondrial function in fresh human  
3 brain” funded by Innovative Neuroscience for Kids (INK) Foundation; “Resting State  
4 Functional MRI to Locate Seizure Onset Zone and Pathological Neurocognitive  
5 Networks in TSC” funded by the DOD; and “The FXCRC FORWARD Registry and  
6 Database: Using Longitudinal Data to Characterize the Natural History of Fragile X  
7 Syndrome- Component A” funded by the CDC.

8       14. As the principal investigator and sponsor of these studies, Dr. Frye had  
9 established, relationships with the agencies and entities funding the studies and he  
10 executed agreements with respect to these studies. Dr. Frye, as PI, was accountable to the  
11 NIH and other funding sources for conducting the research and managing grant funds.

12       15. PCH had knowledge of these studies and Dr. Frye’s contractual and  
13 regulatory obligations with respect to the studies as well as his relationships with the  
14 agencies and entities funding them. In connection with each such study, the Hospital  
15 promised, orally and in writing, to fully support the study.

16       16. Dr. Frye relied on these promises.

17       17. On Friday, July 1, 2022, at approximately noon and without any prior  
18 warning, PCH provided Dr. Frye with a ninety-day, without-cause termination notice with  
19 respect to his employment at PCH.

20       18. Following the termination notice (and notwithstanding PCH’s continued  
21 promises to work with Dr. Frye to support the transfer of his studies), PCH intentionally  
22 and improperly undertook a variety of actions designed to interfere with the studies and  
23 Dr. Frye’s relationships with patients and the agencies and entities funding the studies.

24       19. PCH interfered with Dr. Frye’s efforts to contact the research staff that had  
25 been working with him on his studies.

26       20. Dr. Frye was cut-off from any access to PCH and U of A resources,  
27 including email communications and contacts, study documents such as protocols and all  
28 resources as FDA Sponsor.

1           21. He was unable to access FDA documents integral to his studies and could  
2 not oversee the patients in active treatment in his capacity as site PI, study PI and FDA  
3 Sponsor.

4           22. He was denied access to his professional email, clinical, personal and  
5 research documents and his personal belongings.

6           23. Indeed, PCH circulated emails to staff and to Dr. Frye's collaborators  
7 advising that they should not share data with him or contact him, even though such data  
8 related to studies on which Dr. Frye was the PI and FDA Sponsor.

9           24. PCH also interfered with Dr. Frye's relationships with his ASD patient  
10 population, causing certain patients to feel abandoned by Dr. Frye.

11           25. Following Dr. Frye's termination, PCH directed its staff to electronically  
12 sign Dr. Frye's name on documents relating to his patients, research projects and clinical  
13 projects without any prior approval from Dr. Frye and in violation of FDA regulations  
14 and the regulations of the Office for Human Research Protections in the Department of  
15 Health and Human Services.

16           26. After Dr. Frye was terminated, he spoke with the Vice President for  
17 Research at PCH to confirm that Hospital site patients in the leucovorin clinical studies  
18 would be transferred to his new clinical trial site, which was at a nearby facility that Dr.  
19 Frye had established.

20           27. Dr. Frye sought confirmation that his study patients would be transferred to  
21 a new facility for Dr. Frye, explaining that transferring the patients was essential to the  
22 continued progress and viability of the studies and his relationships with the entities and  
23 agencies funding the studies.

24           28. PCH expressly agreed that it would transfer the patients.

25           29. When a study Sponsor moves to a new facility, it is a common and accepted  
26 medical practice to transfer patients in active studies to the new facility to allow the  
27 research to continue uninterrupted. There was no reason not to do so in the case of the  
28 leucovorin studies.

1           30.    Notwithstanding this accepted practice and in violation of its prior promises  
2 to Dr. Frye, however, PCH decided not to transfer the leucovorin study patients. As three  
3 of the four of the clinical trials were multicenter trials, PCH advised each outside clinical  
4 trial site that the studies were closing down and it instructed that early termination visits  
5 should be scheduled for the patients. PCH also advised each site not to contact Dr. Frye  
6 about this matter.

7           31.    PCH did not consult with Dr. Frye prior to communicating its unilateral  
8 decision to terminate the site studies, rather than transfer the patients. Dr. Frye did not  
9 learn of this decision until July 28, 2022.

10          32.    Thereafter, Dr. Frye received a report on the early termination visits  
11 indicating that (i) 70% of the patients were allowed to decline the early termination visit  
12 and did not return to PCH, and (ii) clinical end-point data was not collected on these  
13 patients. Dr. Frye later learned that many study participants were allowed to dispose of  
14 the drug product without any drug accountability, a clear violation of Good Clinical  
15 Practice ("GCP") and FDA guidance.

16          33.    When Dr. Frye protested this conduct and also made demands for access to  
17 study documents, PCH responded (incorrectly) that PCH was the study Sponsor with the  
18 right to control administration of the studies. Dr. Frye was required to involve the FDA  
19 administration to provide PCH clarification that Dr. Frye was indeed the Sponsor of the  
20 study.

21          34.    PCH's mishandling of the clinical trials in breach of its promises to Dr. Frye  
22 caused significant damage to the studies and Dr. Frye personally. PCH halted the clinical  
23 trials at a critical time period. The trials had been delayed during the COVID pandemic,  
24 and recruitment levels had finally recovered. Seventy percent of the study patients did not  
25 participate in an early termination visit. As a consequence, new patients had to be  
26 recruited and treated for 24 weeks. As a result of this conduct alone, the timeline for  
27 completion of the studies was set back over eighteen (18) months.

28

35. PCH also promised and represented to Dr. Frye that data from the observational studies would be provided to Dr. Frye, but PCH has failed to do so. As a result of PCH's conduct in this regard, important data for certain studies is missing that, in some cases, renders portions of the studies useless.

36. PCH also deliberately terminated communications and interactions with the leucovorin study regulatory monitor which resulted in significant delays in regulatory monitoring of the study and will lead to questions regarding the integrity of the study. As a result of this interference, Dr. Frye was required to hire new monitoring staff to review copies of documents provided from PCH, a violation in GCP, and engage sites that were told not to communicate with him by PCH. Due to the loss of funding, Dr. Frye has had to find outside funds to complete the regulatory monitoring of the study to document its integrity. These delays and additional costs for monitoring were caused by PCH, which foreseeably created a risk to the integrity of the studies by, among other things, interfering with the studies, Dr. Frye's ability to carry out his contractual and regulatory obligations with respect to the studies, and Dr. Frye's relationships with patients and the agencies and entities funding and monitoring the studies.

37. Following his termination and after Dr. Frye was forced to involve personal counsel, PCH initially promised to transfer study data to Dr. Frye. Thereafter, however, it refused to do so. This conduct further delayed and impaired the studies and damaged Dr. Frye's ability to conduct and publish research, as well as his professional reputation.

38. PCH deliberately failed to submit required reports to NIH with respect to the leucovorin study funded by that agency. This misconduct and other delays caused by PCH led the agency to close the study with over \$1M left unspent in the budget.

**COUNT ONE**

**(Tortious interference with Advantageous Relations and Business Expectancy)**

39. Dr. Frye realleges and incorporates by reference each and every other allegation of this Complaint as if fully set forth herein.



1           40. For each study, Dr. Frye had business expectancies with and contractual  
2 and regulatory obligations to the government agencies and private foundations that  
3 funded his studies, including but not limited to DOD, NIH, Autism Speaks and the Brain  
4 Foundation. Dr. Frye was both the sponsor and the PI for these studies.

5           41. PCH knew about the studies and Dr. Frye's business expectancies and  
6 contractual relationships with the agencies and foundations funding such studies.

7           42. On each of these studies, Dr. Frye obtained the funding and had the primary  
8 relationship with the funding agency or foundation.

9           43. Research doctors such as Dr. Frye rely upon research funding sources to  
10 purchase equipment, hire staff, and support study expenses.

11           44. PCH knew that its conduct would improperly interfere with Dr. Frye's  
12 ability to meet his contractual and regulatory obligations regarding the studies and with  
13 his established contractual relationships with agencies and foundations funding and  
14 monitoring the studies, resulting in significant damage to those relationships and related  
15 interests.

16           45. PCH has intentionally interfered with the studies and Dr. Frye's  
17 relationships with the study funding sources including by (i) prematurely terminating the  
18 leucovorin studies, (ii) falsely claiming that it was the study Sponsor and directing other  
19 clinical sites to close down without authorization or advance notice to Dr. Frye, (iii)  
20 terminating patients from leucovorin studies despite a prior agreement to transfer these  
21 patients to a new clinical site in accordance with accepted medical practice, (iv)  
22 withholding access to study data from the study Sponsor (Dr. Frye) thereby delaying the  
23 continuation of the studies and harming Dr. Frye's relations with the funding sources, (v)  
24 forging Dr. Frye's name on certain study documents without Dr. Frye's approval, and (vi)  
25 failing to submit certain documentation to a funding agency (NIH) thereby causing that  
26 agency to close the study.

1           46.   PCH's interference was improper in motive and/or means. PCH's conduct  
2 included breaches of existing agreements, false statements, and breaches of accepted  
3 medical practices.

4           47.   Dr. Frye has suffered damages from the economic and reputational harm  
5 caused by PCH's wrongful interference. He has lost one study grant and other studies  
6 were severely delayed.

7           WHEREFORE, Dr. Frye respectfully requests that judgment be entered in his  
8 favor and against PCH as follows:

9           a.    Ordering damages in a sum to be determined at trial, plus pre-judgment  
10 and post-judgment interest;

11          b.    Ordering that PCH pay Dr. Frye all of his reasonable costs and attorneys'  
12 fees and costs under A.R.S. §§ 12-341 and 12-341.01; and

13          c.    Ordering such other and further relief as the Court may deem just and  
14 equitable.

15               RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of June, 2025.

16                               OSBORN MALEDON, P.A.

17                               By /s/ Jeffrey B. Molinar

18                               Jeffrey B. Molinar  
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1 This document was electronically  
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30<sup>th</sup> day of June 2025, to:

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF MARICOPA**

Dr. Richard Frye,

Plaintiff,

vs.

Phoenix Children's Hospital; and John  
Does I-X,

Defendants.

Case No. CV2024-019664

**DEFENDANT'S MOTION TO  
DISMISS**

(Assigned to the Hon. Scott McCoy)

Defendant Phoenix Children's Hospital ("Defendant" or "PCH") moves to dismiss Plaintiff Dr. Richard Frye's ("Plaintiff") Complaint. PCH hired Plaintiff in 2017 and ended his employment in July 2022. The Parties have a written contract which governs the terms of his employment, and as acknowledged in the Complaint, events after the ending of his employment. Because Plaintiff has no timely claims based on the ending of his employment, he attempts to bring four ill-fitting claims which are similarly untimely or otherwise defective. Plaintiff's claims for breach of contract (Count One), breach of the implied covenant of good faith and fair dealing (Count Two), promissory estoppel (Count Three), and declaratory judgment (Count Four) were not timely filed. Additionally, Plaintiff fails to state a claim for breach of contract or any derivative claim because he does not allege any contractual promise PCH made to him that was breached. Plaintiff also fails to state a claim for tortious interference because he has not identified any contractual relationship or business expectancy with which PCH intentionally and improperly interfered. For these reasons, the Court should dismiss Plaintiff's Complaint in its entirety with prejudice.

**I. FACTUAL BACKGROUND**

Plaintiff is a child neurologist specializing in autism spectrum disorder (“ASD”). (Complaint (“Compl.”) at ¶ 6).<sup>1</sup> PCH hired Plaintiff as its Chief of Neurodevelopmental Disorders in 2017. (*Id.* at ¶ 7). When PCH recruited Plaintiff, it promised him that “it would support his ASD research, ASD population, and academic appointment at the University of Arizona College of Medicine (‘U of A’).” (*Id.* at ¶ 8). Plaintiff alleges PCH made these promises orally and in writing, in a letter dated July 24, 2017 (the “Offer Letter”). (*Id.* at ¶ 8). The Offer Letter contains the following language:

In support of your research, PCH will provide start-up funding and work with you to acquire equipment as outlined in the attached, lab space at the University of Arizona College of Medicine within the Department of Child Health and clinical space for Autism and other Neurodevelopmental Disorders clinic(s) at the Barrow Neurological Institute at Phoenix Children’s Hospital. Phoenix Children’s Hospital will also support your Academic appointment at the University of Arizona College of Medicine.

(Ex. 1, Offer Letter, PCH-REF000002-5).<sup>2</sup> The Offer Letter further stated that if Plaintiff was interested, PCH would “provide an employment agreement for [his] review and execution.” (*Id.*).

Pursuant to the Offer Letter, PCH and Plaintiff entered into a Physician Employment Agreement, effective December 31, 2017 (the “Employment Agreement”). (Ex. 2, Employment Agreement, PCH-REF000172-191). The Employment Agreement provided

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<sup>1</sup> PCH accepts the allegations in Plaintiff’s Complaint for purposes of this Motion only. *See Swift Transportation Co. of Arizona L.L.C. v. Arizona Dep’t of Revenue*, 249 Ariz. 382, 385 (Ariz. App. 2020) (“Arizona courts assume the truth of all well-pled, material allegations in the complaint,” but not conclusions of law.).

<sup>2</sup> Although courts generally do not consider matters outside of the complaint when ruling on a motion to dismiss, there is an exception for documents that are central to the complaint. *See Strategic Dev. & Const., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64 (Ariz. App. 2010) (general rule does not apply to “matters that, although not appended to the complaint, are central to the complaint.”); *Cullen v. Koty-Leavitt Ins. Agency, Inc.*, 216 Ariz. 509, 513 (Ariz. App. 2007), *vacated in part on other grounds*, 218 Ariz. 417 (2008) (“A contract central to the plaintiff’s claim, however, is not a ‘matter[ ] outside the pleadings’ for the purposes of Rule 12(b)(6).”).

1 that PCH had “the right to limit [Plaintiff’s] performance of services that do not involve  
2 direct patient care, such as teaching, education and research.” (*Id.* at PCH-  
3 REF000172, § 1.1). The Employment Agreement clarified that “the patients [Plaintiff]  
4 treats during the term of this Agreement are patients of PCH.” (*Id.* at PCH-REF000182, §  
5 4.5). The Employment Agreement also provided that PCH could terminate Plaintiff’s  
6 employment “for any reason or no reason and in PCH’s sole discretion after giving  
7 [Plaintiff] ninety (90) days written notice,” and that PCH had the option to require Plaintiff  
8 to “no longer provide Services and vacate PCH premises at any time during, or for the  
9 entirety of,” such notice period. (*Id.* at PCH-REF000186, § 6.4). Moreover, the Employment  
10 Agreement provided that upon termination, PCH would maintain “exclusive possession of  
11 all medical files and patient records now or hereafter owned, prepared or maintained by  
12 [Plaintiff] for patients treated during the term of this Agreement” unless required by law or  
13 “upon the request of a patient” to transfer copies of the records to Plaintiff. (*Id.* at PCH-  
14 REF000187, § 6.9).

15 The Employment Agreement also contained an integration clause that provided:

16 This Agreement constitutes a single, integrated written  
17 contract expressing the entire agreement of the parties to this  
18 Agreement concerning the subject matters covered by this  
19 Agreement and supersedes all prior agreements, letters of  
20 intent or understandings of any nature whatsoever between the  
21 parties with respect to the subject matter covered herein. No  
22 other agreements or understandings of any kind concerning the  
23 subject matters covered by this Agreement, whether express or  
24 implied in law or fact, have been made by the parties to this  
25 Agreement except as specifically set forth in this Agreement.

26 (*Id.* at PCH-REF000190, § 8.12). The Employment Agreement further stated that “[n]o  
27 modifications, amendment or waiver of any of the provisions contained in this Agreement,  
28 nor any future representation, promise or condition in connection with the subject matter of  
this Agreement, shall be binding upon any party hereto unless made in writing and signed  
by such party.” (*Id.* at PCH-REF000189, § 8.9).

1 Despite this clear contract between the Parties, Plaintiff goes on to allege “[a]fter  
2 joining PCH, [Plaintiff] began building a successful clinical and research program at [PCH],  
3 obtaining over \$4 million in research funding for both clinical and basic research.” (Compl.  
4 at ¶ 11). Plaintiff “also led three national multicenter trials on leucovorin calcium for the  
5 treatment of ASD as funded by certain granting agencies and private foundations.” (*Id.*).  
6 “In connection with each of such research grants, [PCH] promised, orally and in writing, to  
7 fully support the study.” (*Id.* at ¶ 12). Plaintiff does not specifically identify any of these  
8 purported “promises” in his Complaint or explain how they evade the clear language of the  
9 Employment Agreement’s integration clause.

10 On July 1, 2022, PCH gave Plaintiff notice of its intent to terminate his employment  
11 within 90 days as set forth by the Employment Agreement. (*Id.* at ¶ 15). PCH cut off  
12 Plaintiff’s access to PCH resources, including his email, contacts, and study documents. (*Id.*  
13 at ¶¶ 17, 19). He was also not able to see patients in the study. (*Id.* at ¶ 18).

14 After PCH ended Plaintiff’s employment, “he spoke with the Vice President for  
15 Research at PCH to confirm that Hospital site patients in the leucovorin clinical studies  
16 would be transferred to his new clinical trial site, which was at a nearby facility.” (*Id.* at ¶  
17 23). “Dr. Frye sought confirmation that his study patients would be transferred in light of  
18 [PCH’s] prior promises to support his ASD research.” (*Id.* at ¶ 24). Plaintiff alleges that  
19 PCH “agreed that it would transfer the patients” and “study data” to him, and that “[w]hen  
20 a study Sponsor moves to a new facility it is a common and accepted medical practice to  
21 transfer patients in active studies to the new facility to allow the research to continue  
22 uninterrupted.” (*Id.* at ¶¶ 25-26, 32). “[H]owever, PCH decided not to transfer the  
23 leucovorin study patients.” (*Id.* at ¶ 27). Plaintiff learned of this decision on July 28, 2022.  
24 (*Id.* at ¶ 28). Plaintiff again provides no facts in his Complaint that identify any of these  
25 purported “promises” or explain how they evade the clear language of the Employment  
26 Agreement’s integration clause.

1     **II.     ARGUMENT**

2             **A.     Plaintiff's breach of contract claim (Count One) must be dismissed.**

3                     **1.     Plaintiff's breach of contract claim is untimely.**

4             Plaintiff bases his "contract" claims on the offer letter and the Employment  
5     Agreement. (Compl. at ¶ 9 and 12). The statute of limitations "[f]or breach of an oral or  
6     written employment contract" is "one year after the cause of action accrues." A.R.S. § 12-  
7     541(3). This limitations period applies broadly to all contracts defining the responsibilities  
8     of an employer and employee to one another, including obligations following the end of the  
9     employment relationship. *See, e.g., Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*,  
10    218 Ariz. 293, 297 (App. 2008) (finding A.R.S. § 12-541(3) applies to "all contracts  
11    defining specific responsibilities of the employer to the employee"); *see also Worldwide Jet*  
12    *Charter, Inc. v. Toulatos*, 254 Ariz. 331, 336 (App. 2022) (declining to "bifurcate"  
13    employment and non-employment or post-employment contract terms because regardless  
14    of such characterizations, the parties' agreement arose from their employment relationship).  
15    "A claim for breach of contract accrues when the plaintiff knew or should have known the  
16    facts giving rise to the claim." *Specialty Companies Grp., LLC v. Meritage Homes of*  
17    *Arizona, Inc.*, 251 Ariz. 365, 369 (2021).

18             PCH gave Plaintiff 90 days' notice of its intent to end his employment on July 1,  
19     2022. (Compl. at ¶ 15). That same day, PCH cut off Plaintiff's access to PCH resources,  
20     including his email, contacts, and study documents. (*Id.* at ¶¶ 17, 19). Later that same month,  
21     on July 28, 2022, Plaintiff learned of PCH's decision not to transfer the leucovorin study  
22     patients to him at his new clinical trial site. (*Id.* at ¶¶ 27-28). His employment formally  
23     ended on September 29, 2022. (*Id.* at ¶ 15). By then, Plaintiff either knew or should have  
24     known all above facts giving rise his breach of contract claim, and he does not claim  
25     otherwise. Plaintiff did not file his Complaint until July 24, 2024, however, far more than a  
26     year after any of the above alleged events. Accordingly, Plaintiff's breach of contract claim  
27     is untimely and must be dismissed for this reason alone.



2. **Plaintiff fails to state a claim for breach of contract.**

Even if Plaintiff's breach of contract claim was timely, it would still fail because he has not alleged PCH breached any alleged contractual promise to him. A breach of contract claim requires: (1) the existence of a contract; (2) breach; and (3) resulting damages. *Graham v. Asbury*, 540 P.2d 656, 657 (Ariz. 1975). "[B]reach of contract is a failure, without legal excuse, to perform any promise which forms the whole or part of a contract." *Snow v. W. Sav. & Loan Ass'n*, 730 P.2d 204, 210 (1986) (quoting 11 S. Williston, Williston on Contracts § 1290, at 2 (3d ed. 1968)); see also *Biltmore Bank of Arizona v. First Nat. Mortg. Sources, L.L.C.*, No. CV- 07-936-PHX-LOA, 2008 WL 564833, at \*6 (D. Ariz. Feb. 26, 2008) ("When a party agrees to perform in a certain manner upon adequate consideration and fails to keep a material promise in a contract, that party is liable to the performing party for any damages sustained as a result of such failure to perform.").

Here, Count One alleges that "PCH has breached its contractual promises and obligations," but does not specify any terms in the Employment Agreement (or any other agreement) that PCH allegedly breached or how it breached them. (Compl. at ¶ 35). "When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing." *Taylor v. State Farm Mut. Auto. Ins. Co.*, 854 P.2d 1134, 1138 (Ariz. 1993). The Employment Agreement contained an integration clause that stated it was the only agreement between the parties and superseded any prior agreements. (Ex. 2, Employment Agreement, PCH-REF000190, § 8.12). It further provided no modifications, amendments, or related promises would be effective unless in writing and signed by such party. (*Id.* at PCH-REF000189, § 8.9). Accordingly, Plaintiff cannot bring a breach of contract claim based on anything other than the Employment Agreement or a written agreement signed by at least PCH. Plaintiff's Complaint makes no such claims.

Regardless, Plaintiff has still not alleged a breach. Plaintiff alleges that PCH promised "it would support his ASD research, ASD patient population and academic

1 appointment at the [U of A]" when it was recruiting him. (*Id.* at ¶ 8). Plaintiff states that  
2 such promises were contained in his Offer Letter, which specified PCH would support his  
3 research by providing "start-up funding," acquiring "equipment" and "lab space," and  
4 supporting his "academic appointment at the [U of A]." (*Id.* at ¶ 9; Ex. 1, Offer Letter, PCH-  
5 REF000002-5). Plaintiff does not allege PCH failed to do any of those things. To the  
6 contrary, he alleges that after joining PCH, he was able to build "a successful clinical and  
7 research program at [PCH], obtaining over \$4 million in research funding for both clinical  
8 trial and basic research." (Compl. at ¶ 11).

9 The Employment Agreement did not contain any promises regarding Plaintiff's  
10 research. To the contrary, the Employment Agreement expressly provided that PCH had  
11 "the right to limit [Plaintiff's] performance of services that do not involve direct patient  
12 care, such as teaching, education *and research*." (*Id.* at PCH-REF000172, § 1.1) (emphasis  
13 added). The Employment Agreement expressly stated that any patients Plaintiff treated  
14 during his employment were PCH's patients, not his. (*Id.* at PCH-REF000182, § 4.5).  
15 Additionally, the Employment Agreement provided PCH would retain all patient records  
16 and medical files that Plaintiff prepared during his employment and would only transfer  
17 them to him upon the request of a patient or as otherwise required by law. (*Id.* at PCH-  
18 REF000187, § 6.9). Plaintiff has not alleged that any patient asked PCH to transfer their  
19 files to Plaintiff. He has also not identified any contractual provision that required PCH to  
20 transfer research data to him. Moreover, Plaintiff's suggestion that PCH was required to  
21 "transfer the patients" to him is absurd as PCH cannot force any patient to receive treatment  
22 from a particular physician. In short, Plaintiff has not identified any term in the Employment  
23 Agreement (or any other agreement) that PCH has allegedly breached. Accordingly,  
24 Plaintiff has failed to state a claim for breach of contract and such claim must be dismissed.

25 **B. Plaintiff's claim for breach of the covenant of good faith and fair dealing**  
26 **(Count Two) must be dismissed.**

27 Count Two of Plaintiff's Complaint is based on an alleged breach of the "covenant  
28 of good faith and fair dealing." (Compl. at ¶¶ 42-45). "The law implies a covenant of good

1 faith and fair dealing in every contract.” *Rawlings v. Apodaca*, 151 Ariz. 149, 153 (1986).  
2 This implied covenant “protects the right of the parties to an agreement to receive the  
3 benefits of the agreement that they have entered into.” *Wagenseller v. Scottsdale Mem’l*  
4 *Hosp.*, 147 Ariz. 370, 385, 710 P.2d 1025, 1040 (1985). “Thus, the relevant inquiry always  
5 will focus on the contract itself.” *Id.* For that reason, claims based on the alleged breach of  
6 the covenant of good faith and fair dealing are subject to the same one-year statute of  
7 limitation as employment contract claims. *See Zaki v. Banner Pediatric Specialists LLC*,  
8 No. CV-16-01920-PHX-DLR, 2018 WL 5982634, at \*1 (D. Ariz. Nov. 14, 2018) (“Claims  
9 for breach of the implied covenant of good faith and fair dealing based solely on breach of  
10 an employment contract are subject to a one-year limitations.”). Accordingly, Plaintiff’s  
11 claim for breach of the implied covenant of good faith and fair dealing is untimely for the  
12 same reasons his breach of contract claim is untimely and must also be dismissed.

13 Even if this claim were timely, it would still fail because Plaintiff has not identified  
14 a *benefit* he was entitled to under the Employment Agreement (or some other agreement),  
15 which he did not receive. The benefits flowing from an employment agreement are “that the  
16 employee will do the work required by the employer and that the employer will provide the  
17 necessary working conditions and pay the employee for work done.” *Wagenseller*, 147 Ariz.  
18 at 385. Plaintiff does not allege that PCH did not pay him for his work. He also admits that  
19 PCH gave him adequate notice of its intent to terminate him, as contemplated by the  
20 Employment Agreement. *Id.* (guarantee of continued employment cannot be a benefit of an  
21 at-will employment).

22 Moreover, Plaintiff’s contention that PCH should have transferred the study  
23 materials and patients to him following his termination contradicts the Employment  
24 Agreement. “An implied covenant of good faith and fair dealing cannot directly contradict  
25 an express contract term.” *Bike Fashion Corp. v. Kramer*, 202 Ariz. 420, 423 (App. 2002).  
26 As explained above, the Employment Agreement provided that patients Plaintiff treated  
27 during his employment were PCH’s patients. (Ex. 2, Employment Agreement, PCH-  
28 REF000182, § 4.5). Additionally, the Employment Agreement provided PCH would retain

1 all patient records and medical files that Plaintiff prepared during his employment. (*Id.* at  
2 PCH-REF000187, § 6.9). Thus, it cannot be said that access to patients or their records  
3 following termination was a guaranteed benefit arising out of the Employment Agreement.  
4 Accordingly, Plaintiff has not stated a claim for breach of the implied covenant of good  
5 faith and fair dealing and this case must be dismissed.

6 **C. Plaintiff's promissory estoppel claim (Count Three) must be dismissed.**

7 Promissory estoppel is a quasi-contractual remedy available when justice requires  
8 the enforcement of a promise even if some elements necessary for the creation of an  
9 enforceable contract are absent. *Kersten v. Cont'l Bank*, 129 Ariz. 44, 47 (App. 1981).  
10 Because it is a quasi-contractual remedy, promissory estoppel is subject to the same statute  
11 of limitations as the same types of contracts. *Id.*; see also *Ferren v. Westmed Inc.*, No. CV-  
12 19-00598-TUC-DCB, at \*4 (D. Ariz. May 19, 2021) (applying one-year statute of  
13 limitations and dismissing promissory estoppel claim based on alleged promises regarding  
14 employees' salary, commission, bonuses, and stock options that they allegedly relied on  
15 when deciding to switch jobs). As explained above, the statute of limitations for breach of  
16 an oral or written employment contract is one year. A.R.S. § 12-541(3). Plaintiff did not file  
17 his Complaint within one year of any of PCH's alleged actions. Accordingly, like Plaintiff's  
18 breach of contract and implied covenant of good faith and fair dealing claims, his  
19 promissory estoppel claim is untimely and must be dismissed.

20 **D. Plaintiff's declaratory judgment claim (Count Four) must be dismissed.**

21 "Because Arizona has no statute of limitations expressly applicable to declaratory  
22 judgment actions, [] courts have determined the appropriate limitations period by  
23 'examining the substance of that action to identify the relationship out of which the claim  
24 arises and the relief sought.'" *Canyon del Rio Invs., L.L.C. v. City of Flagstaff*, 227 Ariz.  
25 336, 341 (App. 2011); see also *Stebbins v. Sullivan*, No. 1 CA-CV 14-0774, 2016 WL  
26 492376, at \*4 (Ariz. Ct. App. Feb. 9, 2016) ("The declaratory relief claim that was pled  
27 arises from Sullivan's alleged failure to comply with the employment  
28 agreement. . . Accordingly, the one-year statute of limitations for breach of an employment

contract applies.”). Here, the allegations underlying Plaintiff’s declaratory judgment action are all based on his Employment Agreement and relationship with PCH. Indeed, Plaintiff acknowledges that his declaratory judgment action “arises out of contract.” (Compl. at ¶ 60). Accordingly, this claim is subject to the same one-year statute of limitations as his breach of contract claim and is similarly untimely. Plaintiff simply cannot make his untimely breach of contract claim actionable using different labels. All of these claims, regardless of their label, must be dismissed.

**E. Plaintiff’s tortious interference claim (Count Five) must be dismissed.**

To plead a claim for tortious interference, a plaintiff must allege: (1) the existence of a valid contractual relationship or business expectancy; (2) defendants’ knowledge of that relationship or expectancy; (3) intentional interference inducing or causing a breach; (4) damages; and (5) defendants acted improperly. *Snow v. W. Sav. & Loan Ass’n*, 730 P.2d 204, 211 (Ariz. 1986); *Dube v. Likins*, 167 P.3d 93, 99 (Ariz. Ct. App. 2007). Plaintiff has not identified any valid contractual relationship or business expectancy, any damage, or even the allegation that PCH intentionally and improperly interfered with these unidentified contracts.

**1. Plaintiff has not alleged a contractual relationship or expectancy.**

To state a claim for tortious interference with contractual relationships, a plaintiff must identify an existing contractual relationship. *See id.* at 472. Plaintiff has not alleged he had any contractual relationship with patients. *See id.* (“At most, the record merely reflects a business expectation Miller might have had that customers would return from year to year, rather than any formal contract with them.”). *Miller v. Hehlen*, 209 Ariz. 462, 472 (Ariz. Ct. App. 2005); *see also Simaee v. Levi*, 802 N.Y.S.2d 493 (2005) (holding that a “cause of action, alleging tortious interference with physician/patient relationships, was [] correctly dismissed” as there was no allegation that plaintiff “had an independent contractual relationship with the patients of these entities which would give rise to a pecuniary interest in these relationships.”). He has also not identified any contractual relationship between him and any granting agencies or private foundations.

1 “Although the tort of tortious interference with a business expectancy covers  
2 situations that the tort of intentional interference with a contract does not, the former has  
3 only been available in those situations where the plaintiff can identify the specific  
4 relationship with which the defendant interfered.” *Dube v. Likins*, 216 Ariz. 406, 414 (App.  
5 2007). This requires a plaintiff to show “a business relationship evidenced by an actual and  
6 identifiable understanding or agreement which in all probability would have been completed  
7 if the defendant had not interfered.” *Id.* In other words, such a claim “is insufficient unless  
8 the plaintiff alleges facts showing the expectancy constitutes more than a mere ‘hope.’” *Id.*  
9 at 412. Plaintiff could not possibly have had a business expectancy with regards to patients  
10 given that the Employment Agreement expressly contemplates that the individuals he  
11 treated during his employment were PCH’s patients, not his. (Ex. 2, Employment  
12 Agreement, PCH-REF000182, § 4.5). Nor does Plaintiff allege that he had a reasonable  
13 expectation, beyond a mere hope, that any granting agency or private foundation would  
14 fund his studies if he left PCH. Plaintiff also did not have any reasonable expectation,  
15 beyond his mere hope that his studies would be published, and certainly not that they would  
16 be published at a particular time. Accordingly, Plaintiff has failed to plead a valid existing  
17 contractual relationship or business expectancy, and his tortious interference claim must be  
18 dismissed.

19 **2. Plaintiff has not alleged intentional or improper interference.**

20 There is “nothing inherently wrongful in ‘interference’ itself.” *Wagenseller*, 147  
21 Ariz. at 388. Rather, the interference must be intentional and improper. *Miller*, 209 Ariz. at  
22 471; *Safeway Ins. Co. v. Guerrero*, 210 Ariz. 5, 11 (2005). Courts exercise caution in  
23 determining impropriety “where the effect of the actor’s interference is only to cause the  
24 cancellation of a terminable contract.” *Bar J Bar Cattle Co. v. Pace*, 158 Ariz. 481, 483,  
25 (App. 1988). Again, the Employment Agreement expressly contemplates that the  
26 individuals Plaintiff treated during his employment were PCH’s patients, and PCH would  
27 retain their medical records and files unless the patients requested PCH to transfer them to  
28 Plaintiff. (Ex. 2, Employment Agreement, PCH-REF000182-187, § 4.5, 6.9). Plaintiff does

1 not allege that any patient requested their files to be transferred to Plaintiff. Thus, it could  
2 not have been improper for PCH to refuse to transfer the patients or their records to Plaintiff  
3 after his termination. Plaintiff also does not allege PCH did anything to induce any granting  
4 agency or private foundation to stop supporting his research. To the contrary, Plaintiff  
5 acknowledges that he continued his research studies after leaving PCH. (Compl. at ¶ 31). In  
6 short, Plaintiff has not alleged an intentional and improper interference and, therefore, his  
7 tortious interference claim must be dismissed. Plaintiff has also not alleged in his Complaint  
8 that he suffered damages.

9 **F. An amendment would be futile and Plaintiff has refused to do so.**

10 A court is not required to grant leave to amend if the amendment would be futile.  
11 *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 292 (App. 2010). Here, nothing will change  
12 that Plaintiff's claims for breach of contract, breach of the covenant of good faith and fair  
13 dealing, promissory estoppel, and declaratory judgment are all untimely. (Defendant has  
14 already brought these issues to Plaintiff's attention in a September 17, 2024 letter setting  
15 out these defects and Plaintiff has elected not to amend his Complaint.) Plaintiff  
16 acknowledges that he was aware of the alleged conduct giving rise to those claims more  
17 than a year before he filed this action. (Compl. at ¶¶ 15, 28). No amendment will change  
18 that. Additionally, based on the terms of the Employment Agreement, which allowed PCH  
19 to do the things Plaintiff now complains of, Plaintiff simply cannot allege he had any valid  
20 contractual relationship or business expectancy with any patient or granting agencies with  
21 which PCH improperly interfered.

22 **III. CONCLUSION**

23 For the foregoing reasons, PCH respectfully requests the Court to dismiss Plaintiff's  
24 Complaint in its entirety with prejudice.

25  
26 DATED this 17<sup>th</sup> day of January 2025.  
27  
28

GREENBERG TRAURIG, LLP

By /s/ Stephanie J. Quincy  
Stephanie J. Quincy  
Jorge Coss  
*Attorneys for Defendant Phoenix  
Children's Hospital*

ORIGINAL electronically filed with  
AZTurboCourt this 17<sup>th</sup> day of January  
2025, and COPY electronically transmitted  
to:

The Honorable Scott McCoy  
Maricopa County Superior Court

COPY of the foregoing served via  
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of January 2025 to:

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Employee, Greenberg Traurig



# Exhibit 1



**PHOENIX  
CHILDREN'S  
Hospital**

July 24, 2017

Richard Frye, M.D.  
10 Winthrop Pl.  
Little Rock AR 72211  
[drfryemdphd@gmail.com](mailto:drfryemdphd@gmail.com)

Dear Dr. Frye,

It is with great pleasure that we offer you a full time position as Director Neurodevelopmental Disorders in the Division of Neurology at Phoenix Children's Hospital ("PCH"). Your proposed start date is on or before December 31, 2017. The proposed annual salary, based upon your 1.0 FTE status, will be \$285,000 per year. PCH will provide office space, secretarial support and other necessary materials (phones, computer, etc.) during your employment.

The precise Neurology Division job responsibilities, including but not limited to your clinical services, on-call and other coverage responsibilities, will be delineated by Dr. Angus Wilfong, Child Neurology Division Chief and your specific employment PCH responsibilities will be delineated in your employment agreement. We expect you to participate in the education of medical students, house staff, fellows, and others.

The precise job responsibilities within the Barrow Neurological Institute at Phoenix Children's Hospital will be delineated by Dr. P. David Adelson, Director Barrow Neurological Institute at Phoenix Children's Hospital.

It is anticipated that 50 percent of your time will be dedicated direct clinical care; 40 percent dedicated to Research and the remaining 10% percent Administrative responsibilities.

In support of your research, PCH will provide start up funding and work with you to acquire equipment as outlined in the attached, lab space at the University of Arizona College of Medicine within the Department of Child Health and clinical space for Autism and other Neurodevelopmental Disorders clinic(s) at the Barrow Neurological Institute at Phoenix Children's Hospital. Phoenix Children's Hospital will also support your Academic appointment at the University of Arizona College of Medicine.

In addition to your base salary, you will be eligible to participate in the Neurology Division Individual Productivity Incentive Plan commencing effective January 1, 2019 or sooner dependent upon meeting productivity thresholds.

You will also be eligible to participate in the Phoenix Children's Medical Group Patient Safety and Quality & Experience Incentive Plan. The Plan provides annual incentive compensation of up to 5% of divisional physician, physician assistant and nurse practitioner base salary based

upon the achievement of division specific patient safety, quality and patient experience improvement goals subject to the funding requirements of the Plan which includes reduction in expense per wRVU and increased net revenue per wRVU. Participation in the Phoenix Children's Medical Group Patient Safety and Quality Incentive Plan will commence January 1, 2018.

During your employment, and assuming your 1.0 FTE status, you will be entitled to 208 hours of Paid Time Off ("PTO"), 40 hours of Continuing Medical Education ("CME"), and \$3,000 as a CME Allowance annually. Your contract will automatically renew, based upon the same terms and conditions outline herein, similar to other PCH physicians, on January 1 and annually thereafter.

Phoenix Children's Hospital will pay up to \$15,000 for the reasonable cost of moving your household items including temporary storage.

At your request, Phoenix Children's Hospital will pay for one house hunting trip for you and your spouse, as applicable. Please note, based on IRS guidelines, if you choose to take advantage of this benefit, the cost associated would be considered taxable income to you.

Upon receipt of your continued interest in PCH employment, we will provide an employment agreement for your review and execution. In addition, Tom Diederich, Vice President of Compensation & Benefits will provide you with the details of the benefits you are eligible for as a 1.0 FTE.

In addition, this offer and your employment by PCH are contingent upon the satisfactory completion of a background investigation, physical examination/drug screening and reference check and work authorization.

Also, to help us expedite your employment process with PCH, we have taken the liberty to provide you with a medical staff application. It is essential that once you sign this offer letter we rapidly get you licensed, credentialed and apply for health plan provider numbers, if applicable, as well as, complete your medical staff application. Please note that your start date will be postponed if you do not have your license, medical staff privileges and health plan provider enrollment completed prior to your scheduled start date. Accordingly, we are providing the medical staff packet in advance.

If you accept this offer, please sign below. Once signed and completed, as indicated, we will send you an employment agreement for review and final execution.

We are looking forward to your favorable response to our offer and you joining us at Phoenix Children's Hospital. Please call if you have any questions.

Sincerely,

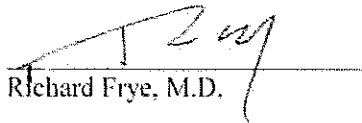


Daniel J. Ostlie, MD  
Surgeon in Chief and Chair of Surgery  
Phoenix Children's Hospital



P. David Adelson, MD  
Director, Barrow Neurological Institute at  
Phoenix Children's Hospital

I accept this offer of employment at Phoenix Children's Hospital.

  
Richard Frye, M.D.

Date

7/30/17

**Proposal for Richard Frye, M.D.**

Director of Neurodevelopmental Disorders, Division of Child Neurology

Barrow Neurological Institute at Phoenix Children's Hospital

Title of position: **Director of Neurodevelopmental Disorders (ND) Program**, within the Division of Child Neurology (Dr. Angus Wilfong) as part of Barrow Neurological Institute at Phoenix Children's Hospital (Dr. David Adelson)

**1. Responsibilities:**

- a. Will be responsible for the strategic vision and operational implementation of the ND program including autism, ADHD, etc. including clinical, research and education
- b. This position will oversee personnel within ND Program:
  - i. Faculty including neurology, developmental pediatrics, psychology, social work as assigned to ND program
  - ii. Clinical coordinator(s)
  - iii. Nurse practitioner(s)/ Physician Assistant(s)
  - iv. Ability to further recruit (2) in ND
  - v. Fellows after development ND Fellowship
  - vi. Research (Clinical and translational) and education personnel

2. Start-up funds for ND program \$750,000 total over first 3 years

3. Annual funding source at \$60k/year) to be utilized at the discretion of the Director of Neurodevelopmental Disorders to begin at time of employment and funded at each annual anniversary of employment.

**4. Equipment needed:**

- a. Seahorse XFe96 (Agilent)- ~\$205k Analysis of live cells (Necessary as part of contract work with collaborative institutions)-
- b. Noldus Human Behavior Usability Lab (A behavioral monitoring system which has a camera system in the monitoring room and the equipment in the control room) .
  - i. Including the software (Observer XT and FaceReader) ~\$65- 75k.
  - ii. May require redesign of present observation rooms (to be discussed as part of capital budget request).

SensoMotoric Instruments Remote Eye Tracking System ~ \$35-45k (to be discussed as part of capital budget request).

# Exhibit 2

**PHOENIX CHILDREN'S HOSPITAL  
PHYSICIAN EMPLOYMENT AGREEMENT**

This Physician Employment Agreement ("Agreement") is entered into as of December 31, 2017 (the "Effective Date") by and between Richard Frye, M.D. ("Physician") and Phoenix Children's Hospital, Inc. ("PCH").

**RECITALS**

PCH owns and operates a pediatric hospital and medical center located in Phoenix, Arizona (the "Hospital") and certain other medical facilities located in the surrounding metropolitan area. Physician is a medical doctor qualified to perform the services set forth in this Agreement, and the parties wish to enter into an employment relationship. (Such employment is sometimes herein referred to as "Employment").

**THEREFORE**, and incorporating the Recitals set forth above, the parties hereby agree to the terms set forth below.

**ARTICLE I  
SCOPE OF EMPLOYMENT**

**1.1 Physician Services.** As of the Commencement Date (as defined in Schedule "B," attached hereto) and throughout the remainder of the term of this Agreement, as a PCH employee, Physician shall provide the professional services as set forth in Schedule "A," including participating in PCH's emergency on-call schedule, and shall carry out such other clinical, administrative, teaching or managerial duties as may reasonably be requested by PCH from time to time (collectively, "Services"). To effectuate the legitimate business purpose of this Agreement, Physician shall provide all Services at PCH or such other locations as may be designated by PCH and shall refer all patients to PCH and other PCH physicians for medically necessary services unless (a) the patient's insurer identifies a different provider or facility, (b) the referral is not in the best medical interest of the patient as determined by Physician, or (c) the patient's and/or patient's family requests a different provider or facility. Physician shall make all professional medical decisions concerning the treatment of patients under his/her care independent of any direction or control of PCH. However, PCH shall have the right to exercise control over Physician as necessary or advisable in requiring that Physician practice: (i) within the parameters of acceptable standards of care and in compliance with all applicable laws and regulations and (ii) within the reasonable and consistently applied quality review criteria established by PCH. PCH further shall have the right to limit physician's performance of services that do not involve direct patient care, such as teaching, education and research.

**1.2 Best Efforts.** Physician agrees to devote Physician's best efforts to the performance of Services on behalf of PCH on the FTE effort as described in Schedule "B".

**1.3 Physician's Prior Agreements.** Physician represents and warrants that he/she is not a party to or bound by any other contract or agreement, or subject to any restriction or agreement related to previous employment or consultation containing confidentiality or non-compete covenants or other relevant restrictions that could be breached or have a possible present or future adverse effect on PCH or Physician by the acceptance of, and adherence to, the terms of this Agreement.

**1.4 No Outside Activities Without Permission.** During Physician's employment with PCH, Physician shall not, directly or indirectly, engage in any other medical or surgical practice; render any other medical or surgical care to patients (except in an emergency); perform any administrative or other duties or services of a medical nature; or establish, own (in whole or part), operate, manage, or provide any contracted services to any non-PCH entity that provides medical or surgical services without the prior written consent of PCH's President and CEO or his/her designee. If the outside activity concerns the possibility of Physician serving as a consultant or testifying expert to or for a party or parties preparing for or conducting litigation, Physician shall not accept such engagement without the prior written consent of PCH's President and CEO or his/her designee. Prior written consent, however, is not required for occasional lectures, speeches or presentations, including those involving honoraria, so long as such activities do not interfere with Physician's performance of the Services and do not violate PCH's Conflict of Interest Policy and Outside Activities Policy.

**1.5 Hours.** Physician shall perform his/her duties as an employee of PCH on such days and during such hours as are reasonably determined by PCH, including such hours as are necessary to provide on-call services. Such hours and days shall be coordinated with the hours and days of service rendered by other physicians who are employed by PCH.

**1.6 Charity Care; Medicare and Medicaid.** Physician shall provide indigent and charity care in conformance with the policies of PCH. Physician shall accept Medicare, the Arizona Medicaid program (the Arizona Health Care Cost Containment System, or "AHCCCS"), and other governmental payor patients, and shall comply with the respective requirements of such programs.

**1.7 Cooperative Efforts.** Physician shall work and cooperate in a reasonable and professional manner with the officers, employees and agents of PCH, and the members of PCH's Medical Staff, all in a reasonable and professional manner to ensure the safe, timely and uninterrupted provision of services contemplated under this Agreement.

## **ARTICLE II** **COMPENSATION and BILLING**

**2.1 Base Salary and other Compensation.** As of the Commencement Date, PCH shall pay Physician an annual base salary ("Base Salary") and reimburse Physician for certain practice expenses, all as set forth in Schedule "B." Physician may be eligible to receive incentive compensation ("Incentive Compensation") on an annual basis based on Physician's clinical productivity as set forth in Schedule "B." Physician's Base Salary



shall be payable to Physician according to PCH's regular payroll schedule and shall be subject to modification by PCH, at PCH's discretion, to take into account changes in Physician's duties or responsibilities or such other factors as may be relevant to PCH. Any such changes will be made by providing Physician with ninety (90) days written notice prior to the effective date of such change. All payments made to Physician shall be subject to applicable tax laws with respect to withholdings and reporting, and may be offset by any sums due to PCH.

**2.2 Benefits.** As of the Commencement Date, PCH shall provide Physician with the standard benefits package available to physician employees of PCH. The benefits package available as of the Effective Date is set forth in Schedule "C." Such benefits are subject to change at PCH's discretion.

**2.3 Billing and Collection.** PCH shall establish fees for Services and shall bill and collect for all Services provided by Physician. Physician shall not bill or collect money from any patients or any third-party payors for any Services provided under this Agreement regardless of where such Services are rendered. Physician shall provide to PCH all necessary consents and documentation to permit PCH to bill and collect for Services under this Agreement. All such fees shall accrue and belong to PCH. The execution of this Agreement by Physician shall be deemed an assignment by Physician to PCH of all fees and accounts for Services rendered by Physician pursuant to this Agreement. To the extent necessary or appropriate to accomplish the intent of this Section, and consistent with applicable laws, Physician shall execute such additional documents as may be reasonably requested by PCH, including without limitation assignments of all fees and accounts for Services rendered by Physician pursuant to this Agreement.

**2.4 HITECH Receipts.** Physician acknowledges that, notwithstanding any other provision of this Agreement, any funds received by Physician pursuant to the HITECH provisions of the American Recovery and Reinvestment Act of 2009 for "meaningful use" of health information technology (HITECH Receipts) shall be the property of PCH and Physician hereby irrevocably assigns to PCH any such HITECH Receipts.

**2.5 Third-Party Payors.** If PCH contracts with or wishes to contract with a public or private third-party payor, or any other purchaser of healthcare services, and the terms of the proposed arrangement include or require an agreement regarding fees for Services, Physician will cooperate with PCH in negotiating the terms of the contract and will execute such documents and agree to such terms as are necessary for PCH to establish the contract and to bill for Services as required by the contract. Physician shall cooperate with PCH in monitoring the allocation of resources and the quality and cost effectiveness or treatment provided to patients who are enrolled in such third-party reimbursement programs, subject to the terms of the agreements that govern such.

**2.6 Restrictions.** Physician may not, in Physician's capacity as an employee of PCH and without PCH's consent, endorse any note or act as an accommodation endorser or surety for any person on behalf of PCH or its affiliates; borrow or lend money on behalf of PCH or its affiliates; make, deliver, or accept any commercial paper or execute any

mortgage, bond, or lease or purchase or enter into any contract to purchase, or sell or contract to sell any property of or for PCH or its affiliates; assign, mortgage, sell, or in any way encumber any interest in PCH; enter into any agreement binding or purporting to bind PCH or its affiliates or create any obligations on the part of PCH or its affiliates.

**2.7 Fair Market Value Review.** Compensation paid to Physician may be subject to annual review by PCH and PCH may, based upon such review, adjust the compensation provided hereunder, including if, in the reasonable judgment of PCH, such compensation no longer represents fair market value or violates or appears to violate or jeopardize: (i) PCH's status under § 501(c)(3) or § 509(a) of the Internal Revenue Code; (ii) the Medicare and Medicaid fraud and abuse/anti-kickback statutes or regulations; (iii) the federal Physician Self-Referral statute or regulations; (iv) any applicable state law addressing physician/hospital compensation or referral relationships; or (v) the tax-exempt financing of PCH. In the event PCH adjusts the compensation hereunder in accordance with this provision, the parties shall either amend this Agreement or terminate this Agreement and enter into a new agreement, as allowed by applicable law, with such amendment or new agreement to reflect the necessary adjustments to compensation and other terms and conditions as agreed upon by the parties. In evaluating compensation hereunder, PCH shall take into account Physician's performance and productivity in generating work RVUs, as well as time spent providing other services such as teaching and education, administrative and medical director duties, and research activities. With respect to physicians engaged in research or other activities funded by federal or other grant monies to which a compensation cap applies, PCH may, in its discretion, adjust such physicians' compensation on a pro rata basis consistent with the applicable compensation cap.

### **ARTICLE III STANDARDS, LICENSES, CREDENTIALS, QUALIFICATIONS**

**3.1 Professional Standards.** Physician covenants that at all times during the term of this Agreement, Physician shall provide all Services in accordance with applicable medical and ethical professional standards and:

**3.1.1** Physician shall participate in appropriate continuing medical education activities as necessary to maintain Physician's license to practice medicine and to prescribe medications, each without restriction, as well as to maintain Physician's clinical knowledge and proficiency.

**3.1.2** Physician shall actively participate in quality assurance, utilization review, clinical protocols, risk management and compliance activities as conducted by PCH and provide continuing medical education to PCH nurses and other personnel as requested by PCH.

**3.1.3** In providing Services, Physician shall comply with all applicable federal, state and local laws and regulations including, without limitation, the rules and provisions relating to the billing and documentation of Services for Medicare and AHCCCS and abstaining from unethical and unprofessional conduct as defined by

Title 32, Arizona Revised Statutes.

**3.1.4** Physician shall comply with all PCH policies, procedures and protocols, as they may be amended by PCH from time to time. This requirement applies, without limitation, to all PCH human resource policies, all PCH policies on copyrights, inventions, patents and grants, and all PCH policies on publication and advertisement pertaining to research or Services arising out of or in connection with Physician's employment at PCH. Physician shall not cause or create a hostile work environment for PCH employees, patients, guests or medical staff or engage in other conduct that imposes liability upon PCH.

**3.1.5** Physician shall comply with all PCH Medical Staff Bylaws, policies, procedures, rules and regulations, as they may be amended.

**3.1.6** Physician shall provide Services promptly and efficiently.

**3.1.7** Physician shall prepare accurate and timely medical records and other documents as requested by PCH including, without limitation, records and documents related to Services. Physician shall prepare the records in accordance with all applicable federal, state and local laws and regulations, including all regulations relating to billing for the Services. All medical files and patient records for patients treated by Physician shall be maintained exclusively by PCH and shall be the property of PCH. Physician shall not sell, transfer, or assign any right to medical files or patient records to any third party.

**3.1.8** Physician shall satisfy all qualifications for insurability under the PCH risk management self-insurance program plan and/or the PCH professional liability coverage policy, as applicable for the particular specialty/subspecialty practiced by Physician.

**3.2 Licenses and Credentials.** Physician covenants that at all times during the term of this Agreement, Physician shall maintain all licenses and credentials as may be necessary to perform the Services.

**3.2.1** Physician warrants that at all times during the term of this Agreement, Physician shall be duly licensed to practice medicine without restriction in the State of Arizona and shall be duly authorized by all applicable law to prescribe medications and to make diagnoses. Physician further warrants that Physician has never had such license or authorization(s) in Arizona or any other state limited, withdrawn, suspended, curtailed, placed on probation, or revoked, except as otherwise timely disclosed to PCH. Physician warrants that at all times during the term of this Agreement, Physician shall maintain an Arizona license to practice medicine with no restrictions or suspensions and a DEA number with no restrictions or suspensions.

**3.2.2** Physician warrants that Physician has never been denied appointment to medical staff membership, reappointment to medical staff membership, or clinical privileges at any healthcare facility, except as otherwise timely disclosed to PCH.

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Physician further warrants that Physician's medical staff membership and/or clinical privileges at a healthcare facility have never been limited, suspended, curtailed, revoked, placed on probation, or withdrawn as a result of action (whether formal or informal) initiated by any healthcare facility or its medical staff, except as otherwise timely disclosed to PCH.

**3.2.3** During the term of this Agreement, Physician shall maintain clinical privileges in good standing on PCH's active Medical Staff, and shall maintain clinical privileges in good standing at any other facility that grants Physician such privileges.

**3.2.4** Physician shall, at PCH's request, apply for and maintain credentials to participate in any managed care plan in which PCH participates as a provider.

**3.2.5** During the term of this Agreement, Physician shall be a participating provider in good standing and without limitation under Medicare, AHCCCS, and other health programs offered by the federal or state governments and shall not be placed on the sanctions list issued by the Office of the Inspector General of the Division of Health and Human Services.

**3.3 Conflicts of Interest.** Physician shall refrain from activities that would be considered a conflict of interest with respect to PCH in accordance with PCH's Conflict of Interest Policies of the Hospital and the Medical Staff.

**3.4 Compliance.** Physician agrees to, and at all times during the term of this Agreement shall, comply with all laws, rules and regulations impacting Physician, and/or PCH. Physician acknowledges that PCH has adopted a corporate compliance program known as PCH's Business Integrity Program ("Compliance Program"). The Compliance Program's purpose is to ensure that the provision of, and billing for, all healthcare services by PCH are in full compliance with applicable federal and state laws. To facilitate this purpose, PCH has adopted an organizational Code of Conduct and compliance related policies and procedures. Physician shall support and comply with PCH's Compliance Program and PCH's policies and procedures that PCH currently has or may have in the future, including, but not limited to, policies relating to the Anti-Kickback Statute, the Stark Law, and conflict of interest Policies of the Hospital and the Medical Staff. Physician certifies that Physician has received, read, understood, and shall abide by PCH's Code of Conduct. Physician shall participate in training and education sessions relating to the Compliance Program, including sessions related to documentation, coding, billing, the Anti-Kickback Statute, the Stark Law, and other relevant compliance requirements, as requested by PCH.

**3.5 Cooperation in Licensure, Certification and Regulatory Requirements.** Physician shall cooperate fully with and assist PCH in fulfilling the requirements of all required state licensure, Medicare and AHCCCS certification, Joint Commission programs, and any and all applicable federal, state and local laws and regulations.

**3.6 Physician Representations.** Physician expressly represents and warrants to PCH that as of the Commencement Date of this Agreement, Physician is, and during the term of this Agreement shall remain, board eligible or board certified in Physician's area of specialty and subspecialty (as applicable), as described in Schedule "B" and as may be required by the PCH Medical Staff Bylaws. Physician expressly represents and warrants that Physician is not and at no time has been listed by a federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in: (i) federal healthcare programs, including Medicare or Medicaid (this includes the U.S. Department of Health and Human Services ("HHS") Office of Inspector General's ("OIG") List of Excluded Persons/Entities); or (ii) Federal procurement or non-procurement programs, which includes the General Services Administration ("GSA") List of Parties Excluded from Federal Procurement and Non-Procurement Programs. Physician further represents and warrants that no proceedings or investigations are currently pending or to Physician's knowledge threatened by any federal or state agency seeking to exclude Physician from such programs or to sanction Physician for any violation of any rule or regulation of such programs and none of these things shall occur during Physician's employment with PCH.

**3.7 Notice.** Physician has disclosed and will disclose to PCH in writing within three (3) calendar days after Physician becomes aware of, whether occurring at any time during the five (5) years prior to the Effective Date or at any time during the term of this Agreement: (i) any claims, charges, investigations, settlements, judgments, threatened actions (whether or not filed in court), or actions against Physician by any person, entity or governmental agency or entity, including without limitation any medical malpractice action initiated against Physician (whether such actions arise out of events occurring prior to or after Physician's employment with PCH); (ii) any actual or threatened disciplinary, peer review or professional review investigation by any licensure board, medical school, professional society or association, third-party payor, peer review or professional review committee or body, or governmental agency, including without limitation any proceeding or investigation that could result in the suspension, revocation, probation, restriction, investigation or any other actions taken by the Arizona Medical Board or any other state licensure agency concerning Physician's ability to practice medicine in Arizona or any other state or the accusation, indictment or conviction of Physician for a crime of any nature, or any proceeding or investigation that could affect Physician's ability to participate as a provider in any federal, state or local governmental program, including Medicare, Medicaid, and AHCCCS; or (iii) failure by Physician to meet the requirements of this Article III. Physician shall then cooperate with PCH in providing information so that PCH can determine the nature of the issue(s) raised and what response by PCH may be appropriate. Physician recognizes that failure to provide any notice or cooperation required by this Section constitutes a material breach of this Agreement.

#### **ARTICLE IV** **RESTRICTIVE COVENANTS**

**4.1 Confidential Information.** During Physician's employment with PCH, Physician

will have access to business information regarding PCH that (i) qualifies as a trade secret under applicable law, (ii) derives value (whether current or potential) from not being generally known to the public or other persons in the same industry as PCH, or (iii) is treated as confidential by PCH and has not become publicly known ("Confidential Information"). Examples of Confidential Information include but are not limited to: the identity of patients, managed care contracts, third-party payor arrangements, health care provider agreements, business plans, strategic plans, marketing strategies, financial information, compilations of data and analyses, techniques, systems, computer programs, formulae, existing research or research plans, records, reports, manuals, models, Intellectual Property (as defined below), and patient information.

**4.1.1** During Physician's employment with PCH, Physician shall not disclose or use any Confidential Information except to the extent such disclosure or use is required in the performance of Services for PCH and as authorized by PCH. Physician shall use Physician's best efforts to safeguard Confidential Information and protect it from disclosure, misuse, loss or theft. Physician shall not remove or transfer any Confidential Information from the premises of PCH except as may be required in the performance of Services for PCH and as authorized by PCH.

**4.1.2** After termination of Physician's employment with PCH for any reason, Physician shall return to PCH any Confidential Information removed or transferred from PCH premises pursuant to subsection 4.1.1, and Physician shall not use any Confidential Information or disclose any Confidential Information to any third party. Nothing in this provision shall be construed to interfere with Physician's ability to provide ongoing treatment to patients so long as such treatment is consistent with Physician's obligations under this Article IV.

**4.1.3** Physician shall maintain the confidentiality of all medical records and protected health information as required by federal or state laws and regulations (including, without limitation, the Privacy and Security Standards adopted under the Health Insurance Portability and Accountability Act (HIPAA)), PCH Medical Staff Bylaws, policies, procedures and rules, and PCH policies, procedures and rules as they may be amended. All records pertaining to the provision of Services under this Agreement are the property of PCH and may not be removed without PCH's specific consent. However, Physician may have access to such records, both during and after the term of this Agreement, to the extent permitted by applicable law, for all legitimate purposes, including patient care and the defense of legal claims or disciplinary proceedings.

**4.2 Intellectual Property.** During Physician's Employment with PCH, Physician's and PCH's respective ownership rights in Intellectual Property, as defined below, are subject to the terms and conditions contained herein and in PCH's intellectual property policy, as may be implemented and as may be amended from time to time ("IP Policy"). The current IP Policy is attached hereto as Schedule F and is hereby incorporated by this reference. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the IP Policy, the terms and conditions of the IP Policy shall govern.

**4.2.1** For purposes of this Agreement, "Intellectual Property" means patents, patent applications, patentable inventions, inventions, discoveries, concepts, developments, processes, methods, drawings, computer programs, compositions of matter, ideas, copyrights, copyright registrations, copyrightable material, writings, works of authorship, trade secrets, trademarks, service marks, know-how, or any other rights in intellectual property, whether created or established by registration or operation of law, created, conceived and/or reduced to practice in whole or in part by Physician with the use of PCH resources, derived from the activities of Physician during Employment by PCH, or otherwise related to any operations or activities of PCH.

**4.2.2** PCH shall solely own all Intellectual Property, whether created by Physician or others and whether created jointly or alone during the entirety of Physician's Employment with PCH, whether under the terms of this Agreement or prior agreements. Physician shall promptly disclose to PCH all Intellectual Property. Physician assigns to PCH all right, title and interest Physician may have or may acquire in and to all Intellectual Property in the United States and throughout the world and any related rights. Physician shall sign and deliver to PCH any documents that PCH considers desirable to provide evidence of (i) the assignment of all rights of Physician in and to such Intellectual Property, and (ii) the ownership of such Intellectual Property. In the event that Physician is unable to execute and/or deliver such documents, Physician irrevocably designates and appoints PCH as Physician's agent and attorney-in-fact to act for and on Physician's behalf to enable PCH to obtain and enforce its rights to the Intellectual Property in the United States and throughout the world. Physician shall not, without the prior written consent of PCH, which may be withheld at PCH's sole discretion, disclose to any third party any Intellectual Property, publish any documents related to or outlining any Intellectual Property or file any applications covering any of the Intellectual Property. The obligations in this section shall continue after termination of Physician's Employment with PCH.

**4.2.3** Prior to becoming employed by PCH, Physician hereby acknowledges and agrees that he/she has not created, discovered, developed or acquired ownership rights in any Intellectual Property, with the exception of the Intellectual Property listed on Schedule "D."

**4.3 Restrictions Regarding Employees and Others.** During Physician's employment with PCH and for a period of twelve (12) months after termination of that employment for any reason, Physician shall not (without the express written consent of the CEO of PCH, which consent may be withheld in PCH's sole discretion), directly or indirectly, on Physician's own behalf or on behalf of another person or entity, hire or attempt to hire any employee, independent contractor, or agent of PCH or solicit, induce or attempt to influence (or attempt to solicit, induce or influence) any such person to terminate his or her employment with PCH.

**4.4 Restrictions Regarding Competition.** Physician and PCH acknowledge and agree that PCH expends substantial time and resources in identifying, recruiting and

selecting pediatricians to provide Services at PCH and other PCH facilities, that substantial time and resources would be required to replace Physician and that the replacement period may reasonably be expected to last twelve (12) months or longer. Further, PCH and Physician acknowledge that PCH anticipates that Physician may perform Services at multiple PCH facilities in the Phoenix metropolitan area and that such facilities lie in varying proximities to the facilities of PCH's competitors. Accordingly, and in light of Physician's access to Confidential Information described herein, during Physician's employment with PCH and for a period of twelve (12) months after termination of that employment pursuant to Sections 6.2, 6.3, 6.5 or 6.6 of this Agreement or following expiration of the Term of Employment resulting from Physician's failure to accept an offer of an extended Term of Employment as set forth in a new Schedule "B" (the "Restricted Period"), Physician shall not (without the express written consent of PCH, which consent may be withheld in PCH's sole discretion), directly or indirectly, provide medical services or consultation, whether individually or through any other person, as an employee, contractor, owner, manager, financing source or other similar means, in the same pediatric specialty or subspecialty as the pediatric specialty or subspecialty in which Physician provided Services to PCH within a radius of thirteen (13) miles of any PCH facility in which Physician regularly provided Services during the twelve (12) month period prior to termination of Physician's employment at PCH (or such shorter period if Physician was not employed by PCH for twelve (12) months) (the "Restricted Area"). In the event that a court of competent jurisdiction determines that the geographic restriction of thirteen (13) miles is too broad, the parties agree to reduce such restriction to a radius of eleven (11) miles of any PCH facility in which Physician regularly provided services during the twelve (12) month period prior to termination of this Agreement. In the event that a court of competent jurisdiction determines that the geographic restriction of eleven (11) miles is too broad, the parties agree to reduce such restriction to a radius of five (5) miles of any PCH facility in which Physician regularly provided Services during the twelve (12) month period prior to termination of this Agreement. In the event that a court of competent jurisdiction determines that the geographic restriction of five (5) miles is too broad, the parties agree to reduce such restriction to a radius of two (2) miles of any PCH facility in which Physician regularly provided Services during the twelve (12) month period prior to termination of this Agreement. This provision does not limit Physician's ability to provide emergency, indigent or charity medical treatment within the Restricted Area during the Restricted Period or Physician's ability to secure privileges and provide medical services relating to emergency, indigent or charity medical treatment during the Restricted Period on a non-employment and non-contract basis at any other hospital located within the Restricted Area.

Physician shall be deemed to have regularly provided Services at a PCH facility if Physician provided Services at such facility an average of once per week or more during the twelve-month period prior to termination of Physician's employment at PCH (or such shorter period if Physician was not employed by PCH for twelve (12) months). Physician and PCH acknowledge and agree that by providing Services at a PCH facility an average of once or more per week Physician will become familiar with the facility, its staff, patients and referral sources, as well as the facility's other Confidential Information. Physician and PCH further acknowledge and agree that by providing services at a PCH facility an average of once or more per week Physician will represent and embody PCH's goodwill and reputation within the medical and business communities associated with the facility.



Accordingly, Physician and PCH acknowledge and agree that the Restricted Area as defined herein is reasonable.

If, for any reason, any provision of Section 4.4 is found upon final determination to be illegal or unenforceable, the remainder of the provisions of this Section 4.4 shall remain in full force and effect and the rights and obligations of the parties shall be construed and enforced as if this Section did not contain the provision held to be illegal or unenforceable. In addition, to the extent a provision of this Section 4.4 would be deemed unenforceable by virtue of its scope, but may be made enforceable by limitation thereof, each party agrees that this Agreement shall be reformed and amended so that the same shall be enforceable to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

Physician expresses, agrees, and acknowledges that the covenants contained in this Section 4.4 are necessary for PCH's protection because of the nature and scope of PCH's business and Physician's position with and services for PCH. Furthermore, Physician acknowledges that, in the event of a breach of any of these covenants, money damages will not sufficiently compensate PCH for its injury caused thereby, and Physician accordingly agrees that, in addition to such money damages, Physician may be restrained and enjoined from any continuing breach of any of these covenants without any bond or other security being required by a court. Physician acknowledges that any breach of any of these covenants would result in irreparable damage to PCH.

Physician expressly agrees and acknowledges as follows:

- (a) These covenants are reasonable as to time and geographical area and do not place any unreasonable burden upon Physician;
- (b) The general public will not be harmed as a result of enforcement of any of these covenants;
- (c) Physician has requested or has had the opportunity to request that Physician's personal legal counsel review these covenants; and
- (d) Physician understands and hereby agrees to each and every term and condition of these covenants.

**4.5 Non-Solicitation of Patients.** Physician acknowledges and agrees that the patients Physician treats during the term of this Agreement are patients of PCH. During Physician's employment with PCH and for a period of twelve (12) months after termination of that employment for any reason, Physician shall not (without the express written consent of the CEO of PCH, which consent may be withheld in PCH's sole discretion), directly or indirectly solicit or induce or influence (or attempt to solicit, induce or influence) any referral source to refer, or any PCH patient to receive treatment, diagnosis, or other healthcare services from any other physician, physician practice, hospital, or healthcare facility or entity, except as medically indicated in the professional opinion of the Physician.

**4.6 Extension of Twelve (12) Month Restriction.** If Physician breaches Physician's obligations under Sections 4.3, 4.4 or 4.5, the applicable twelve (12) month post-employment restriction shall be extended by and tolled for the length of time that Physician is in breach.

**4.7 Reasonableness of Restrictions.** Physician acknowledges and agrees that as a trusted professional employee of PCH, Physician will have access to information and relationships that place Physician in a position to cause immediate and irreparable harm to PCH should Physician's employment with PCH terminate. Physician further acknowledges and agrees that as an employee of PCH who regularly deals with PCH patients and referral sources and with the general public on PCH's behalf, Physician represents and embodies PCH's goodwill and reputation within the medical and business communities to a degree that justifies precluding Physician from competing with PCH for a period of time after Physician's employment with PCH ends. Accordingly, the restrictions set forth above are reasonable, calculated only to protect PCH's legitimate business interests, and designed to allow PCH to protect its investment in Physician and to recover from Physician's departure while not unduly restricting Physician's efforts to work in Physician's chosen profession and specialty or prohibiting Physician from seeing patients.

**4.8 Relief.** Physician acknowledges that any violation of this Article will result in immediate and irreparable injury to PCH, the exact monetary amount of which will be difficult or impossible to ascertain, and that the remedies at law for any such violation will not be reasonable or adequate for such a violation. Accordingly, should Physician violate any of the provisions of this Article, PCH shall, in addition to any other remedies that may be available at law or in equity, be entitled to a temporary or permanent injunction and/or a decree of specific performance from any court of competent jurisdiction without the necessity of proof of actual damages.

**4.9 Subsequent Disclosure.** For twelve (12) months after termination of Physician's employment with PCH for any reason, if Physician considers employment with any entity or group practice located within the Phoenix, Arizona metropolitan area, Physician shall, disclose to any such entity or group the post-employment restrictions contained in this Article before accepting such employment.

## **ARTICLE V** **PCH RESPONSIBILITIES**

**5.1 Compensating Physician.** As of the Commencement Date, PCH shall provide Physician with payment of all earned compensation pursuant to PCH's normal payroll practices.

**5.2 Space, Equipment, Furnishings.** As of the Commencement Date, PCH shall provide the office and clinic space, furnishings, equipment, utilities, supplies and support staff services reasonably necessary in the opinion of PCH to facilitate the provision of Physician's Services.

**5.3 Healthcare Facility Licenses.** PCH shall secure and maintain such healthcare

facility licenses and certifications as necessary for the operation of PCH's healthcare facilities under Arizona law and to qualify as a provider under Medicare and AHCCCS.

**5.4 Professional Liability Coverage.** As of the Commencement Date, PCH shall provide professional liability insurance (either through a purchased insurance product or a comparable program of self-insurance) for Physician with coverage extending to claims for professional liability (malpractice) arising out of the duties and responsibilities undertaken by Physician under this Agreement within the scope and term of Physician's employment with PCH. Such professional liability insurance shall be in the minimum amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the annual aggregate. This insurance shall not cover services or activities which are outside the scope of Services provided under this Agreement but shall include coverage for claims arising from Services performed during the term of this Agreement notwithstanding the date upon which such claims are first asserted. Physician shall obtain, maintain and be financially responsible for any tail coverage required to cover claims for professional services performed prior to the Commencement Date in accordance with applicable law. PCH shall have no liability for services rendered by Physician prior to the Commencement Date. As a condition precedent to professional liability coverage, Physician shall cooperate in the investigation and a common defense of all covered claims. In the event that Physician fails to cooperate in the investigation or common defense of a covered claim PCH may, in its sole discretion, terminate coverage and/or employment. Physician shall not have authority to select or direct defense counsel or to consent to any settlement.

## **ARTICLE VI**

### **TERM AND TERMINATION**

**6.1 Term of Employment.** Physician's employment under this Agreement shall begin on the Commencement Date and shall remain in full force and effect throughout the Term of Employment as set forth in Schedule "B" unless earlier terminated as provided herein. Certain provisions of this Agreement impose obligations on the parties after termination of Physician's employment with PCH and shall survive termination of this Agreement including but not limited to insurance, cooperation in event of a claim, confidentiality, non-competition, non-solicitation and this Section. All other provisions of this Agreement shall terminate as of the date Physician's employment terminates. The "Commencement Date" is the later of (a) the date on which Physician is anticipated to begin his or her employment ("Projected Commencement Date"), as set forth in Schedule "B"; or (b) the date Physician has obtained both (i) an unrestricted and unlimited license to practice medicine in the State of Arizona and (ii) medical staff membership and clinical privileges on PCH's Medical Staff (collectively, "Licensure"). Notwithstanding the foregoing, if Physician has not obtained Licensure within ninety (90) calendar days following the Projected Commencement Date ("Commencement Deadline"), the employment will not commence and this Agreement will, in the sole discretion of PCH, become null and void, and Physician will in such event have no recourse against PCH.

**6.2 Termination by PCH without Cure Period.** PCH may terminate Physician's employment immediately upon giving written notice to Physician upon the occurrence of

any of the following:

**6.2.1** Physician dies or is unable to perform Services, putting forth the FTE effort as described in Schedule "B" under this Agreement, including if Physician becomes disabled such that, as a result of such disability, Physician is unable with reasonable accommodation to perform such essential functions of the practice of medicine in his or her specialty. Termination by PCH under this subsection is subject to all applicable federal, state and local laws. In the event a dispute arises between Physician and PCH concerning Physician's ability to perform the essential functions of the practice of medicine in his or her specialty or subspecialty as referenced above, Physician shall, at PCH's expense, submit to examination by a competent physician, mutually agreeable to the parties, and the physician's opinions as to Physician's capability to so perform will be final and binding.

**6.2.2** Physician is limited in the practice of medicine or the prescribing of medication including loss or suspension of Physician's license to practice medicine or authority to prescribe controlled substances.

**6.2.3** Exclusion or suspension of Physician from the Medicare, Medicaid, AHCCCS or other federal, state or local sponsored healthcare program; placement of Physician on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services; placement of Physician on the excluded parties list issued by the Government Accountability Office.

**6.2.4** Physician's violation of federal, state or local law, rule or regulation, or PCH's Compliance Program, or PCH's rules, regulations or procedures, including those relating to the billing and documentation of Services.

**6.2.5** Denial, loss, limitation, or suspension of Physician's Medical Staff privileges at PCH or any other facility.

**6.2.6** Physician's violation of PCH Medical Staff Bylaws, policies, rules, regulations or protocols that, in the opinion of PCH, jeopardizes patient care or safety.

**6.2.7** Actions by Physician that, in the judgment of PCH, would make the continued presence or service of Physician detrimental to the interests of PCH, its patients, its personnel or the medical staff.

**6.2.8** Physician engages in drug or alcohol abuse, or in any other violation of the PCH substance abuse policy.

**6.2.9** Physician is found guilty of unprofessional or unethical conduct by, or is expelled, suspended or forced to resign from, any medical professional board, institution, organization or society.

**6.2.10** Physician violates the confidentiality, solicitation, or noncompetition provisions set forth in Article IV of this Agreement.

**6.2.11** Physician is charged with, convicted, or pleads no contest to, a felony, any criminal act involving health care or any other criminal act that PCH, in its sole discretion, believes negatively impacts, or could negatively impact, Physician's fitness or ability to practice; or

**6.2.12** Physician loses the legal authority to work in the United States.

**6.3 Termination by PCH with Cure Period.** PCH may terminate Physician's employment for a material breach of this Agreement by Physician (other than those reasons set forth in Section 6.2, which calls for no cure period) after giving Physician written notice of the alleged breach and allowing Physician thirty (30) days to fully cure. No notice and opportunity to cure shall be required if the same breach has occurred more than once in any eighteen (18)-month period and written notice and opportunity to cure were provided with respect to the previous breach(es).

**6.4 Termination by PCH with Ninety (90) Days' Notice.** PCH may terminate Physician's employment for any reason or no reason and in PCH's sole discretion after giving Physician ninety (90) days written notice. PCH may, at its option, require that Physician no longer provide Services and vacate PCH premises at any time during, or for the entirety of, the ninety (90)-day notice period. PCH shall continue to provide Physician with all compensation and benefits Physician would have received had Physician continued working during the ninety (90) day notice period.

**6.5 Termination by Physician.** Physician may terminate Physician's employment relationship with PCH in accordance with the following:

**6.5.1** If PCH is in material breach of this Agreement, Physician may terminate the employment after giving PCH written notice of the alleged breach and allowing PCH thirty (30) days to cure. No notice and opportunity to cure shall be required if the same breach has occurred more than once in any eighteen (18)-month period and written notice and opportunity to cure were provided with respect to the previous breach(es).

**6.5.2** Physician may terminate employment with PCH for any reason or no reason after giving PCH ninety (90) days' written notice. The terms of Section 6.4 shall apply in any such situation.

**6.5.3** If Physician fails to provide the notices specified above, Physician will not be paid for any unused paid time off; any such time will be forfeited. Under no circumstances shall Physician terminate the employment with PCH in a way that threatens to compromise patient care and safety.

**6.6 Termination by Mutual Assent.** The parties may terminate Physician's employment at any time by mutual written agreement.

**6.7 Suspension.** PCH may immediately suspend the Services of Physician under this Agreement, without pay, by written notice to Physician in the event that PCH has

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reasonable grounds to believe that there has been an event or an offense that is a basis for terminating this Agreement under Section 6.2 above, pending an investigation. Physician may not provide the Services or exercise any clinical privileges at any facility of PCH while the suspension is in effect.

**6.8 Medical Staff Privileges Following Termination.** Physician shall remain eligible for Medical Staff privileges at PCH following termination of employment subject to demonstration by Physician that he or she satisfies all requirements for obtaining and maintaining privileges at PCH, including obtaining and maintaining professional liability insurance coverage.

**6.9 Return of PCH Records and Property upon Termination.** Except as otherwise expressly provided herein, immediately upon termination of Physician's employment for any reason whatsoever, Physician shall return to PCH:

**6.9.1** Any and all records belonging, in whole or in part, to PCH. "Records" means all information, however recorded or stored, including without limitation documents, facsimiles, video and audio tapes, computer discs and printouts, microfiche, handwritten notes, files, binders, books, booklets, plan, reports, pictures, graphs, slides, articles and any and all other forms of physically or electronically stored information. Except as otherwise may be provided in this Agreement, upon the termination of this Agreement for any reason, PCH shall have the exclusive possession of all medical files and patient records now or hereafter owned, prepared or maintained by Physician for patients treated during the term of this Agreement. To the extent required by applicable law, PCH shall grant Physician access to these records and the right to copy the same at Physician's cost. Notwithstanding anything in this Agreement to the contrary, upon termination of this Agreement PCH will transfer copies of records to Physician upon the request of a patient in accordance with applicable laws and regulations, as well as PCH's policies and procedures.

**6.9.2** All PCH property in Physician's possession, including but not limited to laptops, cell phones, and pagers, and any materials relating to the services performed by Physician at PCH or other locations as may be designated by PCH under this Agreement.

## **ARTICLE VII**

### **DISPUTE RESOLUTION**

**7.1 Internal Dispute Resolution.** In the event of a claim or dispute, Physician shall submit to PCH's Chief Operating Officer, Phoenix Children's Medical Group ("PCMG") a written description of any controversy, claim or dispute arising out of or in any way relating either to this Agreement or Physician's employment or termination of employment with PCH, along with a written statement of the resolution Physician desires. If the matter is not resolved to Physician's satisfaction by the Chief Operating Officer, PCMG within ten (10) business days, Physician shall submit to PCH's Physician or Surgeon-in-Chief the same written description and statement of resolution sought. If the matter is not resolved to Physician's satisfaction by the Physician or Surgeon-in-

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Chief within an additional ten (10) business days, Physician shall submit to PCH's CEO the same written description and statement of resolution sought. If the matter is not resolved to Physician's satisfaction by the CEO within an additional ten (10) business days, and the dispute is legal in nature, Physician shall, if Physician wishes to pursue the matter, proceed with the external dispute resolution procedures set forth in Section 7.2 below and the attached Schedule "E." Physician's compliance with this Section 7.1 is a necessary prerequisite for invoking the external dispute resolution procedures set forth in Section 7.2 and Schedule "E."

**7.2 External Dispute Resolution.** With the sole and exclusive exception of disputes arising out of Article IV of this Agreement including, without limitation, injunction proceedings initiated by PCH as contemplated by Section 4.8, all legal controversies, claims or disputes arising out of or in any way relating either to this Agreement or Physician's employment with PCH shall, if they are not resolved by the procedures set forth in Section 7.1 above, be resolved by the alternative dispute resolution procedures set forth in the attached Schedule "E."

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**8.1 Assignment to Third Parties.** Neither this Agreement nor any of the rights or obligations arising hereunder may be assigned by any party to this Agreement to any third party without the prior written consent of the other party to this Agreement except that PCH may, without such consent, assign all such rights and obligations to a wholly-owned subsidiary or affiliate of PCH or to a successor in interest to PCH that shall assume all obligations and liabilities hereunder.

**8.2 Severability.** In the event that any provision or part of any provision of this Agreement should be held to be void, unlawful or for any reason unenforceable, the remaining portions of this Agreement shall remain in full force and effect unless, as a result of the unenforceability of a provision, the fundamental purpose of the Agreement is thwarted.

**8.3 Governing Law.** This Agreement shall be governed by the laws and judicial decisions of the state of Arizona and any applicable federal laws. Venue shall lie in Maricopa County, Arizona.

**8.4 Subsequent Litigation Costs.** In the event of any legal proceeding in which one party alleges that the other has breached this Agreement, the prevailing party shall recover its litigation costs (including, without limitation, attorneys' fees, expert witness fees and both taxable and non-taxable costs) incurred in connection with the dispute underlying such legal proceeding with the sole exception of the prevailing party's share of the administrative costs of arbitration as set forth in Section 14 of Schedule "E".

**8.5 Notices.** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and delivered by hand to the person designated below or sent by certified or registered mail, return receipt requested, to:

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To Physician: Richard Frye, M.D.  
10 Winthrop Pt.  
Little Rock, AR 72211

To PCH: Phoenix Children's Hospital  
1919 E. Thomas Road  
Phoenix, Arizona 85016  
Attn: General Counsel

**8.6 Cooperation in Dispute Resolution.** Following termination of Physician's employment with PCH for any reason, Physician shall be reasonably available to consult with PCH or any of its affiliates with regard to any potential or actual dispute PCH or any of its affiliates may have with any third party, and to testify about any such matter should such testimony be required.

**8.7 Headings.** Headings used in this Agreement, as designated by bold typeface, are for convenience only and shall not be used to interpret or construe the Agreement's provisions.

**8.8 Compliance and Changes in Law or Interpretation.** Physician and PCH shall each comply with all applicable laws and regulations in performing its obligations under this Agreement. If any legislation, regulation or government policy is passed or adopted, or if current or new laws, regulations or policies are interpreted in a manner that would materially affect either party's participation in or implementation of this Agreement as written, the party raising such concern shall provide notice of such law, regulation, policy or provision to the other party, and the parties agree to negotiate in good faith to modify the terms of this Agreement to comply with the applicable law, regulation or policy. If the parties cannot agree upon the necessary modification, either party may terminate this Agreement on thirty days advance written notice. Further, if at any time before the expiration of this Agreement, any federal, state or local regulatory body, including but not limited to the Centers for Medicare and Medicaid Services ("CMS"), the Division of Health and Human Services or the Internal Revenue Service, determines that this Agreement is illegal or jeopardizes PCH's tax status or otherwise materially adversely affects PCH's activities or business, the governing body for PCH may, in its sole discretion, terminate this Agreement with such notice as it deems appropriate.

**8.9 Modifications/Waivers.** No modifications, amendment or waiver of any of the provisions contained in this Agreement, nor any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any party hereto unless made in writing and signed by such party or by a duly authorized officer or agent of such party. The waiver in any particular instance or series of instances of any term or condition of this Agreement or any breach thereof by any party shall not constitute a waiver of such term or condition or of any breach thereof in any other instance.

**8.10 Incorporation of Schedules.** All of the attached Schedules are incorporated into



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and shall be considered part of this Agreement.

**8.11 Assistance of Counsel.** Physician acknowledges that he or she has been provided with an opportunity to review this Agreement with legal counsel prior to signing and therefore agrees that neither party shall be deemed to be the Agreement's drafter for purposes of its construction or interpretation.

**8.12 Integration.** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the parties to this Agreement concerning the subject matters covered by this Agreement and supersedes all prior agreements, letters of intent or understandings of any nature whatsoever between the parties with respect to the subject matter covered herein. No other agreements or understandings of any kind concerning the subject matters covered by this Agreement, whether express or implied in law or fact, have been made by the parties to this Agreement except as specifically set forth in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have approved and executed this Agreement on the dates appearing below.

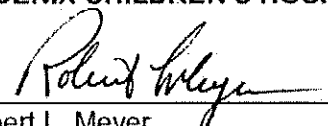
Dated: 8/8/17

PHYSICIAN

  
Richard Frye, M.D.

Dated: 8/16/17

PHOENIX CHILDREN'S HOSPITAL, INC.

  
Robert L. Meyer  
President and Chief Executive Officer