(5)

19072

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley. Circuit Court Judge

Case No. 06-CP-32-0371

J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., ... Respondents.

V.

Columbia Heart Clinic, P.A., ... Appellant.

RECORD ON APPEAL
Volume I

A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS & BABCOCK, L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

ATTORNEYS FOR APPELLANT

Charles F. Thompson, Jr.
Michael D. Malone
MALONE, THOMPSON, SUMMERS & OTT, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
(803) 254-3300

ATTORNEYS FOR RESPONDENTS

RECEIVED
MAR 2 9 2011
SC Court of Appeals

Index

Volume 1

Orders

Order of the Honorable William P. Keesley
Dated September 30, 2010 1

Consent Order consolidated 06-CP-32-0371 and 06-CP-32-1497
Filed: October 17, 2006 35

Order of Judge Patterson
Dated: April 4, 2006 37

Pleadings

Complaint in C/A 06-CP-32-0371,
Dated: February 2, 2006 40

Answer and Counterclaims in C/A 06-CP-32-0371
Dated: March 3, 2006 44

Complaint in C/A 06-CP-32-1497
Dated: April 27, 2006 51

Answer and Counterclaims in C/A 06-CP-32-1497
Dated May 31, 2006 121

Amended Complaint (in consolidated case)
Dated: December 27, 2007 133

Answer to Amended Complaint and Counterclaims of Defendant
(in consolidated case)
Dated: January 14, 2008 143

Motions and Memoranda

Defendant's Motion for Preliminary Injunction,
Filed March 7, 2006 154

Defendant's Motion for Partial Summary Judgment
Filed: April 18, 2008 156

Defendant's Memorandum of Law in Support of Partial Summary Judgment
Filed: April 18, 2008 310

Volume II

Defendant's Memorandum of Law in Support of Partial Summary Judgment
Filed: April 18, 2008 (continued from Volume I) 492

Columbia Heart Clinic's Pre-Trial Brief
Dated May 11, 2009 513

Columbia Heart Clinic's Post-Trial Brief
Dated June 3, 2009 562

Columbia Heart Clinic's Reply to Respondents' Post- Trial Brief
Dated: June 8, 2009 575

Columbia Heart Clinic's Supplemental Post-Trial Brief,
Dated: March 10, 2010 590

Columbia Heart Clinic's Reply to Plaintiffs' Supplemental Post-trial Brief,
Dated: March 19, 2010 600

Notice of Appeal
Filed: October 27, 2010 607

Transcripts

Trial before The Honorable William P. Keesley,
Dated: May 12-15 2009 609

Opening Argument of Mr. Thompson 613
Opening Argument of Mr. Babcock 627

Jennifer Feldman
Direct examination by Mr. Malone 646
Cross examination by Mr. Babcock 658
Redirect examination by Mr. Malone 680
Recross examination by Mr. Babcock 686
Redirect examination by Mr. Malone 687

Barry Feldman
Direct examination by Mr. Thompson 688
Cross examination by Mr. Babcock 716
Redirect examination by Mr. Thompson 777
Recross examination by Mr. Babcock 785

Tod Augsburger
Direct examination by Mr. Thompson 791
Cross examination by Mr. Babcock 818
Redirect examination by Mr. Thompson 821
Recross examination by Mr. Babcock 822
Redirect examination by Mr. Thompson 827

Charles Parker
Direct examination by Mr. Thompson 828
Cross examination by Mr. Babcock 839

Robert Schulze
Direct examination by Mr. Thompson 841
Cross examination by Mr. Babcock 854
Redirect examination by Mr. Thompson 872

Benjamin R. Jones
Direct examination by Mr. Thompson 883

Kevin Baugh
Direct examination by Mr. Thompson 892
Cross examination by Mr. Babcock 924
Redirect examination by Mr. Thompson 967
Recross examination by Mr. Babcock 975
Redirect examination by Mr. Thompson 978

Volume III

Donald H. Burkett
Direct examination by Mr. Thompson 982
Cross examination by Mr. Babcock 998
Redirect examination by Mr. Thompson 1005
Recross examination by Mr. Babcock 1006
Direct examination (on recall) by Mr. Thompson 1252

Cross examination by Mr. Babcock 1259

David Summer
Direct examination by Mr. Babcock 1007
Cross examination by Mr. Thompson 1043

Ben Jones
Direct examination by Mr. Babcock 1086
Cross examination by Mr. Thompson 1155
Redirect examination by Mr. Babcock 1203
Recross examination by Mr. Thompson 1206
Direct Examination (on recall) by Mr. Babcock 1247
Cross examination by Mr. Thompson 1258

Marty Ouzts
Direct examination by Mr. Babcock 1208
Cross examination by Mr. Thompson 1228
Redirect examination by Mr. Babcock 1245

Kevin Baugh
Direct examination (in rebuttal) by Mr. Thompson 1261
Cross examination by Mr. Babcock 1266

Exhibits to Trial
Plaintiffs' Exhibit 1 1280
Plaintiffs' Exhibit 2 1301
Plaintiffs' Exhibit 4 1322
Defendant's Exhibit 1 1369
Defendant's Exhibit 2 1382
Defendant's Exhibit 3 1407
Defendant's Exhibit 4 1411
Defendant's Exhibit 7 1412
Defendant's Exhibit 8 1438
Defendant's Exhibit 11 1439
Defendant's Exhibit 22 1469
Court Exhibit 2 (minus attachments) 1470

Certificate of Counsel 1472

COPY

FILED
2019 SEP 30 AM 10:42
BETH A. CARLSON
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF
)	COMMON PLEAS
COUNTY OF LEXINGTON)	CASE NO. 2006-CP-32-0371
J. KEVIN BAUGH M.D. AND BARRY J. FELDMAN M.D.)	
Plaintiffs,)	
v.)	ORDER
COLUMBIA HEART CLINIC P.A.)	
Defendant.)	

OVERVIEW

This is an extremely difficult case involving a Shareholder Physician Employment Agreement (the "Agreement") and the consequences of two physicians (the Plaintiffs) electing to leave the medical group Columbia Heart Clinic ("CHC" or "Medical Group"). The court is asked to decide certain issues without a jury. Other issues are reserved for a jury trial. The court finds that the covenant not to compete contained in Article 5 of the Agreement is unenforceable. The court finds that the remedies for breach of that covenant set forth in §5.4. are not enforceable. However, the court has had great difficulty in construing whether the separate forfeiture provisions related to accounts receivable and salary contained in Article 4 are enforceable. The conclusion is that the Plaintiffs are entitled to be paid the Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable computed §4.5.(f)(ii).

It is clear that the Plaintiffs are competing with the Defendant in the sense that competition is commonly understood. The Plaintiffs provided the

same service on the same medical facility campus in direct competition with CHC immediately upon leaving that group. The primary reason for finding the covenant in Article 5 unenforceable is that it contains a definition of "Compete" that is too broad to comply with South Carolina legal precedent. Public policy against prohibiting a person from engaging in his livelihood resulted in disfavoring covenants not to compete and requiring very strict construction.

Where the analysis becomes far more troublesome is in recognizing that the Agreement contains a blending of language from a previous contract. These parties had a previous agreement with a non-compete provision. The definition of "Compete" contained in Article 5 of the new Agreement is not contained in the old one. When the new Agreement was drawn, rather than having a definitional section defining the term "Compete" and using it consistently throughout the Agreement, the draftsman (who is very skilled in his art) decided to keep most of the language from the old agreement in Article 4[1] [specifically §4.5.(i)] and wrote that the Definitions in Article 5 (§5.2.) were, "For purposes of Article 5 of this Agreement . . .."

So, the forfeiture provisions of §4.5.(i) of the new Agreement do not, on their face, crave reference to the definitions in Article 5. Article 4, §5.(i) does not use the defined term, capital-C "Compete" as the triggering mechanism for the forfeiture provisions. It reads, as follows:

[1] The territorial restriction in the old agreement was for Richland and Lexington Counties. The new Agreement utilized a 20-mile radius restriction, as set forth herein.

> Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

As set out in more detail below, the court does not believe that a time restriction of 12 months or a territorial restriction of 20 miles would be unenforceable in this case. The court also does not find a restriction against the practice of medicine in the field of cardiology is too broad. What is too broad is the use of the word "assist" and the inclusion of prohibitions in the definition of "Compete" against such things as renting property to a cardiologist.

WPC #3

There is ambiguity, however, which requires the court to interpret the meaning and intention of the parties. Article 5 contains a Remedies section. It provides a liquidated damages provision in §5.4.(a). Under the plan, a physician could pay the liquidated damages, plus forfeit additional sums, and be allowed to practice in a manner that otherwise be in violation of the Agreement. It was described in testimony as "pay to play." After setting forth that the liquidated damages would be 100% of the Physician's Income

(a defined term), the language continues with a separate paragraph that reads, as follows:

> These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary contained herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitled Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

The testimony presented in this trial establishes, by a preponderance of the evidence, that the parties intended these remedies to apply in concert. It is the court's interpretation that the ability to practice cardiology in a manner that would otherwise be inconsistent with the Agreement was intended to be contingent on both the liquidated damages of Article 5 and the forfeitures of Article 4. By referencing the forfeiture provisions of Article 4 in Article 5's section on Remedies, the court finds that they must be held to be unenforceable.[2] The court also is persuaded by the logic of *Almers v. S.C. Nat'l Bank of Charleston*, 217 S.E.2d 135, 140 (S.C. 1975), as discussed below.

BACKGROUND

The Plaintiffs (Drs. Kevin Baugh and Barry Feldman) are cardiologists who presently own and operate the Lexington Heart Clinic

[2] It has not escaped the court's analysis that there could be a situation where a violation would trigger the liquidated damages provisions of Article 5, but not the forfeiture provisions of Article 4. However, the court has not been able to come up with a realistic scenario where that would invoke the Remedies section of Article 5, and it certainly is not the situation here.

(LHC) located on the Lexington Medical Center (LMC) campus. Before April 21, 2006, they were employed by the Defendant at CHC's Lexington, South Carolina office. After that time, both Plaintiffs left CHC's employ and opened LHC. The Plaintiffs each had essentially identical Employment Agreements (Agreements) with CHC that contained the non-competition provisions that are at issue in this case.

This action was brought by the Plaintiffs as a declaratory judgment action seeking a ruling that the non-competition provisions are invalid. CHC counterclaimed for breach of contract, breach of fiduciary duty, and breach of duty of loyalty. Plaintiffs subsequently added claims for breach of contract, violation of the South Carolina Wage Payment Act, and similar claims based on CHC's alleged failure to pay compensation due. This court, sitting non-jury, held a trial that began on May 12, 2009. This court heard testimony and took evidence on the non-jury questions of the validity of the non-competition provisions of the Agreements, and the Plaintiffs' claims to unpaid compensation under the South Carolina Wage Payment Act. The remaining claims, by consent of the parties, are to be heard after the resolution of these issues.

FACTUAL BACKGROUND

Dr. Feldman joined the Columbia Cardiovascular Clinic (a predecessor to CHC) in 1993. Dr. Baugh joined that same entity in 1996. That entity later merged with another cardiology practice to form CHC. At

the time of the merger, Dr. Feldman was an employee/shareholder of CHC (a corporation). Dr. Baugh became a shareholder of CHC in 1999.

Both Drs. Baugh and Feldman had employment agreements that preceded the 2004 Agreements. *(D. Ex. 2, D. Ex. 7)*. These prior agreements contained a non-competition provision at article 4(h) that provided, in relevant part:

> . . . in the event Physician continues or commences the active practice of medicine in the field of cardiology within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following the termination . . . of this Agreement, the Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5.

The "monies payable" in Section 4.5 was a share of the accounts receivable balance that existed on the date of the termination of the Agreement. There were no other penalties or forfeitures provided in these prior agreements. The purported consideration for these agreements was a compensation system that was attached, as exhibit A, to the agreements.

The Employment Agreements at issue in this case were entered into in July 2004. It was not contested that one of the main reasons CHC sought new employment Agreements in 2004 was because the CHC shareholders (through a separate entity) were embarking upon a substantial undertaking in constructing a new office building at the Richland Hospital campus of Palmetto Health.[3] The building was owned by Palmetto Heart MOB LLC ("the MOB") that was separate and independent of the entity CHC. The

[3] "Palmetto Health" is an umbrella organization under which several hospitals in the Midlands of South Carolina operate.

MOB was formed in 2003 and its operating agreement was signed in October 2003. *(D. Ex. 11).* The MOB operating agreement was drafted independently of the Agreements at issue in this case and contained no reference to CHC or to the shareholder's employment with CHC. The same shareholders of CHC owned a majority share of the building through the MOB, although there were other shareholders in the building. CHC was going to be the anchor tenant of the new building.

Primarily out of concern to protect the investment in the new building and in light of the large liabilities that were being assumed, some of the CHC shareholders sought to bind all the physicians more tightly to CHC. The mechanism CHC settled on to do this was to create a new and stronger non-competition covenant to the employment agreements. Discussions about such a new provision occurred in 2004. As late as July 2004, CHC was still weighing how to draft the new employment agreements. The Employment Agreements for Drs. Baugh and Feldman are dated July 15, 2004.

No separate monetary consideration was paid to any physician to sign the Agreement; but, there are promises that form consideration for the Agreement. The preamble in the Agreement refers to consideration being the "promises of the parties" and "other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged ... ." There was no change to the basic compensation system in connection with the 2004 Agreements. The Agreements provide new consideration for the new non-competition provisions as follows:

> Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event Physician violates Article V, no amount shall be paid pursuant to this section . . .

(P. Ex. 1 Article 4.5(l) page 9).

The new non-competition provision states:

> Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in section 5.1 below) with Medical Group.

(P. Ex. 1 Article 5.1(b) page 10).

"Compete" is defined as follows:

> "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of the Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as director, officer, employee, agent, consultant, lendor, lessor or otherwise) to engage in the Business in the Territory.

(P. Ex. 1 Article 5.2 page 10).

"The Business" is defined as ". . . the practice of medicine in the field of cardiology." *(Id. at § 5.1(a))*. The "Territory" is defined as "the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement." *(Id. at § 5.2(iii))*.

Another provision of the Agreement is pertinent to this decision. Article 4 of the Agreement gives the Physician a right to receive payment of

an amount of money calculated by using a formula tied to accounts receivable upon termination of employment. Termination can occur in several ways. The type of termination that occurred in this case was termination "without cause" and the Agreement required Drs. Baugh and Feldman to provide 90 days advance notice (which they did). The formula of accounts-receivable-based payment is calculated in the same manner as it was in the previous employment agreement.

According to the Agreement, if a departing physician breaches the non-competition provision, there are three significant consequences. First, Article 5.4(a) provides that a physician who practices in violation of the non-competition provisions must pay CHC an amount equal to the average W-2 income of all the physicians in the practice for the preceding year. Payment of this penalty "will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical group for such breach." *(P. Ex. 1, Article 5.4(a))*. The parties agreed this amount is $591,710. Second, as indicated above, the physician does not receive the consideration provided for in Article 4.5(l). Finally, the physician forfeits his claim to the accounts-receivable-based monetary payment provided for in Article 4. With regard to the forfeiture of accounts receivable, the definition of improper competition appears to be different, as discussed in the Overview above. It retains essentially the same non-competition language from Article 4(h) of the predecessor agreement that is quoted above. However, the new Agreement ties the accounts receivable based monetary forfeiture at Article 4

to the new non-competition provisions of Article 5 in at least two ways. First, Article 4.5 states that the forfeiture of the accounts receivable based monetary amount, together with the $591,710 amount, is restitution to CHC for damages it will suffer as a result of competition. Second, Article 5.4(a) similarly states that the forfeiture of the accounts receivable based monetary amount, along with the $591,710 amount, is required for the physician to practice in breach of the new non-competition provisions at §5.1.

The forfeiture of the accounts receivable based monetary amount was valued by Plaintiffs' expert at approximately $172,070 for Dr. Baugh, and $171,460 for Dr. Feldman.[4] *(P. Ex. 1 and P. Ex. 4).* CHC also claims that Drs. Baugh and Feldman owed it $24,888 (Dr. Baugh) and $55,273 (Dr. Feldman). Drs. Baugh and Feldman counterclaimed under the South Carolina Wage Payment Act for two weeks pay that was never paid by CHC [which amounts to $8,095.17 (Dr. Baugh) and $8,063.00 (Dr. Feldman)], and the accounts-receivable-based monetary amounts provided for in the Agreements. Dr. Feldman also claims unpaid Director fees in the amount of approximately $4,500. *(P. Ex. 4).*

Articles 4 and 5 both contain "acknowledgement of reasonableness" clauses. *(P. Ex. 1 Article 4.6 and 5.5 pages 9 and 12).* The Article 4

[4] During discovery, CHC was unable to provide an accounts receivable balance for the last day Drs. Baugh and Feldman worked. This amount is therefore estimated from the Plaintiffs' personal receipts after they left. Plaintiffs' expert also compared this number to the most recent available Accounts Receivable balances and determined that, if the most recent numbers were used, the amount would even be higher. Furthermore, Defendant's expert witness provided a report showing the amount of Accounts Receivable that Drs. Baugh and Feldman might have gotten to be $191,130. *(D. Ex. 22).*

provision purports to acknowledge the reasonableness of the forfeiture of accounts receivable and states:

> 4.6 Acknowledgement of Reasonableness. Physician acknowledges that the forfeiture [of the Accounts Receivable based monetary amount] is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by physician with the Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

Article 5 purports to require acknowledgment that the non-competition and penalty provisions contained in Article 5 are reasonable and it states:

> 5.5 Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2. 5.3 and 5.4 (together with the remedy set forth in Article 4) are fair and reasonably required for the protection of the Medical Group.

Wpl #11

It is the position of the Defendants that the inclusion of these provisions controls the issue of reasonableness. The court disagrees. Those provisions do not obviate the requirement that the agreement comply with the law.

ANALYSIS

The respective Employment Agreements were signed by Dr. Baugh and by Dr. Feldman in 2004, well after the commencement of their employment with CHC. Unlike restrictive covenants entered into at the inception of employment, restrictive covenants entered into after the onset of

employment require new and independent consideration. *Poole v. Incentives Unlimited, Inc.*. 548 S.E.2d 207 (S.C. 2001).[5]

CHC argues that the restrictions in the 2004 Agreements were the same as those in the predecessor employment agreements and therefore did not require new consideration. This is unsupportable. CHC's own witnesses admitted the 2004 restrictions were meant to be tougher and, indeed, they are more restrictive in a number of ways. Most significantly, the old agreements did not contain a penalty provision which, in this case, amounts to almost $1.2 million (cumulatively) for both Plaintiffs. Furthermore, the new restrictions go beyond limiting a physician's ability to practice medicine, prohibiting the physician from assisting, in any manner or capacity, another entity that practices medicine in the field of cardiology. Finally, instead of being limited to Richland and Lexington counties, the 2004 Agreements expanded the geographical restriction to 20 miles around the offices in which the Physician routinely practices. For Drs. Baugh and Feldman, those offices were the Columbia and Lexington offices. The 20-mile restriction encompasses almost all of Richland and Lexington counties, but also includes significant portions of Calhoun, Kershaw, Fairfield, and Newberry counties

[5] The South Carolina Supreme Court in *Poole* explained its position as follows: "We are persuaded by jurisdictions, such as North Carolina, which find that ordinarily employment is a sufficient consideration to support a restrictive negative covenant, but where the employment contract is supported by the purported consideration of continued employment, there is no consideration when the contract containing the covenant is exacted after several years employment and the employee's duties and position are left unchanged. Kadis v. Britt, 29 S.E.2d 543 (N.C. 1944). Therefore, we adopt the rule that when a covenant is entered into after the inception of employment, separate consideration, in addition to continued at-will employment, is necessary in order for the covenant to be enforceable." 548 S.E.2d 207, 209.

and small parts of Aiken and Saluda counties. Therefore, the restrictions in the 2004 Agreements are very different from the predecessor restrictions and required new consideration. In addition, the 2004 Agreements specifically "supercede[ ] all prior agreements . . .." *(P. Ex. 1, Article 6.4 p. 9)*. Therefore, this court finds that new consideration was needed to support the non-competition provisions of the 2004 Agreements.

Plaintiffs argue that the purported consideration of $60,000 in section 4.5(l) is illusory, and therefore insufficient, because a physician who competes in contravention of the terms of the restrictive covenant will never receive the purported consideration and, therefore, has incurred very substantial limiting obligations regarding future employment without receiving anything in return. Stated differently, Plaintiffs argue they never received any consideration in exchange for their agreement not to compete, in contravention of the directive in *Poole* requiring additional consideration. 548 S.E.2d 207. The court disagrees.

Mutual promises to perform future acts are sufficient to support a contract. CHC's promise to pay consideration, contingent on its employees abiding by the terms of the contract, is an acceptable promise sufficient to constitute consideration. "A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Benya v. Gamble*, 321 S.E.2d 57, 60 (S.C. Ct. App.1984). In 1926, the court in *Callaham v. Ridgeway*, 135 S.E. 646 (S.C. 1926), stated that " 'valuable consideration,' in the sense of the law, may

consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other. Mutual promises also constitute a good consideration." *Id.* at 10, 649. In *Carolina Chemical Equipment Co., Inc. v. Muckenfuss*, 471 S.E.2d 721 (S.C. 1997), the Court of Appeals held "[c]learly, under contract law, mutual promises afford sufficient legal consideration for the support of each other." *Id.* at 303, 728 (citing *Evatt v. Campbell*, 106 S.E.2d 447 (S.C. 1959)).

Here, the 2004 Employment Agreement was supported by mutual promises. CHC promised to pay each Plaintiff $5,000 per month for 12 months in exchange for Plaintiffs' promise not to compete. The consideration is not illusory as Plaintiffs claim. The fact that Plaintiffs never received any payments does not affect the validity of the consideration -- the promises themselves. The new promise of additional money by CHC (in exchange for Plaintiffs' promise not to compete) provided the consideration. Mutual promises must both be performed, or not at all.[6] *See, Modern Controls, Inc. v. Andreadakis*, 578 F.2d 1264 (8th Cir. 1978). The fact that the promises were contingent on future performance by the Plaintiffs does not mean that the promises, when made, did not serve as consideration.[7]

[6] A material breach by one party relieves the other of the obligation to perform. 17A *Am.Jur.2d Contracts* § 606. *See, W.T. Rawleigh Co. v. Wilson*, 139 S.E. 395, 398 (S.C. 1927)(If one party is at fault for breaching the contract, that party cannot complain of the other.).

[7] The court does not, however, agree with CHC's argument that the opportunity to participate as a shareholder in the new building was additional consideration. The Agreements do not state this. To the extent it might have been discussed by the parties, the South Carolina parol evidence rule and section 6.4 of the Agreements prohibit reference to such oral assertions to

However, non-competition agreements, to be enforceable, must pass a stringent review. In South Carolina, non-competition clauses are greatly disfavored by the Courts. *Moser v. Gosnell,* 334 S.C. 425, 513 S.E.2d 123 (1999). In addition, such covenants are strictly construed against the employer. A covenant not to compete will be upheld only if it is:

(1) necessary for the protection of the legitimate interest of the employer;
(2) reasonably limited in its operation with respect to time and place;
(3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood;
(4) reasonable from the standpoint of sound public policy; and
(5) supported by valuable consideration.

Id.

WPK #15

If a covenant not to compete is defective in one of the above-referenced areas, the covenant is totally defective and cannot be saved. *Faces Boutique, Ltd. v. Gibbs,* 455 S.E.2d 707 (S.C. Ct. App. 1995); *Somerset v. Reyner,* 104 S.E. 344 (S.C. 1958).

CHC argues that the non-competition provisions are not subject to reasonableness review because Drs. Baugh and Feldman are allowed to

---

alter or vary the terms of the contract. *See e.g., Ward v. West Oil Co., Inc.,* 665 S.E.2d 618, 628 (S.C. Ct. App.,2008) (citing *Penton v. J.F. Cleckley Co.,* 486 S.E.2d 742, 745 (S.C. 1997). South Carolina courts have specifically held that when an Agreement sets forth consideration, parol evidence may not be introduced to show additional consideration. *Shelton v. Skyland Stages,* 169 S.E.2d 718 (S.C. 1933) (error for the trial judge to admit parol evidence of other consideration when the contract set forth the consideration); *Gladden v. Keistler,* 140 S.E. 161 (S.C. 1927) (same); *Gill v. Ruggles,* 89 S.E. 503 (S.C. 1916) (same). Such statements referencing "other good and valuable consideration" do not open the door to parol evidence of other consideration where the contract sets forth consideration. *Halsey v. Minnesota-South Carolina Land & Timber Co.,* 177 S.E. 29, 33 (S.C. 1934); *Williston on Contracts* § 33:43 (4th ed. 2005). Even if the court were consider this evidence, the court would not give that evidence any weight. The new building was the subject of an entirely separate operating agreement, with its own consideration, under which the physicians gave personal guarantees of the related debt, under an entirely separate and distinct legal entity (the MOB). Also, that agreement was completed sometime before CHC developed and implemented the Employment Agreements.

compete if they each pay the $591,000 for the right to do so. However, the court finds that the Agreements are subject to the above reasonableness requirements. CHC places much reliance on the North Carolina case of *Calhoun v. WHA Medical*, 632 S.E.2d 563 (N.C. 2006). In that case, a group of non-interventional cardiologists left WHA and set up a competing practice. However, they had all signed non-competition agreements with WHA several years earlier in conjunction with the sale of their practice to another entity called Phycor. The physicians received a substantial sum of money from Phycor and then continued practicing in the employ of Phycor. They subsequently repurchased the practice from Phycor. The agreements provided that, for a period of 18 months following termination of employment, they would not compete against WHA in 5 counties that surround WHA's location in Southeastern North Carolina. However, the agreement also provided that the physicians could practice in violation of the agreement if they first paid an amount equal to their average annual wage. The WHA court recognized that, under North Carolina law, such restrictions are not subject to reasonableness review so long as the penalty was a reasonable estimate of damages. *Id.* at 572 (citing *Eastern Carolina Internal Med. v. Faidas*, 564 S.E.2d 53, 56 (N.C. 1988).[8] It is this court's opinion that South Carolina would not follow the reasoning or results used in *WHA Medical* or *Faidas* in this case. South

WHA #16

[8] Although stating the agreement in the case was not subject to reasonableness review, the court nevertheless found the WHA agreements reasonable because the physicians were able to pay the penalty without undue hardship.

Carolina courts have examined these types of agreements and have taken a different approach.

First, the Agreements in this case contain substantial forfeitures of accounts receivable amounts. South Carolina courts have explicitly ruled that employment agreements based on forfeiture penalties are subject to reasonableness review. *Almers v. S.C. Nat'l Bank of Charleston*, 217 S.E.2d 135, 140 (S.C. 1975);[9] [*accord Wolf v. Colonial Life*, 420 S.E.2d 217 (S.C. App. 1992) ("the Prohibited Acts sections are often referred to as forfeiture clauses. Such clauses are subject to the same requirements and strict analysis as covenants not to compete.") (emphasis added)]. CHC argues that the loss of the accounts receivable is not a forfeiture because the physicians had no right to the accounts receivable amounts. However, the Agreement repeatedly refers to the "forfeiture" of the accounts receivable and clearly this is how the Agreements operate.

WJMC #17

In addition, South Carolina courts have examined similar provisions and have taken a different approach from the North Carolina courts. In *J.W. Hunt v. Davis*, 313 S.C. 352, 437 S.E.2d 557, 559 (S.C. App. 1994), a departing accountant was required by an agreement to pay J.W. Hunt an amount equal to two times the gross annual billings for each client of J.W. Hunt that Davis took. In holding this type of agreement valid, the court

[9] "In the case of a forfeiture the employer is not able to prevent the employee from competing but only to exercise leverage by divesting deferred income rights. . . . the covenant not to compete and forfeiture upon competing are but alternative approaches to accomplish the same practical result. Therefore, we would not substitute the reasoning of the pure logician for the realities of the business world and embark on a separate course of treatment for covenants not to compete and forfeiture provisions. When pruned to their quintessence, they tend to accomplish the same results and should be treated accordingly."

specifically noted that the agreement was a partnership agreement (rather than an employment agreement) and, had it been an employment agreement, it would be subject to reasonableness review. CHC urges the court to recognize that the Plaintiffs in this case were akin to partners. However, CHC was clearly a corporation and the Agreements are employment agreements. Neither the parties nor the courts may ignore the business form chosen by the parties. *See, e.g., Todd v. Zaldo,* 403 S.E.2d 666, 668 - 669 (S.C. Ct. App. 1991) ("Zaldo argues he may recover damages personally because Georganne Apparel Company, Inc. was a close corporation with only three stockholders. He seeks to have Georganne Apparel viewed more as a partnership than a corporation. This record does not support application of these principles. Mr. Zaldo did business in the corporate form. He testified the business operated as a corporation. He recognized it was owned by the shareholders. This record does not present a factual scenario sufficient to ignore the corporate nature of Georganne Apparel, Inc."). CHC chose the corporate form of business, and its physicians were employees. The corporate form cannot simply be set aside when it is convenient for CHC to do so. In addition, the *Hunt* court was careful to base its decision on a line of cases holding these agreements valid due to the fairness of requiring payment for clients that a departing partner takes.[10] The Agreements in this case are different and simply impose a huge

WM #18

[10] The *Hunt* court based its decision on holdings in cases from other jurisdictions including North Carolina, Nevada, and Kansas. *Dixom, Odom & Co. v. Sledge*, 296 S.E.2d 512 (N.C. Ct. App. 1982); *Engel v. Ernst*, 724 P.2d 215 (Nev. 1986) and *Francis v. Schlotfeldt*, 704 P.2d 381 (Kan. 1985). In each of these cases, the penalty was tied to customers or clients that the departing employee took with them. In other words, the payment was reasonably related to the employer's damages.

penalty whether or not the departing physicians take any patients with them. Therefore, the Agreements in this case must pass reasonableness review.

CHC argues that Drs. Baugh and Feldman waived any challenge to the reasonableness of the non-competition provisions because Articles 4.6 and 5.1 of the Agreements state that the provisions are reasonable. However, South Carolina law is very clear that whether or not a non-competition agreement is reasonable is a question for the court. *Preferred Research Inc. v. Reeve*, 357 S.E.2d 707 (S.C. App. 1987) (citing *Koger Properties v. Adams Cates Company*, 274 S.E.2d 329 (Ga. 1989)). The parties cannot make an agreement enforceable which is unenforceable under South Carolina law.[11] Even if the court were to consider these acknowledgements, it would do so only as one factor in determining the reasonableness of the non-competition provisions.

Finally, CHC appears to concede, at trial and in its post-trial brief, that the non-compete must pass a reasonableness review:

> **Counsel for CHC:** the other section, which is really the new covenant not to compete, is in section 5 of the agreement.... I don't think there's any question that in South Carolina, you do have to be reasonable in terms of time. Well, it's a one year provision, it's a one-year provision for the covenant and that's clearly an appropriate time and I don't think there can be any dispute in terms of that. But the other two sections for

[11] This is clearly the view of the few courts that have considered such clauses. For example, in *Hagemeyer North America v. Thompson*, 2006 Westlaw 516733 (D. S.C. 2006) (unpublished) such a provision was considered only to counter the proposition that the employee did not understand the importance of the contract. The court was careful to apply the South Carolina case law on reasonableness independent of the acknowledgement. Similarly, in *Herring Gas Co. v. Magee*, 813 F.Supp. 1239, 1241, 1245-46 (S.D. Miss.1993) the court noted the presence of an "acknowledgment of reasonableness" clause but evaluated the enforceability of the non-competition without regard to that language.

what needs to be reasonable under South Carolina law is what is being prohibited, which is protected.

(Tr. Transcript pp. 25-26) (emphasis added).

> **Counsel for CHC:** again, when they look at covenants not to compete, the law is clear in South Carolina, there is no prohibition against covenants not to compete. They need to be reasonably drawn and narrowly protect [sic] -- that's what's being done here because you had to make sure that these doctors didn't go out and become employees or owners or for display in the field of cardiology within the restricted area.

(Tr. Transcript pp. 26-27) (emphasis added).

> In order to be upheld, a covenant must be reasonably limited with respect time and place and it cannot be unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood.

(CHC Post Trial Brief p. 6).

WPM #20

The scope of prohibited activities is not unduly harsh or oppressive

(CHC Post Trial Brief p. 8).

The covenant not to compete contained in the Agreement cannot pass a reasonableness review. Section 5.2(a)(i) of the non-competition provision is overly broad in defining "Compete" as "assisting any person (as a director, officer, employee, agent, consultant, lender, lessor, or otherwise) to engage in the Business in the Territory." The provision would preclude Drs. Baugh and Feldman from working in any capacity in cardiology or a business that provides cardiology services. For example, neither could serve as a consultant, as director of a hospital's cardiology department, as a marketer of cardiology devices, as a manager of a business or practice in the cardiology field, nor even provide services (such as renting property) to a medical practice engaged in the field of cardiology. CHC argues that the Agreement

only prohibits Drs. Baugh and Feldman from directly or indirectly practicing medicine in the field of cardiology. However, the restriction is far broader than that. The examples of prohibited activity in section 5.2 make clear that the prohibition on "assisting" is quite broad and each Plaintiff is barred from being a "director," or "consultant," or even a "lendor" or "lessor." This non-exclusive list of examples makes it apparent that the Agreement seeks to bar Plaintiffs from assisting in any capacity—even if that assistance is not the practice of medicine in the field of cardiology.

The South Carolina Court of Appeals rejected such a restriction in *Faces Boutique, Ltd. v. Gibbs*, 455 S.E.2d 707 (S.C. App. 1995). In *Faces*, the employer — a facial spa — attempted to enforce a non-competition covenant that purportedly forbade the former employee from owning, managing, operating, controlling, being "employed" by, participating in, or being connected "in any manner with the ownership, management, operation, advertisement or control of any business in direct competition with the type of business conducted by [Faces.]" 455 S.E. 2d at 708. The court refused to enjoin the employee from working for a competitor, in part because the restriction prohibited the employee from working for any business that sold cosmetics or facials, even if she did not participate in such activities. This, the court held, was beyond what was necessary to protect the employer and was therefore unenforceable. Similarly, in *Preferred Research, Inc. v. Reeve*, the clause in question prevented

WPA #21

Reeve from working "alone or in association with others, in a similar business, *in any capacity*." Reeve had previously done title search work for Preferred and, thereafter, sought to do real estate work of a different nature for other firms. The trial judge found this particular language unreasonably overbroad, and the Court of Appeals agreed.

> . . . the clause in question prevents Reeve from working "alone or in association with others, in a similar business, *in any capacity*." (Emphasis added). The trial judge found this particular language unreasonably overbroad, and we agree.

Preferred Research, Inc. v. Reeve, 357 S.E.2d 489, 490 (S.C. Ct. App. 1987) (emphasis added).

WDK #22

This court reaches the same conclusions regarding this Agreement. The Agreement goes beyond restricting the Plaintiffs from doing what they did for CHC and seeks to expand restrictions into areas wholly unrelated to the Plaintiffs' CHC employment. The Agreements are, therefore, not "narrowly drawn" to protect only the "legitimate interests" of the employer as South Carolina courts require. *See, e.g., Faces Boutique, Ltd. v. Gibbs*, 455 S.E.2d 707, 708-709 (S.C. Ct. App. 1995); *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 301 S.E.2d 142 (S.C. 1983); *Stringer v. Herron*, 424 S.E.2d 547 (S.C. Ct. App.1992); *Almers v. South Carolina Nat'l Bank*, 217 S.E.2d 135 (S.C. 1975); *Collins Music Co. v. Parent*, 340 S.E.2d 794 (S.C. Ct. App.1986); *Eastern Business Forms, Inc. v. Kistler*, 189 S.E.2d 22, 24 (S.C. 1972); *Somerset v. Reyner*, 104 S.E.2d 344, 346 (S.C. 1958).

Plaintiffs also argue that the territorial restriction of a 20-mile radius around any Medical Group office where the physician "routinely provided" is

unenforceable. Although Plaintiffs argued that they worked in Newberry and Winnsboro, the court finds that they spent the vast majority of their time in the Lexington and Richland offices and that is where they "regularly practiced." The court also finds that the majority of patients these physicians treated came from within 20 miles of those offices. Plaintiffs argue that, even if the majority of their patients were drawn from within 20 miles of the offices where they regularly practiced, the practical restriction on the Plaintiffs is much greater than 20 miles because, in order to practice their medical specialty (interventional cardiology) Plaintiffs require frequent access to a medical facility authorized to perform elective invasive procedures like stenting and angioplasty. In addition, they must live within 30 minutes of the medical facility at which they take call. Palmetto Richland and Providence hospitals are the only medical facilities in the Midlands authorized to perform elective invasive procedures. In support of this argument, Plaintiffs rely on *Cardiosvascular v. Mammana*, 61 P.3d 210 (Okla. 2002), in which the covenant was struck down because the practical effect of the covenant prevented the surgeon from practicing surgery unless he moved 100 miles away. However, the court finds this argument unpersuasive. The covenant does not prevent Plaintiffs from earning a livelihood as it did the surgeon in *Mammana*. Plaintiffs could have practiced outside the radius in locations such as Camden, Orangeburg or Sumter, performing all procedures except stents and angioplasties; and they can practice outside the radius in the locations that allow interventional procedures.

WPK #23

CHC argues that, even if the non-competition provisions do not pass reasonableness review, the court may rewrite the restrictions of the Agreements to make them reasonable. This would be employing the so-called "blue-pencil" rule. The court rejects that assertion. It is not a function of the courts to rewrite covenants not to compete. Prior to the trial and during the time that the attorneys were submitting briefs, the attorneys and the court did not have the benefit of *Poynter Investments v. Century Builders* slip op 26821 (S.C. May 24, 2010). When the court first requested a proposed Order, prior to the issuance of *Poynter*, this court indicated that it rejected the defense's contention that the parties could provide by contract that a South Carolina court would modify or blue-pencil a covenant not to compete so as to make it enforceable. *Poynter* subsequently ruled similarly finding that a trial judge erred in modifying the territorial restrictions in a covenant not to compete by "blue penciling."

Previously, a South Carolina court stated: "We cannot make a new agreement for the parties into which they did not voluntarily enter." *Somerset v. Reyner*, 104 S.E. 344 (S.C. 1958). A United States District Court in South Carolina has used the blue-pencil rule in a limited fashion. *Rockford Mfg., Ltd. v. Bennet*, 296 F.Supp.2d 68, 688 (D. S.C. 2003). That court noted that there is little room in South Carolina for blue-penciling and it is only arguably allowed when the court can strike a provision without affecting anything else in the agreement. In *Rockford*, the agreement listed specific customers that the employee could not solicit. The court struck some of the customers off

the list. Nothing like that is possible in this case. Even if blue-penciling were allowed in South Carolina for a covenant not to compete, there is no appropriate way to make the scope of the job (*i.e.*, the "compete" and "Business" definitions), reasonable without dramatically changing the substantive intent of the non-competition provision. For example, there is no way, without dramatically altering the non-competition provisions of the Agreements, to strike out language so that Drs. Baugh and Feldman could work as consultants to a cardiology practice, lease property to such a practices, or work as operating or financial managers of a cardiology practice. Nevertheless, CHC argues that, because the Agreements authorize, in Article 5.5, a court to rewrite the restrictions that this court has greater latitude to rewrite the restrictions as it sees fit. South Carolina courts have expressly and repeatedly held that rewriting contracts "is a service the courts of South Carolina do not provide." *MailSource, LLC v. M.A. Bailey & Associates*, 588 S.E.2d 635, 639 (S.C. Ct. App. 2003), *see also, Schulmeyer v. State Farm Fire & Cas. Co.*, 579 S.E.2d 132, 134 (S.C. 2003) (courts do not rewrite contracts); *Lewis v. Premium Inv. Corp.*, 568 S.E.2d 361, 363 (S.C. 2002) (same). Even if Article 5.5 and precedent provided authority to blue-pencil the Agreement, the court would be bound by the limitation that it could only sever provisions that could be struck without substantively altering the intent of the Agreement. The changes that CHC suggests the court make would require this court to provide a contract that was very different from what the

WPR #25

parties entered or expressed the intent to enter. This, courts are not permitted to do.

If the non-competition provisions are deemed unenforceable, the question turns to the application of the South Carolina Wage Payment Act. Both sides seem to agree that the invalidity of a non-competition agreement does not affect the validity of other portions of the contract, though they disagree on what provisions would still be enforceable and why.

Drs. Baugh and Feldman terminated their employment in accordance with the "termination without cause" provisions of the Agreement at Sections 4.4(a) and 4.5(f) by providing notice of 90 days. The agreement provides that they are entitled to the specified compensation.

WPR #26

The Plaintiffs claim that they are entitled to a portion of the accounts receivable. The accounts-receivable-based amount was valued by Plaintiffs' expert at $172,070 for Dr. Baugh and $171,460 for Dr. Feldman. *(P Ex. 1 and P. Ex. 4).* These amounts are less than the estimate provided by CHC's expert and are therefore conservative estimates. *(D. Ex. 22).* The court accepts them.

CHC argues that the Plaintiffs are not entitled to these amounts because the accounts receivable do not belong to individual physicians (P Ex. 1, §3.1) under the agreement, and the physicians only become eligible to receive a portion of the accounts receivable if the separation from CHC complies with the portions of the agreement applicable to departing

physicians. This deals with the primary issue discussed in the Overview section above.

The Agreement is divided into separate Articles. Article 4 is entitled "Term and Termination." Article 5 is entitled "Restrictive Covenant and Confidential Information." Under Article 6, "General Provisions," there is a severability clause which reads:

> 6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

WPC #27

It is well-settled in South Carolina that parties are free to make their own contracts and that courts are to enforce the agreements, not make them. Obviously, covenants not to compete are viewed differently than other contractual provisions because of overriding public policy. Covenants not to compete are disfavored and mandate strict construction. The primary, if not the sole reason for court's ruling about the covenant here is that the definition of "Compete" in 5.2.(i) is too broad and the court cannot be charged by the parties to reform (blue-pencil) it into a definition that would be acceptable to the court. Particularly, though not exclusively, the court finds that 5.2.(i)(C) is too broad. It defines Compete to include, "(C) assisting any Person (as director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory."

As discussed in the Overview above, the evaluation becomes more troublesome because the defined term, "Compete," is not mentioned in Article

4, but only in Article 5. Throughout the Agreement, when defined terms are used, they are designated by capitalizing them.

The provisions for forfeiting a share of the accounts receivable is contained in Article 4. Article 4 contains a requirement that a departing physician cannot compete with CHC (P Ex. 1, Article 4).

CHC cites the following language:

> Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

Wpac #28

For the same reasons that were stated in the Overview above, the court finds that the inclusion of this provision in the Remedies section of Article 5, and the testimony and evidence, demonstrate that the forfeiture provisions were part of, intended to be part of, and cannot be logically separated from the consequences of violating the non-compete provisions in Article 5. While the court thinks this is close and difficult question, the court finds that CHC cannot bar the Plaintiffs from recovering the portion of the accounts receivable in dispute here.

As for the question about payment of what has been termed salary, it is clear that CHC is correct when it asserts that Drs. Baugh and Feldman had been overpaid and owed CHC approximately $24,888 (Dr. Baugh) and $55,273 (Dr. Feldman). These amounts are not contested. Drs. Baugh and Feldman claim that they were supposed to be paid for two weeks that was never paid by CHC, which would amount to $8,095.17 (Dr. Baugh) and $8,063.00 (Dr. Feldman). Finally, Dr. Feldman claims unpaid Director fees in the amount of approximately $4,500. *(P. Ex. 4).* CHC argues that the Wage Payment Act does not apply to the amounts in dispute, which CHC designates as unpaid draws and Director fees. CHC also disputes the applicability of the Act to the portion of accounts receivable that are in dispute.

WPR #29

The court finds that CHC physicians worked under a system of draws, with quarterly and yearly true-ups. When Dr. Baugh and Dr. Feldman left CHC, they had been paid more than they were entitled to receive based on the true-up that was performed. So, they owed money to CHC. Dr. Baugh owed $24,888 and Dr. Feldman owed $55,273.

CHC refused to pay these amounts because of the dispute over the accounts-receivable-based amounts (which was a legitimate dispute) and because CHC offset the $24,888 and $55,273 against any wages dues. CHC argues that Drs. Baugh and Feldman were, in reality, more akin to partners than employees, and therefore were not being paid wages under the Wage Payment Act. The court cannot accept that argument. The Plaintiffs were

employees. CHC was organized as a corporation. The Agreements describe the physicians as employees and make repeated references to terms that would only be applicable in an employment context.[12] CHC also argues that the accounts receivable amounts are not wages under the Act.

The court has expressed to the attorneys that it has some confusion about exactly what the court is being asked to determine related to the South Carolina Wage Payment Act. If the question is whether the sums claimed to be due fall under the ambit of the Act, the court finds that they do because of the very broad definition of "wages." The amounts denominated as salary were wages, even if they did have many of the attributes of what is a traditional draw in a partnership setting. The Director fees were wages. The "Physician's Prorata Share" must also be declared to fall under the Act, though the court lacks the same degree of certainty as to those amounts, and the court does not know if there is an argument that can be made that the division of accounts receivable would fall under the concept of profit sharing, which is excluded from the Act. The court is unaware of that issue being raised.

WPM #30

[12] CHC's Employment Agreement with Plaintiffs, makes reference to "Employee Benefits," "salary," and W-2 compensation of physician-shareholders." In addition, the Employment Agreement provides that CHC agrees to provide "office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician." Furthermore, the Employment Agreement establishes extensive control over Plaintiffs with regard to the business operations of the practice. Finally, the Employment Agreement provides CHC with the ability to terminate the Employment Agreement with Plaintiffs with or without cause. This clearly shows a range of control indicative of an employment relationship. South Carolina Workers' Compensation Comm'n v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

The Wage Payment Act has very broad definitions. South Carolina Code § 41-10-10 defines "employer" and "wages" as follows:

> **SECTION 41-10-10.** Definitions.
>
> As used in this chapter:
> (1) "Employer" means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.
> (2) "Wages" means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

Wage #31

The definition of wages includes similar compensation schemes such as severance payments. CHC argues that this is a contractual matter not subject to the Wage Payment Act. However, the fact that wages are defined by contract does not preclude application of the Act. In fact, the Act specifically contemplates that a contract may define what wages are due. For these reasons, the court finds these amounts do fall under the South Carolina Wage Payment Act, S.C. Code Ann. § 41-10-10 (1976) (*et. seq.*). If the non-competition provisions fail, then the forfeiture of accounts receivable based amounts (which is based on the non-competition provisions) likewise fails and Drs. Baugh and Feldman are entitled to recover these amounts (less the undisputed amounts they owe back to CHC).

However, while the court finds that these sums would be considered "wages" under the broad definition and fall within the ambit of the Act, it does not find that the Plaintiffs have established entitlement to any of the penalties that go along with non-payment of wages. Reading the Act in its entirety, it is clear that the statutory scheme contemplates that there will be disputes over the wages due. Here, Plaintiffs were paid more money in salary than they had earned at the time of their leaving CHC, with the total sum including more than enough to encompass the non-payment of the Director's fee. But for the accounts receivable issue, the Plaintiffs had been given more money than they were expecting in what is traditionally considered wages. There was a legitimate dispute, known to all parties, regarding the obligation to pay the money involved in the Physician's Prorata Share and the formula related thereto. The Plaintiff has failed to prove that there was any violation of the spirit and intent of the Act, and the court believes that the Act was not intended to grant additional relief in the form of penalties and attorney's fees in situations such as this one.

Wpk #32

In assessing whether the amounts should be trebled and costs added, the statute uses the permissive term "may" rather than "shall." The Act provides a mechanism for penalties being imposed by Labor, Licensing, and Regulation (LLR) in the event of wrongdoing. As for civil penalties pursued by litigants in civil actions, Section 41-10-80(C) of the South Carolina Code reads:

> (C) In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may

FILED
2010 SEP 30 AM 10:42
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.

The court does not find this to be a situation where trebling the amount of wages is appropriate. Nor does it find that an award of costs and attorney's fees would be warranted.

Having carefully considered the evidence and the arguments of counsel, the court finds that, as to the issues that were presented to it, the Plaintiff Dr. Baugh is entitled to judgment in the amount of $155,277, and Dr. Feldman is entitled to judgment in the amount of $128,750. The attorneys shall notify the Chief Judge for Administrative Purposes concerning the remaining issues that require a jury trial.

#33

AND IT IS SO ORDERED.

William P. Keesley, Judge

September 29, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley. Circuit Court Judge

Case No. 06-CP-32-0371

RECEIVED
OCT 27 2010
SC Court of Appeals

J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., ... Respondents.

v.

Columbia Heart Clinic, P.A., ... Appellant.

PROOF OF SERVICE

I, Adam Goodman, employee of the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served **Notice of Appeal** upon opposing counsel by hand delivering a copy of same to opposing counsel at the following address:

Michael D. Malone, Esquire
Charles F. Thompson, Jr., Esquire
Malone Thompson Summers & Ott, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Adam Goodman

This 27th day of October, 2010.

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	C. A. NO. 2006CP32-0371

FILED
2006 OCT 17 P 2:54
SETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

J. KEVIN BAUGH M.D. AND BARRY J. FELDMAN M.D.

Plaintiffs,

v.

COLUMBIA HEART CLINIC P.A.

Defendant.

CONSENT ORDER

Following the filing of this action, Plaintiffs brought a second action against the same defendant entitled *Baugh and Feldman v. Columbia Heart Clinic PA*, 2006-CP32-1497. The second actions arises out of the same facts and circumstances as the first but asserts new claims. Defendant answered the new action and asserted counterclaims which were subsequently answered by the Plaintiffs.

On June 5, 2006 Defendant filed a motion to dismiss or consolidate the two actions. Defendant and Plaintiff now jointly request that the actions be consolidated under the above case caption. For good cause shown, the court hereby consolidates these actions.

IT IS SO ORDERED

/S/ WILLIAM P. KEESLEY

William P. Keesley
Chief Administrative Judge
for the Eleventh Judicial Circuit, Common Pleas

October 6, 2006

Edgefield, South Carolina

WE CONSENT

Charles F. Thompson, Jr.
Michael D. Malone
Malone, Thompson & Summers
1312 Gadsden Blanding Street
Columbia, SC 29201
803-254-3300
facsimile 803-254-0309

ATTORNEYS FOR THE PLAINTIFFS

A. Camden Lewis
Keith M. Babcock
Brady R. Thomas
Lewis & Babcock LLP
1513 Hampton St.
Columbia, SC 29201
803-771-8000
facsimile 803-733-3534

ATTORNEYS FOR THE DEFENDANT

ORIGINAL

RRB

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	C/A NUMBER: 2006-CP-32-0371 **ORDER**

FILED
2006 APR -4 A 9:57
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

This matter comes before the court on cross-motions for Preliminary Injunctions. Plaintiffs J. Kevin Baugh, M.D., and Barry J. Feldman, M.D. are physicians who are employed by Columbia Heart Clinic but are resigning from the practice, with an effective resignation date of April 22, 2006. Plaintiffs executed Employment Agreements on July 15, 2004, which contain the terms of their employment and include covenants not to compete, which covenants can be avoided by payment of sums certain to cover in part Columbia Heart Clinic's investment in the practice of Dr. Baugh and Dr. Feldman. Plaintiffs dispute the validity of the covenants and seek to enjoin Defendant from enforcing the covenants during the pendency of this lawsuit. Defendant seeks to enjoin Plaintiffs from competing and enforce the covenants during the pendency of the lawsuit or to require the posting of a bond.

A hearing was held before this Court on March 17, 2006 in Lexington, South Carolina. After considering the arguments of counsel, as well as the parties' memoranda and affidavits, I hereby order the following:

1. Plaintiff J. Kevin Baugh, M.D. is ordered to post a bond of $480,000 prior to

departing Defendant's practice or employment on April 22, 2006;

2. Plaintiff Barry J. Feldman, M.D. is ordered to post a bond of $480,000 prior to departing Defendant's practice or employment on April 22, 2006;

3. All other issues in the case remain open for litigation.

IT IS SO ORDERED.

Larry R. Patterson
Chief Administrative Judge,
for the Eleventh Judicial Circuit, Common Pleas

March 30, 2006
Lexington, South Carolina

IRREVOCABLE LETTER OF CREDIT

ISSUING BANK: The National Bank of South Carolina
NUMBER:
AMOUNT: DATE:

BENEFICIARY: Columbia Heart Clinic ALL DRAFTS HEREUNDER MUST

BE MARKED: DRAWN UNDER LETTER OF CREDIT NO. _____

DATED

Dear _____,

In the event of a judgment against Dr. Kevin Baugh in the matter of Baugh and Feldman v. Columbia Heart Clinic 2006-CP-32-0371, we hereby authorize you to draw on the National Bank of South Carolina, Attention City Executive, Post Office Box 1457, Columbia, South Carolina 29202, available by your drafts for any sum or sums not exceeding a total of $480,000.00 for the account of Dr. Kevin Baugh.

Documents Required:

1) A sight draft marked "drawn under NBSC letter of credit number _____" for the amount the letter of credit Beneficiary wishes to draw under the letter of credit.
2) An order of judgment issued by the Court of Commons Pleas, Lexington County
3) This original letter of credit, NBSC letter of credit number _____.

Partial draws under this letter of credit are permitted.

We hereby agree that all drafts drawn under and in compliance with the terms of this credit will by duly honored by us or drawer on or before June 30, 2008, the Letter of Credit's expiration date.

This letter of Credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

Sincerely,
Holly Verzyl
Vice President

Filed
2006 FEB 21 PM 12:36
Beth A. Carrigg
Clerk of Court
Lexington, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	CIVIL ACTION NUMBER:
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,)	2006-CP32-0371
Plaintiffs,)	COMPLAINT
v.)	DECLARATORY JUDGMENT
Columbia Heart Clinic, P.A.)	(NON-JURY)
Defendant.)	

NOW COME Plaintiffs J. Kevin Baugh, M.D., and Barry J. Feldman, M.D. (hereinafter "Drs. Baugh and Feldman" or "Physician", as applicable), complaining and the above-named defendant, Columbia Heart Clinic, P.A., and stating as follows:

1. Drs. Baugh and Feldman are citizens and residents of South Carolina and practice cardiology in Lexington County, South Carolina. Drs. Baugh and Feldman bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* and Rule 65, SCRCP, seeking a Declaratory Judgment, Temporary Injunction, and Permanent Injunction.

2. The Defendant, Columbia Heart Clinic, P.A. (the "Defendant," "Practice" or "P.A."), is a professional corporation organized and existing under the laws of the State of South Carolina with an office in Lexington County, South Carolina.

3. On or about July 15, 2004, Drs. Baugh and Feldman, respectively, signed a "Shareholder Physician Employment Agreement" (hereinafter the "Contract") between himself and the P.A., copies of which are attached as Exhibit A.

4. Article 5 of the Contract describes certain Restrictive Covenants (hereinafter "the Non-Competition Covenant") that provide that, for a period of twelve (12) months immediately following the date of the termination of the Contract, Drs. Baugh and Feldman shall not "Compete" with the Defendant "within a twenty (20) mile radius of any office [of the Defendant] at which Physician routinely provided services during the year prior to the date of termination or expiration of this [Contract]."

5. By the terms of Section 5.2(i) of the Contract, "Compete" means, *inter alia*, "assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory." Section 5.1(a) of the Contract defines "Business" to mean the "practice of medicine in the field of cardiology." "Territory" is defined

in Section 5.2(iii) of the Contract as "the area within a twenty (20) mile radius of any . . . office [of the Defendant] at which Physician routinely provided services during the year prior to the date of termination or expiration of this [Contract]." Drs. Baugh and/or Feldman routinely provided services in the Lexington and Winnsboro offices during the year prior to the date of termination.

6. The Contract also provides in Section 5.4(a) that, should Drs. Baugh and Feldman wish to work in violation of the purported Non-Competition Covenant described in Article 5, they would be obligated to pay the Defendant "One Hundred Percent (100%) of the Physician's Income" Section 5.4(a) of the Contract defines "the Physician's Income" as "the average W-2 compensation of physician-shareholders of [the Defendant] in the calendar year prior to the date of termination or expiration of this Agreement."

7. The Contract also provides in Section 4.5(f) that, in the event that Dr. Baugh or Dr. Feldman terminate the Contract without cause, they would receive all salary earned or accrued but unpaid, and "Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of [the Defendant], computed on the date of termination of this Agreement." However, if Drs. Baugh or Feldman violated the terms of the Contract's purported Non-Competition Covenant, Section 4.5(i) states that Drs. Baugh and Feldman shall "**forfeit** any monies payable to Physician pursuant to this Section 4.5." (emphasis added.)

8. The Contract also provides in Section 4.5(l) that, "in addition to any other amounts payable upon termination, [each] Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article [5] of this Agreement. In the event that the Physician violates Article [5], no amount shall be payable pursuant to this section 4.5(l), and any amount previously paid to Physician pursuant to this section shall be refunded to [the Defendant]."

9. Therefore, as a part of the **penalty** for violating the purported Non-Competition Covenant described in Article 5, Drs. Baugh and Feldman would also **forfeit** compensation described in Section 4.5(f) and 4.5(l) of the Contract in addition to the liquidated damages demanded in Section 5.4(a) of the Contract. In fact, the Contract explicitly states in Section 5.4(a) that "payment of such liquidated damages [referenced in ¶ 6 of this Complaint] (together with the **forfeiture** described in Article 4 above [referenced in ¶¶ 7 and 8 of this Complaint]) will entitle Physician to practice in breach of the provisions contained in Section 5.1 [the Non-Competition Covenant] without further liability to [the Defendant] for such breach."

10. Drs. Baugh and Feldman gave the Defendant the appropriate ninety (90) day written notice of the termination of their respective Contracts without cause, pursuant to Section 4.4(a) of the Contract, on January 22, 2006 (a copy of which is attached hereto as Exhibit B).

11. The Defendant, through its officers and agents, has notified Drs. Baugh and Feldman that it intends to enforce all provisions of the Contract, including the Non-Competition Covenant and the sections thereto which **penalize** Drs. Baugh and Feldman for allegedly

violating the Non-Competition Covenant in the Contract (a copy of which is attached hereto as Exhibit C).

12. The Non-Competition Covenant is unenforceable because Lexington County is currently underserved by physicians specializing in cardiology. Enforcing the Non-Competition Covenant would adversely effect public health and unduly restrict the public's access to physicians specializing in cardiology in Lexington County. As such, the Non-Competition Covenant violates public policy and is unenforceable.

13. The Non-Competition Covenant is also unenforceable because it extends far beyond the scope reasonably necessary to protect the legitimate business interests of the Defendant. For instance, the Non-Competition Covenant prevents Drs. Baugh and Feldman from working as an "employee" in any capacity – even as a business manager or custodian – for an entity that provides cardiology services in the Territory.

14. The Non-Competition Covenant is also unenforceable because the Territory it seeks to restrict is ambiguous, since neither Dr. Baugh not Dr. Feldman could determine, when the Contract was signed, the extent of the territorial restriction.

15. The Non-Competition Covenant is also unenforceable because the Territory it seeks to restrict is overly broad and beyond that which is reasonably necessary to protect the legitimate business interests of the Defendant.

16. The liquidated damages and **forfeiture** provisions referenced in Section 5.4(a) of the Contract are far in excess of the actual damages that the Defendant might suffer if Drs. Baugh and Feldman were to offer cardiology services to the citizens of Lexington County. As such, the provisions are an unenforceable **penalty**.

17. Because the Defendant, through its officers and agents, have indicated that they will seek to enforce the Non-Competition Covenant and **forfeiture** provisions of the Contract, a justiciable controversy now exists.

18. Drs. Baugh and Feldman file this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.*, and Rule 65, SCRCP, requesting that this Court: (a) declare the rights and duties of the parties in this action under the Contract; (b) find the Non-Competition Covenant and **forfeiture** provisions void as against public policy; (c) find that the Non-Competition Covenant is also unenforceable because the Territory it seeks to restrict is ambiguous; (d) find that the Non-Competition Covenant is unenforceable because it extends far beyond the scope reasonably necessary to protect the legitimate business interests of the Defendant; (e) find that the Contract's liquidated damages and **forfeiture** provisions are an unenforceable **penalty**; and (e) issue both a Temporary and Permanent Injunction enjoining the Defendant P.A. from taking any action to enforce or attempt to enforce the Non-Competition Covenant and **forfeiture** provisions of the Contract against Drs. Baugh and Feldman.

WHEREFORE, Plaintiffs J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., respectfully request that this Court:

1. Enter a Declaratory Judgment declaring that the Non-Competition Covenant and **forfeiture** provisions of the aforementioned Contract to be invalid and unenforceable for the reasons mentioned above;

2. Issue a Temporary and Permanent Injunction enjoining the Defendant from attempting to enforce the unenforceable Non Competition Covenant and **forfeiture** provisions of the Contract against Drs. Baugh and Feldman;

3. Award attorney's fees and costs of this action to Drs. Baugh and Feldman; and

4. Award Drs. Baugh and Feldman other such relief as the Court may deem just and proper.

RICHARDSON, PLOWDEN, CARPENTER
& ROBINSON, P.A.

Eugene H. Matthews
P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

Attorneys for Plaintiffs J. Kevin Baugh, M.D.,
and Barry J. Feldman, M.D.,

February 1, 2006
Columbia, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	CIVIL ACTION NUMBER: 2006-CP32-0371 **ANSWER AND COUNTERCLAIMS OF DEFENDANT** (Jury Trial Demanded)

FILED
2006 MAR -3 P 4:27
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Defendant Columbia Heart Clinic, P.A. , hereby answering the Complaint, subject to and reserving their Motions pursuant in Rule 12(b), SCRCP, and Counterclaiming against Plaintiffs, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every allegation in the Complaint not specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.

2. Defendant Columbia Heart Clinic, P.A. is without sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 1, and placing its denial on that ground, denies same and demands strict proof thereof.

3. Defendant Columbia Heart Clinic, P.A. admits the allegations in Paragraph 2 and 3 of the Complaint.

4. In answering Paragraphs 4, 5, 6, 7, 8, and 9 Defendant admits only so much of said paragraphs as alleges or infers that the parties entered into Shareholder Position and Employment Agreements ("Contracts") and that said Contracts speak for themselves. Defendant denies the

allegations in Paragraphs 4, 5, 6, 7, 8, and 9 inconsistent with the terms of the Contracts. Defendant denies the remaining allegations contained in Paragraphs 4, 5, 6, 7, 8, and 9.

5. Defendant Columbia Heart Clinic, P. A. admits the allegations in Paragraphs 10 and 11 of the Complaint.

6. Defendant Columbia Heart Clinic, P.A. denies the allegations in Paragraphs 12, 13,14, 15, and 16 of the Complaint.

7. Defendant Columbia Heart Clinic, P.A. admits the allegations in Paragraph 17 of the Complaint.

8. Paragraph 18 does not contain allegations directed at the Defendant. Accordingly, no response is required. However, to the extent that a response is required the allegations are denied.

FOR A SECOND DEFENSE
(Rule 12 Motions)

9. Defendant has filed Rule 12(b) motions. This Answer shall not be construed to waive any motion under Rule 12(b), SCRCP.

FOR A THIRD DEFENSE
(Prior Pending Action)

10. This action should be dismissed because there is another prior action pending between the same parties for the same claims in Richland County.

FOR A FOURTH DEFENSE
(Counterclaims)

11. Defendant Columbia Heart Clinic, P.A. is a professional association formed and organized under the laws of the state of South Carolina with its principal place of business in Richland County, South Carolina.

12. Plaintiff J. Kevin Baugh is a shareholder/employee of Defendant Columbia Heart Clinic, P.A.

13. Plaintiff Barry J. Feldman is a shareholder/employee of Defendant Columbia Heart Clinic, P.A.

14. Plaintiff Baugh joined Columbia Heart Clinic, P.A. in 1996 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Baugh.

15. Plaintiff Feldman joined Columbia Heart Clinic, P.A. in 1993 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Feldman.

16. On or about July 15, 2004, Plaintiff Feldman and Plaintiff Baugh entered into Shareholder Physician Employment Agreements ("Contracts") with Defendant. Attached as Exhibits A and B are copies of their respective Contracts.

17. The Contracts contain a Restrictive Covenant whereby the Plaintiffs promised that should Plaintiffs leave the employ of Defendant, Plaintiffs will either not compete with Defendant for a twelve month period or Plaintiffs will, prior to competing with Defendant, pay Defendant restitution for Defendant's investment in Plaintiffs' practice and liquidated damages.

18. Section 5.4 (a) of Plaintiffs' Contracts with Defendant provides:

> In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance in practicing in violation of that Section of an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed by Physicians against amounts owed by Physician to Medical Group hereunder. For purpose of this agreement, "Physicians's Income" shall mean the average W-2 compensation of

physicians-shareholders of Medical Group of the calender year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach in an partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything of the contrary stated herein, payment of such liquidated damages (together with forfeiture described in Article 4 above) will entitle the Physician to practice with breach of the provisions contained in Sections 5.1 without further liability to Medical Group for such breach.

19. On January 22, 2006, Plaintiffs gave 90 days written notice to Defendant of their intent to resign from employment.

20. Plaintiffs also notified Defendant that they intend to set up a competing practice in Lexington County in violation of the Contracts' provisions.

21. Plaintiffs have not paid and, upon information and belief have no plans to pay Defendant the monies due as restitution and liquidated damages under Section 5.4(a) of the Contracts.

22. Plaintiffs initiated this litigation in a bad faith attempt to avoid the bargained for terms in their Contract including their promise to pay Defendant under Section 5.4(a).

23. Plaintiffs, while in the employ of Defendant, have acted disloyal and taken affirmative acts towards undermining Defendant's business and establishing a competing business.

24. Plaintiffs, while in the employ of Defendant, have been secretly and/or overtly soliciting Defendant's base of referring physicians.

FOR A FIRST COUNTERCLAIM CAUSE OF ACTION
(Breach of Contract)

25. The allegations set forth in paragraphs 1 though 24 above are incorporated herein as if set forth verbatim.

26. Plaintiffs had binding Contracts with Defendant Columbia Heart Clinic, P.A. whereby Plaintiffs promised, inter alia, not to compete with Defendant Columbia Heart Clinic, P.A.

27. Plaintiffs also promised that if Plaintiffs elected to compete with Defendant Columbia Heart Clinic, P.A. that Plaintiff would first pay Defendant compensation and liquidated damages.

28. Plaintiffs have a duty of good faith and fair dealing in performing their duties under the Contracts.

29. Plaintiffs have announced that they plan to compete with Defendant's practice in breach of the Contracts.

30. Plaintiffs have unjustifiably breached the Contracts by, inter alia, refusing to pay Defendant restitution and liquidated damages in advance of competing with Defendant as required by the Contracts in Section 5.4 (a).

31. Plaintiffs have breached their duty of good faith and fair dealing by initiating this litigation in bad faith solely in an attempt to avoid the bargained for and agreed to terms of the Contracts and to avoid paying the restitution and liquidated damages due to Defendant.

32. Defendant has satisfied all obligations owed under the Contracts to Plaintiffs.

33. As a direct and proximate result of the breaches by Plaintiffs, Defendant has

suffered damages. In addition, Defendants are entitled to prejudgment interest as a result of Plaintiffs breaches.

FOR A SECOND COUNTERCLAIM CAUSE OF ACTION
(Breach of Fiduciary Duty)

34. The allegations set forth in paragraphs 1 though 33 above are incorporated herein as if set forth verbatim.

35. Defendant placed trust and special confidence in Plaintiffs and expected that Plaintiffs would act fairly in Plaintiffs' dealings with Defendant.

36. Plaintiffs were aware that the Defendant was placing trust and special confidence in Plaintiffs and were aware of the expectation of fair dealing.

37. Plaintiffs owed Defendant fiduciary duties as members and employees of a professional P.A.

38. Plaintiffs breached the fiduciary duties owed Defendant.

39. Plaintiffs breached the fiduciary duties owed Defendant by, inter alia, actively working to establish a competing business and to undermine Defendant's business prior to Plaintiffs leaving Defendant's employ.

40. Plaintiffs breached the fiduciary duties owed Defendant by, inter alia, actively soliciting Defendant's base of referring physicians prior to Plaintiffs leaving Defendant's employ.

41. As a direct and proximate result fo the breaches of fiduciary duty owed by Plaintiffs, Defendant has suffered damages.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Columbia Heart Clinic, P.A. prays that:

a. Plaintiff's Complaint be dismissed with prejudice along with attorney's fees and costs;
b. Defendant be awarded actual damages and prejudgment interest pursuant to Defendant's Counterclaim for Breach of Contract;
c. Defendant be awarded actual damages pursuant to Defendant's Counterclaim for Breach of Fiduciary Duty; and
d. the Court issue such further relief as the Court deems proper and appropriate.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis
Keith M. Babcock
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Columbia Heart Clinic, P.A.

Columbia, South Carolina

March 3, 2006.

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	

FILED

2006 APR 27 A 10:40

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,	C. A. No.
Plaintiffs,	
v.	COMPLAINT
Columbia Heart Clinic, P.A.	
Defendant.	

2006-CP32-1497

Plaintiffs J. Kevin Baugh, M.D., and Barry J. Feldman, M.D. (hereinafter "Drs. Baugh and Feldman" or "Physician", as applicable), complain of the above-named defendant, Columbia Heart Clinic, P.A., as follows:

1. Drs. Baugh and Feldman are citizens and residents of South Carolina and practice cardiology in Lexington County, South Carolina.

2. The Defendant, Columbia Heart Clinic, P.A. (the "Defendant," "Practice," "Medical Group," or "P.A."), is a professional corporation organized and existing under the laws of the State of South Carolina with an office in Lexington County, South Carolina.

3. On or about July 15, 2004, Drs. Baugh and Feldman, respectively, signed a "Shareholder Physician Employment Agreement" (hereinafter the "Contract") between himself and the P.A., copies of which are attached as Exhibit A.

First Cause of Action
(Breach of Contract)

4. Paragraph 1.1 of the Shareholder Physician Employment Agreement is entitled

"Compensation." This section provides that the Medical Group shall pay to physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of the Medical Group from time to time. While the Employment Agreement indicates that physician compensation policies are attached to the Employment Agreement as "Exhibit A," no such policies were attached to the respective Employment Agreements of Drs. Baugh and Feldman.

5. Drs. Baugh and Feldman, as physicians employed by the practice, provided medical services to the practice through April 22, 2006, and are entitled to appropriate compensation for their services which necessarily includes salary, bonus compensation, and "Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, calculated on the date of termination of this Agreement."

6. Drs. Baugh and Feldman have been advised that they will not be paid the compensation to which they are entitled for providing medical services on behalf of the medical group.

7. Drs. Baugh and Feldman are entitled to directorship compensation that has not been paid to them.. The Medical Group has improperly and repeatedly failed to pay and denied Dr. Feldman directorship compensation dating back to 2005. Dr. Feldman has been advised that the Medical Group does not intend to provide Dr. Feldman with his directorship compensation.

8. Drs. Baugh and Feldman assert that the non-competition provisions set forth in the Agreement are unenforceable for multiple reasons, and that such provisions are not a proper basis for refusing to provide compensation due to them in exchange for their provision of medical services to the medical group.

9. Drs. Baugh and Feldman assert that they are entitled to all compensation due to them in exchange for their provision of medical services to the medical group.

Second Cause of Action
(Violation of State Wage Payment Statute, S.C. Code § 41-10-10 *et seq.*)

10. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 9 of this complaint.

11. Drs. Baugh and Feldman provided medical services on behalf of defendant Medical Group and are entitled to the compensation promised to them for providing such services.

12. Defendant medical group has failed to provide directorship compensation to Dr. Feldman and Dr. Baugh although both Dr. Feldman and Dr. Baugh have provided directorship services for which the Medical Group received compensation or other benefits.

13. Defendant Medical Group has expressly communicated to Dr. Feldman that he will not receive directorship compensation, despite the fact that defendant Medical Group has acknowledged its repeated failure to provide such compensation to Dr. Feldman.

14. Defendant Medical Group has advised Drs. Baugh and Feldman that they will not be receiving the remainder of salary owed to them through April 22, 2006, their last day of employment.

15. Defendant Medical Group, through its words and actions, has indicated that the medical group will not provide Drs. Baugh and Feldman with compensation based on "Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, calculated on the date of termination of this Agreement," as set forth in section 4.5(f) of the Employment Agreement.

16. Drs. Baugh and Feldman assert that the non-competition provisions set forth in the Agreement are unenforceable for multiple reasons, and that such provisions are not a proper basis for refusing to provide compensation due to them in exchange for their provision of medical services to the Medical Group.

17. Drs. Baugh and Feldman assert that they are entitled to three (3) times the amount of unpaid compensation, plus reasonable attorneys' fees, as damages resulting from defendant Medical Group's failure to compensate Drs. Baugh and Feldman for their services.

Third Cause of Action
(Quantum Meruit)

18. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 18 of this complaint.

19. Drs. Baugh and Feldman provided medical services on behalf of defendant Medical Group and are entitled to the compensation promised to them for providing such services. The best way indicator of the fair market value of the services provided by Drs. Baugh and Feldman is the compensation agreed upon by the parties.

20. Defendant Medical Group has advised Drs. Baugh and Feldman that they will not be receiving the remainder of salary and prorata share of accounts receivable owed to them through April 22, 2006, their last day of employment.

21. Drs. Baugh and Feldman assert that they are entitled to the fair market value of the medical services they provided on behalf of defendant medical group.

Fourth Cause of Action
(Equitable Action in the Nature of Replevin for Failure to Provide Patient Contact Information)

22. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 22 of this complaint.

23. The American Medical Association's Ethical Guideline 7.03 provides the following:

> The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. **Patients of the physician should be notified of the physician's new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice.** It is unethical to withhold such information upon request of a patient. **If the responsibility for notifying patients falls to the departing physician rather than to the group, the group should not interfere with the discharge of these duties by withholding patient lists or other necessary information.**

American Medical Association, Ethical Opinion E - 7.03. (Emphasis added.)

24. Defendant Medical Group has refused to notify patients of Drs. Baugh and Feldman of their new cardiology office address and of the opportunity for these patients to have their medical records forwarded to Drs. Baugh and Feldman at their new cardiology office address. Defendant Medical Group has also refused to provide the same notification and opportunity to patients of Dr. Jennifer Feldman, a former cardiologist employee of defendant Medical Group who has advised defendant Medical Group of her intention to practice cardiology with Drs. Baugh and Barry Feldman at the same new location.

25. Defendant Medical Group has refused multiple requests from Drs. Baugh, Feldman, and Feldman to provide them with their patient contact information or, in the alternative, to collaborate on the content of a letter to the patients of Drs. Baugh, Feldman, and Feldman – that would be sent out on defendant Medical Group's letterhead at the expense of Drs. Baugh, Feldman, and Feldman.

26. Defendant Medical Group's refusal to provide patient contact information to Drs. Baugh, Feldman, and Feldman, and defendant Medical Group's refusal to assist in any way in the provision, to patients of Drs. Baugh, Feldman, and Feldman, of written contact information for the new cardiology offices of Drs. Baugh, Feldman, and Feldman, constitutes unethical

interference with the ethical duty of Drs. Baugh, Feldman, and Feldman to advise patients of their new location and phone number, and of the option of the patients to have their medical records transferred to the new offices of Drs. Baugh, Feldman, and Feldman.

27. The South Carolina Department of Labor, Licensing, & Regulation and the South Carolina Board of Medical Examiners has endorsed the American Medical Association's Ethical Opinion 7.03. (Exhibit B).

28. S. C. Code § 44-115-20 of the Physicians' Patients Records Act states:

> The **physician** is the owner of medical records in his possession that were made **in treating a patient** and of records transferred to him concerning prior treatment of the patient.

(Emphasis added.) This statute declares that the treating physician is the owner of patient medical records.

29. There is no reference in the Physicians' Patient Records Act to ownership of medical records by a medical group or a medical practice.

30. The provision in the Employment Agreement that declares patient records to be proprietary information of the medical group contravenes the Physicians' Patient Records Act and, therefore, is unenforceable.

31. The Employment Agreement does not include a "no solicitation" provision or any other provision that seeks to prevent Drs. Baugh or Feldman from contacting their patients following the cessation of their employment with defendant Medical Group. Such a provision, however, would contravene the American Medical Association's ethical guideline that addresses proper notice to patients upon the departure of the treating physician. To the extent that defendant Medical Group asserts that the "Confidential Information" provision in the

Employment Agreement operates as a "no solicitation" provision, this provision is unenforceable on the ground that the restriction is of an indefinite duration and, therefore, overbroad.

32. Drs. Baugh, Feldman, and Feldman are entitled to an order of the court directing defendant Medical Group to provide Drs. Baugh, Feldman, and Feldman with the names, addresses, and phone numbers of their patients so that these patients may be advised of the following: (1) the new address and phone number for the new cardiology offices of Drs. Baugh, Feldman, and Feldman; (2) the option to continue be seen by cardiologists at Columbia Heart Clinic which requires no action on the part of the patient; and (3) the option to have their medical files transferred to the new offices of Drs. Baugh, Feldman, and Feldman along with instructions as to how this action can be accomplished.

PRAYER FOR RELIEF

WHEREFORE, Drs. Baugh and Feldman pray that the following recovery and relief be granted:

1. That the court grant Drs. Baugh and Feldman a judgment for all compensation due to them in exchange for their provision of medical services to the medical group;

2. That the court grant Drs. Baugh and Feldman a judgment in an amount equal to three times the amount of unpaid compensation, plus reasonable attorneys' fees, as damages resulting from defendant Medical Group's failure to compensate Drs. Baugh and Feldman for their services.

3. That the court issue an injunction requiring defendant Medical Group to provide Drs. Baugh, Feldman, and Feldman with access to patient contact information for the purpose of allowing Drs. Baugh, Feldman, and Feldman to advise their patients of the options: (1) to continue to be treated and cared for by Drs. Baugh, Feldman, and

Feldman; (2) to continue to be seen by cardiologists who are employed by defendant Medical Group which requires no action on the part of the patients; and (3) to have their medical records transferred to the new offices of Drs. Baugh, Feldman, and Feldman if the patients choose to continue to be treated and cared for by Drs. Baugh, Feldman, and Feldman.

4. That the court award Drs. Baugh and Feldman reasonable attorneys' fees; and

5. That the court award Drs. Baugh and Feldman costs and such other appropriate relief as the court deems just and proper.

Respectfully submitted,

Michael D. Malone
Charles F. Thompson, Jr.
Lake E. Summers
MALONE, THOMPSON & SUMMERS L.L.C.
1312 Gadsden Street
Columbia, S.C. 29229
(803) 254-3300
(803) 254-0309

ATTORNEYS FOR THE PLAINTIFFS

This 27th day of April, 2006.
Columbia, South Carolina

EXHIBIT A

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between COLUMBIA HEART CLINIC, P.A., a South Carolina professional corporation ("Medical Group"), and J. KEVIN BAUGH, M.D. ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical

Exhibit
A

education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
J. Kevin Baugh, M.D.
10 Cotton Hope Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, MD

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS
FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **BARRY J. FELDMAN, M.D.** ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical

education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
Barry J. Feldman, M.D.
5 Castle Hall Court
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
Barry J. Feldman, MD

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

EXHIBIT B

South Carolina Department of Labor, Licensing and Regulation

Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina Board of Medical Examiners

110 Centerview Drive
Post Office Box 11289
Columbia, SC 29211-1289
Phone: (803) 896-4500
FAX: (803) 896-4515
www.llr.state.sc.us

To: Whom It May Concern

From: South Carolina Board Of Medical Examiners

Re: Closing a Medical Practice in South Carolina

The attached information on requirements and suggestions for physicians in closing a medical practice has been obtained from the American Medical Association, the South Carolina Board of Medical Examiners and the South Carolina Medical Association. It is provided to you as guidance in closing a practice or practice site.

Addendum A: Excerpts from the American Medical Association's Code of Medical Ethics regarding closing a practice

Addendum B: Article from the American Medical Association regarding legal issues relating to ending the patient-physician relationship

Addendum C: Copy of the Physicians Patient Records Act

Total number of pages including the addendums is 17 pages

PROCEDURES FOR CLOSING A DOCTOR'S OFFICE

All records should be kept for the period of the statute of limitations.

Doctor should advertise in all papers, and notify all patients (no matter how long ago treated) by letter of closing. All returned mail should be kept in patients file. Notifying of patients should be done within three (3) months in advance; thirty (30) days at a minimum. This is done so patients cannot sue for abandonment.

All patients receiving records should sign a statement for receiving such and the statement should be kept in the patient's file.

Notifying Your Employees

In the best of all worlds, you will have found a buyer who wants your employees to stay on and everyone lives happily ever after. But there is always the possibility that you won't find a buyer or that if you do, the new physician will want to bring on his or her own staff.

In any case, you'll have to give your employees sufficient notice that you plan to retire; how much notice is the problem. You don't want an empty office by the time you are ready to leave. Still you owe them fair warning. Keep in mind that you'll need their help and cooperation in closing out or transferring your operation.

To make sure that you aren't left alone the last weeks to cover the telephones and fill out insurance forms, it is a good idea to give at least one employee an incentive to stay on for a designated amount of time after you actually stop seeing patients to finish the final closing details. There are a number of loose ends to be tied together before you can consider yourself retired, a list of which is found at the end of this section.

Don't be surprised if some of your employees are not overjoyed about your decision to retire. They may feel betrayed and rejected by you, particularly if there are no immediate job prospects for them.

More than one physician has been sued by a loyal employee who decided to see the wages board about all that overtime she put in over the years and for which she never received payment.

You can help allay their fears by letting them know that you will do all you can to find them new jobs. When you write to your colleagues to notify them of your plans to leave practice, send along the resumes of your staff. Let pharmaceutical and supply sales persons know that you are planning to leave, and that you have some good people looking for new jobs. Sales people are generally well informed about openings in the area and can get the word around about your staff.

Notifying Your Patients

The next step is notifying your patients. To avoid charges of abandonment, you'll need to send a letter to "active" patients. Active isn't always easy to define and in the end it is your decision. At a minimum, you should notify all patients seen within the past two years. Certainly patients who have chronic or complicated conditions must be contacted so you can help them arrange for their future treatment. For your high-risk patients, send a certified letter to them advising of your retirement.

For those of you in group practice, a letter may not be necessary if there will be continuing care of your patients by your colleagues in the partnership or corporation. Check with your medical society and get their opinion on how the situation is handled in your area. Your patients have the option of changing physicians and it is your obligation to notify them of your planned departure.

The basic form and content of notification letter to your patients is included at the end of this section. Modify it to meet your needs and to make it personal. Do, however, include the essential information found in the example. It is a good idea to send out the letter three months before you plan to stop practicing.

Collecting Accounts Receivable

Collection of long due bills is rarely easy and never pleasant. You have little recourse. You can't for example, refuse to transfer the record of a slow-paying patient, nor can you include in the record any information about the patient's bill-paying habits. Still, there are some tried and true techniques developed by the AMA's Practice Management Department to help you collect what is yours.

At the end of this section are a number of aids to help you establish a system for collecting your overdue accounts, including a series of sample letters, guidelines for choosing a collection agency, telephone techniques and tips on how to deal with slow-paying insurance companies.

One way to avoid collection problems is to ask your patients to pay at the time of service. It will help you cut down on the cost of billing—which amounts to at least $2 per bill these days—and when you get ready to close out, the books will be clear.

How to start? First, make sure your patients are well informed of your credit policies. Then, have your staff ask for payment at the end of the visit and for payment on any overdue account. If the patient cannot pay in full, have your office business manager take him or her aside and work out a mutually agreeable plan for the payment. Letters are your next resort and they should become progressively tougher as the bill's age mounts. Note the sample letters provided at the end of this section. Telephoning is the next step and, finally, turning the old accounts over to a collection agency.

If you are transferring your practice, you may be able to arrange with the new doctor to try to collect your outstanding accounts, giving him or her a percentage or fixed fee.

Reducing the Bloat of Record Retention

What do you with medical records when you retire? "One thing not to do with them is leave the problem of their disposition to your spouse," says Lynn Dowling, former program director for the Department of Practice Management. Whether you close or sell your practice, you will want to start making arrangements for your medical records at least three months before you leave. The following offers advise on reducing the bloat of record retention after retirement.

How Long Should I Keep Medical Records?

There are no hard and fast rules, says William Smith, AMA legal counsel. "Where there is no legal requirement, which is the case in most states," he says, "records should be kept for the period of the statute of limitations for professional liability (the length of time in which such a suit can be filed). That time period varies from state to state, but is usually under ten years. Contact your local or state medical society to be sure what the laws are where you practice.

Note, too, that the statute of limitations does not begin running for children until they reach the age of majority-usually 18. In many states the statute of limitations is two years from the date of discovery. If your specialty is pediatrics or obstetrics, or you have otherwise treated children, you will need to count on retaining some records possibly a minimum of thirty years.

You may want to retain some records for a "reasonable amount of time" beyond the statute, Smith says. "Records should be available in the event that patients want or need them," he points out. "Sure, you might have only four or five patients in a couple of thousand who ever actually contact you for the record, but it may make a dramatic difference to that person if the record is available."

Women whose mothers took DES during their pregnancy have been grateful to physicians who retained records containing the information.

How Do I Decide Which Records to Keep?

Unless you have unlimited storage space, you'll have to set some guidelines for which records to keep and which to purge. Generally, you can toss records of patients you saw only once for a routine checkup or procedure and of patients with uncomplicated problems whom you haven't seen in a number of years.

Deceased patients' records can be destroyed a few years after their death. Once the estate is closed and any statute of limitations for wrongful death has run, no suits for professional liability can be brought, Smith says.

You'll want to hang onto records of active patients—and there's the rub. How do you define active? Where is the cutoff in terms of the date of the last visit or the complexity of the case? Once again, the judgment call is yours to make.

Even if you are part of a group practice or partnership that will retain your patients' records after you retire, you may want to purge inactive records before you leave. They'll be taking valuable space from your colleagues.

In What Form Should I Transfer a Medical Record?

Keep in mind that you own the original hard copy of the record. You should hold onto it. If your patient requests that you forward her file to a new doctor, you have two options: (1) you can either photocopy the entire contents and let the new physician decide what to retain or (2) you can make a summary of the record. Smith notes that the summary is preferable if you have made notes in short hand or, as is so often the case among physicians, if our handwriting is illegible.

What if a Patient Owes on His Account? Am I obliged to transfer his Record if he requests it?

You can't refuse to forward a record because a patient owes you money. Nor should such information be in the medical record. If it is you can be in violation of state or federal consumer laws.

Is It Okay to Give a Copy of The Record to The Patient?

A number of states have passed laws granting patients access to their medical records. Note, however, that you should provide a copy, not the original.

A case in point for retaining your hard copy is the experience of a Maryland physician we'll call Dr. Purge. When he retired he decided to dispose of his records by giving them to his patients. A sign went up in the waiting room: "Pick up your medical chart after your last visit." And away the patients went with their entire files tucked under their arms.

All was well until about a year after Dr Purge had moved to Florida. One day the state medical society received a frantic call from his lawyer. It seems Dr. Purge was being sued by a former patient.

"What is the charge?" asked the medical society's legal counsel.
"We don't know," replied the lawyer. "We don't have the record."

Fortunately for Dr. Purge, the plaintiff's attorney was willing to share the document. And to Dr. Purge's amazement he found that the patient after reading the record had decided the doctor had been withholding information about his condition. How had he reached that conclusion? All the entries were in blue or black ink, save one, which was in red. The red ink must mean something, the patient had decided. Alas, it meant only that Dr Purge had picked up a red pen that day to make chart notes.

The moral of the story is, don't hand over original records to patients. Instead, dictate or summarize or photocopy the record if the patient insists on having it with him.

What Are The Options for Storing Medical Records?

If you are closing your practice you face the decision of where to store your records. You have several options:

1) Contact your medical society. Some have storage centers or can direct you to others in the community.
2) Do you have room in your basement, attic or garage? And do you intend to stay in that location? Are these places dry and safe?
3) Check out storage companies in your area and what they charge if you must retrieve a record.

What About Microfilm?

Microfilming records may or may not be the answer to your storage problems. The initial cost can be high, depending on the size and number of charts. The major cost is labor—to prepare the record for filming. You may want to select only certain material for filming, which will require review of each record. Then there is the removing of staples, paper clips and putting the papers in the proper sequence.

What Can I do With X-ray Film?

According to Smith, if you retain the report on the x-ray the information is probably sufficient. If, for any reason, you think the x-ray might be needed later, keep it. You may be able to turn in the x-rays for their silver value. Call your medical society to find out who in your area might be interested in the films for their silver content.

How Do I Destroy Records?

You need to find a way in which they will not fall into the hands of someone outside who might use them. If you have a refuse service pick up the records, be sure they will be burned. Cut or tear them in hall before disposing.

Agencies to Notify

Whether a physician retires, dies or simply changes address or practice status, certain agencies must be notified as soon as possible. Some notifications are required by law while others are just good public relations and make good sense.

The State Board of Medical Examiners want to know where their physician-licensees are living. The State Board should be advised of any change in residence or practice location.

The Drug Enforcement Administration must be notified when a physician retires, dies or changes the location of the practice. They will give instructions as to the disposition of any narcotics and/or drugs, as well as your certificate of registration, order forms, records, etc. In

addition, you may need to contact your state agency, such as the **State Commissioner of Narcotics and Dangerous Drugs.**

Professional Associations such as the American Medical Association, your specialty societies, county and state medial societies should be notified as well. Note that the AMA maintains the national registry of all physicians. The address is 535 N. Dearborn, Chicago, IL 60610. Addresses for most state county and specialty societies can be obtained by writing the AMA.

The Major Insurance Carriers should be advised of your change in status and address due to the long lag time between filing of claims and final payment. Be sure to notify:

____Medicare
____State Medicaid Program
____Local Blue Shield Plan
____Other Major Commercial Carriers

All addresses should be available from your state Insurance Commissioners Office.
The Social Security Administration Office should be another stop to make if you are approaching your 65th birthday. Apply for your benefits as well as Medicare coverage. Be sure to get a complete run-down of what Medicare covers (you probably know what it doesn't cover, from experience) so you can evaluate supplemental coverage needed.

CLOSING CHECKLIST 1
(ADVANCE PLANNING)

Steps to Take	Recommended Time Frame
Lease	At the beginning of next lease term
	Make arrangements for a retirement "escape clause" to be written into your lease. Most landlords will agree to this with a six-month notice. If you cannot negotiate an escape clause, be sure you have the right to sublease your space.
Accounts Receivable	Two years before closing (as soon as possible)
	Consider asking for payment at the time of service for small office charges. Begin aging your accounts receivable, if you do not do so currently. Develop a polished mail and telephone collection program. Tighten up procedures for insurance filing. Be sure you have a tickler file established to follow-up slow claims.
Employees	Approximately three months before closing (perhaps a bit longer depending on employees circumstances and your town's job market).
	Notify employees of your plans. Assist them in finding employment if possible. Arrange for key person(s) to remain as long as you'll need them. Line up potential temporaries in the event people leave before you close. Be square with staff regarding overtime pay, un-used sick leave and vacation. Review your policy manual. Discuss amount vesting employees may have in pension plans and how funds are to be transferred.
Patient Records	Approximately three months before closing (longer, based on local circumstances)
	Identify patients that are active and draft a notice to them of your plans. Mail along with an authorization to release records. Start processing transfers. Know your state regulations regarding patient access to records, retention requirements for storage of remaining records, or microfilming. Draft a notice for the newspapers.
Equipment	Three months before closing
	Explore sources available for sale and/or disposition of office equipment and furniture. Have equipment appraised, place ads in journals if you wish to sell. Consider donation if appraisals are low or you don't wish to bother trying to sell.

Sample Letter for Physicians Discontinuing Practice

Dear Mr. Mrs. Ms. _____

Please be advised that because of _____ I am discontinuing the practice of medicine on _____, _____. I shall not be able to attend you professionally after that date.

I suggest that you arrange to place yourself under the care of another physician. If you are not acquainted with another physician, I suggest that you contact the _____ Medical Society.

I shall make my records of your case available to the physician you designate. Since the records of your case are confidential, I shall require your written authorization to make them available to another physician. For this reason, I am including at the end of this letter an authorization form. Please complete the form and return it to me.

I am sorry that I cannot continue as your physician. I extend to you my best wishes for your future health and happiness.

Yours very truly,

_____M.D.

Sample form for authorization to transfer records

Date:_____

To:_____**, M.D.**

I hereby authorize or make available to _____**, M.D.,** _____
(name) **(address)**

all the records and reports relating to my case.

Signed_____

FROM THE AMA'S CODE OF MEDICAL ETHICS

an unpaid bill for medical services. Physicians may charge a reasonable fee for copying medical records. (IV)

Issued prior to April 1977.

Updated June 1994.

N.Y. Surr. 1968 Patients of a deceased physician filed an action seeking to obtain or copy records maintained by the decedent during his lifetime regarding them. The executor had refused to deliver the records by reason of a provision in the decedent's will directing that his "office records" be destroyed. Quoting Opinions and Reports of the Judicial Council, Sec. 9 Paras. 3, 4, 5, 6, and 7 (1966) [now Opinions 7.01, 7.02, 7.03, and 7.05], the court ruled that, while patient records are the property of the physician, it would be against public policy to permit their destruction. As a result, the court ordered the executor to make the records available to the patients' succeeding physicians at their request. *In re Culbertson's Will, 57 Misc. 2d 391, 292 N.Y.S.2d 806, 808-10.*

S.C. Att'y Gen. 1978 Citing Opinions 5.61, 5.62, and 5.63 (1977) [now Opinions 7.01, 7.02, and 7.03], state attorney general found that patient medical records are the property of the physician or hospital which compiled them and that patients have no ownership rights in them. Further, the opinion concludes that patients have a right to information contained in their records and the right to have records sent to another physician. Patients do not, however, have the right to unlimited direct access to their medical records. *South Carolina Att'y Gen. Op., 1978 S.C. AG LEXIS 806.*

7.03 **Records of Physicians Upon Retirement or Departure from a Group.** A patient's records may be necessary to the patient in the future not only for medical care but also for employment, insurance, litigation, or other reasons. When a physician retires or dies, patients should be notified and urged to find a new physician and should be informed that upon authorization, records will be sent to the new physician. Records which may be of value to a patient and which are not forwarded to a new physician should be retained, either by the treating physician, another physician, or such other person lawfully permitted to act as a custodian of the records.

The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. Patients of the physician should also be notified of the physician's new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice. It is unethical to withhold such information upon request of a patient. If the responsibility for notifying patients falls to the departing physician rather than to the group, the group should not interfere with the discharge of these duties by withholding patient lists or other necessary information. (IV)

Issued prior to April 1977.

Updated June 1994 and June 1996.

N.Y. Surr. 1968 Patients of a deceased physician filed an action seeking to obtain or copy records maintained by the decedent during his lifetime regarding them. The executor had refused to deliver the records by reason of a provision in the decedent's will directing that his "office records" be destroyed. Quoting Opinions and Reports of the Judicial Council, Sec. 9 Paras. 3, 4, 5, 6, and 7 (1966) [now Opinions 7.01, 7.02, 7.03, and 7.05], the court ruled that, while patient records are the property of the physician, it would be against public policy to permit their destruction. As a result, the court ordered the executor to make the records available

Addendum A

to the patients' succeeding physicians at their request. *In re Culbertson's Will, 57 Misc. 2d 391, 292 N.Y.S.2d 806, 808-10.*

S.C. Att'y Gen. 1978 Citing Opinions 5.61, 5.62, and 5.63 (1977) [now Opinions 7.01, 7.02, and 7.03], state attorney general found that patient medical records are the property of the physician or hospital which compiled them and that patients have no ownership rights in them. Further, the opinion concludes that patients have a right to information contained in their records and the right to have records sent to another physician. Patients do not, however, have the right to unlimited direct access to their medical records. *South Carolina Att'y Gen. Op., 1978 S.C. AG LEXIS 806.*

7.04 Sale of a Medical Practice. A physician or the estate of a deceased physician may sell to another physician the elements which comprise his or her practice, such as furniture, fixtures, equipment, office leasehold, and goodwill. In the sale of a medical practice, the purchaser is buying not only furniture and fixtures, but also goodwill, i.e., the opportunity to take over the patients of the seller.

The transfer of records of patients is subject, however, to the following:

(1) All active patients should be notified that the physician (or the estate) is transferring the practice to another physician who will retain custody of their records and that at their written request, within a reasonable time as specified in the notice, the records or copies will be sent to any other physician of their choice. Rather than destroy the records of a deceased physician, it is better that they be transferred to a practicing physician who will retain them subject to requests from patients that they be sent to another physician.

(2) A reasonable charge may be made for the cost of duplicating records. (IV)

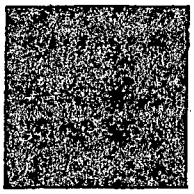
Issued July 1983.

N.Y. Surr. 1977 In a discovery proceeding, respondent-psychiatrist, who had treated some patients of deceased psychiatrist subsequent to his death, allegedly misappropriated decedent's patient records. Estate petitioned court for return of records and damages for injury to value of decedent's practice. Respondent sought dismissal of claim arguing that estate could not sell patient records. The court rejected respondent's request. In so ruling, the court noted that under Principle 9 (1957) [now Principle IV and Opinion 5.05] prohibiting physicians from revealing patient confidences, various guidelines had been issued regarding sale of a medical practice [now Opinion 7.04]. Whether respondent's actions had interfered with the estate's efforts to dispose of decedent's practice in keeping with these guidelines presented the court with factual issues for later resolution. *Estate of Finkle, 90 Misc. 2d 550, 395 N.Y.S.2d 343, 346.*

7.05 Retention of Medical Records. Physicians have an obligation to retain patient records which may reasonably be of value to a patient. The following guidelines are offered to assist physicians in meeting their ethical and legal obligations:

(1) Medical considerations are the primary basis for deciding how long to retain medical records. For example, operative notes and chemotherapy records should always be part of the patient's chart. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time.

(2) If a particular record no longer needs to be kept for medical reasons, the physician should check state laws to see if there is a requirement that records be





Legal Issues For Physicians

Legal Issues For Physicians

- Business and Management Issues
- Compliance Issues
- Patient - Physician Relationship Issues

Ending the Patient-Physician Relationship

Once a patient-physician relationship is begun, a physician generally is under both an ethical and legal obligation to provide services as long as the patient needs them. There may be times, however, when you may no longer be able to provide care. It may be that the patient is noncompliant, unreasonably demanding, threatening to you and/or your staff, or otherwise contributing to a breakdown in the patient-physician relationship. Or, it may be necessary to end the relationship simply due to relocation, retirement, or unanticipated termination by a managed care plan and/or employer.

Regardless of the situation, to avoid a claim of "patient abandonment," a physician must follow appropriate steps to terminate the patient-physician relationship. Abandonment is defined as the termination of a professional relationship between physician and patient at an unreasonable time and without giving the patient the chance to find an equally qualified replacement. To prove abandonment, the patient must show more than a simple termination of a patient-physician relationship. The plaintiff must prove that the physician ended the relationship at a critical stage of the patient's treatment without good reason or sufficient notice to allow the patient to find another physician, and the patient was injured as a result. Usually, expert evidence is required to establish whether termination in fact happened at a critical stage of treatment.

A physician who does not terminate the patient-physician relationship properly may also run afoul of ethical requirements. According to the AMA's Council on Ethical and Judicial Affairs, a physician may not discontinue treatment of a patient as long as further treatment is medically indicated, without giving the patient reasonable notice and sufficient opportunity to make alternative arrangements for care. Further, the patient's failure to pay a bill does not end the relationship, as the relationship is based on a fiduciary, rather than a financial, responsibility. According to the AMA's Code of Medical Ethics, Opinion 8.115, physicians have the option of terminating the patient-physician relationship, but they must give sufficient notice of withdrawal to the relatives, or responsible friends and guardians to allow another physician to be secured.

Appropriate steps to terminate the patient-physician relationship typically include:

1. Giving the patient written notice, preferably by certified mail, return receipt requested;
2. Providing the patient with some explanation for terminating the relationship (though this is

Addendum B

3. Agreeing to continue to provide treatment and access to services for a reasonable period of time, such as 30 days, to allow a patient to secure care from another physician (a physician may want to extend the period for emergency services);
4. Providing resources and/or recommendations to help a patient locate another physician of like specialty; and
5. Offering to transfer records to a newly-designated physician upon signed patient authorization to do so.

Following this protocol may be easier in some situations than others. For example, if a physician has signed a covenant-not-to-compete, chances are the employer will not hand over the patient list upon notice of departure. In instances such as these, you (in consultation with your attorney) may want to provide a model patient termination letter to the party withholding your patients' addresses, and request that the addresses and letter be merged for distribution to your patients. Ideally, you should not be in a contractual arrangement that makes contacting your patients difficult. However, if you find yourself in this situation, work with an attorney to ensure that appropriate steps are taken.

Prepared by the American Medical Association, Office of the General Counsel, Division of Health Law

Copyright 1998 American Medical Association

Posted: September 1998

AMA Home • About AMA • Advocacy • Ethics, Education, Science, Accreditation
Journals • Information for Physicians • Health and Fitness Information

© 1995–1998 American Medical Association. All rights reserved.

PHYSICIANS' PATIENT RECORDS ACT

[Back to the Laws & Regulations Page] [Back to the Board of Medical Examiners Homepage]

§ 44-115-10. Short title.
§ 44-115-20. Physician is owner of certain patient records.
§ 44-115-30. Patient's right to receive copy of medical record or have it transferred to another physician; written authorization required.
§ 44-115-40. Physician not to release records without express written consent.
§ 44-115-50. Physician may rely on representations of insurance carrier or administrator as to patient authorization to release records; immunity from liability and disciplinary action.
§ 44-115-60. Physician's release of summary or portion in lieu of full record.
§ 44-115-70. Records not to be withheld because of unpaid medical bills.
§ 44-115-80. Fees physician may charge for search and duplication of records.
§ 44-115-90. Fees for providing medical information other than copying existing documents.
§ 44-115-100. Sections 44-115-80 and 44-115-90 not applicable to requests for information made in relation to health insurance claims.
§ 44-115-110. Payment for services related to medical records a just debt; payment in advance may be required.
§ 44-115-120. Length of time records must be kept; records pertaining to minors.
§ 44-115-130. Sale of medical records by physician restricted; notice of intent to sell.
§ 44-115-140. Immunity from civil, criminal, and disciplinary liability for compliance with request to release information.
§ 44-115-150. Other provisions pertaining to medical records or actions involving medical negligence not invalidated by this chapter.

PHYSICIANS' PATIENT RECORDS ACT

§ 44-115-10. Short title.
This chapter may be cited as the Physicians' Patient Records Act.

§ 44-115-20. Physician is owner of certain patient records.
The physician is the owner of medical records in his possession that were made in treating a patient and of records transferred to him concerning prior treatment of the patient.

§ 44-115-30. Patient's right to receive copy of medical record or have it transferred to another physician; written authorization required.

A patient or his legal representative has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his representative to release the record.

§ 44-115-40. Physician not to release records without express written consent.
Except as otherwise provided by law, a physician shall not honor a request for the release of copies of medical records without the receipt of express written consent of the patient or person authorized by law to act on behalf of the patient.

Addendum C

§ 44-115-50. Physician may rely on representations of insurance carrier or administrator as to patient authorization to release records; immunity from liability and disciplinary action.

A physician may rely on the representations of a health and life insurance carrier or administrator of health and life insurance claims that the authorization of the patient or of a person upon whose status the patient's claim depends for release of the medical record is on file with the carrier as an authorization to release medical information under this chapter. A physician who in good faith releases medical information for claims processing relying on the representations of the claims administrator that an authorization for release of the information is on file is immune from any civil or criminal liability alleged to be caused by the physician's compliance with the request to release the information. The physician is not subject to disciplinary action for an alleged violation of law or regulation due to the compliance with the request to release information.

§ 44-115-60. Physician's release of summary or portion in lieu of full record.
Except as otherwise provided by law, a physician may refuse to release a copy of the entire medical record and may furnish instead a summary or portion of the record when he has a reasonable belief that release of the information contained in the entire record would cause harm to the patient's emotional or physical well-being, the emotional or physical well-being of another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. An unreasonable refusal to release the entire medical record constitutes unprofessional conduct and subjects the physician to disciplinary action of the South Carolina State Board of Medical Examiners. However, notwithstanding the provisions of this section, a physician may not refuse to release the entire record or a portion of the record if the information is requested by a licensed attorney representing the patient, when the request is accompanied by a written authorization signed by the patient, the patient's legal guardian, or the patient's personal representative, for any reason, a licensed attorney representing the patient, or by an insurance company with reference to an application for life or health insurance or the payment and adjudication of claims relating to life and health insurance or if the information is requested with reference to the payment or adjudication of personal injury claims.

§ 44-115-70. Records not to be withheld because of unpaid medical bills.
Medical records may not be withheld because of an unpaid bill for medical services.

§ 44-115-80. Fees physician may charge for search and duplication of records.
A physician, or other owner of medical records as provided for in Section 44-115-130, may charge a fee for the search and duplication of a medical record, but the fee may not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages, and a clerical fee for searching and handling not to exceed fifteen dollars per request plus actual postage and applicable sales tax. A physician, health care provider, or other owner of medical records must provide a patient's medical records at no charge when the patient is referred by the physician, health care provider, or an employee, agent, or contractor of the owner of the record to another physician or health care provider for continuation of treatment for a specific condition or conditions. The physician may charge a patient or the patient's representative no more than the actual cost of reproduction of an X-ray. Actual cost means the cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication.

§ 44-115-90. Fees for providing medical information other than copying existing documents.
When a request for medical information involves more than making copies of existing documents, a physician may charge reasonable fees, exclusive of those fees charged for copying the medical record, for providing this service.

§ 44-115-100. Sections 44-115-80 and 44-115-90 not applicable to requests for information made in

relation to health insurance claims.
The provisions of Sections 44-115-80 and 44-115-90 do not apply to requests for medical information necessary to process a health insurance claim made by a patient or on behalf of the patient by a health insurance carrier or health insurance administrator for services rendered by the physician from whom the information is requested.

§ 44-115-110. Payment for services related to medical records a just debt; payment in advance may be required.
Payment for all services related to medical record requests is a just debt, due and payable at the time service is rendered. A physician may require payment in advance for a copy of the record.

§ 44-115-120. Length of time records must be kept; records pertaining to minors.
Physicians shall retain their records for at least ten years for adult patients and at least thirteen years for minors. These minimum recordkeeping periods begin to run from the last date of treatment. After these minimum recordkeeping periods, the records may be destroyed.

§ 44-115-130. Sale of medical records by physician restricted; notice of intent to sell.
A physician may not sell medical records to someone other than a physician or osteopath licensed by the South Carolina State Board of Medical Examiners or a hospital licensed by the South Carolina Department of Health and Environmental Control. Exceptions to this prohibition may be granted and approved by the South Carolina State Board of Medical Examiners.
Before a physician may sell medical records, he must cause to be published a public notice of his intention to sell the records in a newspaper of general circulation in the area of his practice at least three times in the ninety days preceding the sale. The notice shall advise patients that they may retrieve their records if they prefer that their records not be included in the sale.

§ 44-115-140. Immunity from civil, criminal, and disciplinary liability for compliance with request to release information.
A physician who in good faith releases medical records to a party pursuant to a written authorization from the patient or the patient's representative is immune from civil or criminal liability alleged to be caused by the physician's compliance with the request to release the information. The physician is not subject to disciplinary action for an alleged violation of law due to compliance with the request to release information.

§ 44-115-150. Other provisions pertaining to medical records or actions involving medical negligence not invalidated by this chapter.
This chapter does not invalidate any other provision of law concerning medical records, the alteration of medical records, any interest a patient has in the information contained within the medical record, or any civil action brought in the state or federal courts alleging medical negligence; further, this chapter does not invalidate the authority of a court to issue a subpoena or of a licensing or disciplinary board of this State to obtain these records as provided by law.

Link to this document at the South Carolina Department of Labor, Licensing & Regulation website.

(http://www.llr.state.sc.us/POL/Medical/Office%20Closing%20Packet%20retyped.pdf).

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	C/A NUMBER: 06-CP-32-1497
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	**ANSWER and COUNTERCLAIMS OF DEFENDANT**

FILED
2006 MAY 31 AM 8:5
Beth A. Carlisle
Clerk of Court
Lexington, SC

Defendant Columbia Heart Clinic, hereby answers and responds to the Complaint of Plaintiffs J. Kevin Baugh and Barry J. Feldman as follows.

FOR A FIRST DEFENSE

1. Defendant generally and specifically denies each and every allegation, statement, matter and/or thing set forth and alleged in the Complaint unless specifically admitted, qualified, or explained.

2. As to Paragraph 1, Defendant admits the allegations.

3. As to Paragraph 2, Defendant admits the allegations.

4. As to Paragraph 3, Defendant admits the allegations.

5. As to Paragraph 4, Defendant admits so much of the paragraph as alleges that Section 1.1 of the Shareholder Physician Employment Agreement is entitled "Compensation" and craves reference to the entire document for all terms and conditions as to the remaining allegations. Defendant lacks the knowledge to form a sufficient belief as to the policies attached to Employment Agreement of Plaintiffs. Defendant further alleges that Defendant followed a set payment practice for some time

prior to the Employment Agreements, and under that payment plan, Plaintiffs have been fully compensated and actually, paid more than they were entitled.

6. As to Paragraph 5, Defendant admits that Plaintiffs were physicians employed by the practice through April 22, 2006 but deny the Plaintiffs are entitled to any compensation. Defendant specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

7. As to Paragraph 6, Defendant denies the allegations.

8. As to Paragraph 7, Defendant denies the allegations and further specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

9. As to Paragraph 8, Defendant denies the allegations.

10. As to Paragraph 9, Defendant denies the allegations and specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

11. In answering Paragraph 10, Defendant realleges Paragraphs 1-16 as fully as if repeated verbatim herein.

12. As to Paragraph 11, Defendant admits so much as alleges that Plaintiffs provided certain medical but denies the remaining allegations. Defendant specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

13. As to Paragraph 12, Defendant admits so much of the paragraph as alleges that Plaintiffs

provided directorship services to Defendant, but denies the remaining allegations. Defendant specifically alleges Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

14. As to Paragraph 13, Defendant admits only so much of the paragraph as alleges that Defendant has discussed directorship compensation with Dr. Feldman, but denies the remaining allegations. Defendant specifically alleges that any non-payment of directorship fees was inadvertent and Plaintiffs failed to bring any alleged non-payment to Defendant's attention or request such payment. Furthermore, Defendant specifically alleges that asserts that even if directorship fees have not been paid, Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

15. As to Paragraph 14, Defendant admits only so much of the paragraph as alleges that it has communicated with Plaintiffs regarding salary but specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper..

16. As to Paragraph 15, Defendant admits only so much of the paragraph as alleges that Plaintiffs will not be receiving additional compensation based on accounts receivable but asserts that Plaintiffs are not entitled to any additional compensation and therefore the remaining allegations are denied. Defendant specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

17. As to Paragraph 16, Defendant denies the allegations.

18. As to Paragraph 17, Defendant denies the allegations.

19. In answering Paragraph 18, Defendant realleges Paragraphs 1-24 as fully as if repeated

verbatim herein.

20. As to Paragraph 19, Defendant admits so much as alleges that Plaintiffs but denies the remaining allegations. Defendant further alleges that the Plaintiffs had a contract with Defendant an that Defendant has paid in accord with that contract or has paid more than the contract amount.

21. As to Paragraph 20, Defendant admits only so much of the paragraph as alleges that Plaintiffs will not be receiving any additional compensation but asserts that Plaintiffs are not entitled to any additional compensation and therefore the remaining allegations are denied. Defendant specifically alleges that Plaintiffs have received all compensation to which they were entitled, and in fact, have been paid more than was proper.

22. As to Paragraph 21, Defendant denies the allegations.

23. In answering Paragraph 22, Defendant realleges Paragraphs 1-28 as fully as if repeated verbatim herein.

24. As to Paragraph 23, Defendant admits the allegations, but denies any implication that Defendant has acted contrary to any ethical guidelines.

25. As to Paragraph 24, Defendant denies the allegations.

26. As to Paragraph 25, Defendant denies the allegations.

27. As to Paragraph 26, Defendant denies the allegations.

28. Paragraph 27 is a statement of law that does not require a response, but to the extent that it does, Defendant denies the allegations.

29. Paragraph 28 is a statement of law that does not require a response, but to the extent that it does, Defendant denies the allegations.

30. Paragraph 29 is a statement of law that does not require a response, but to the extent that it does, Defendant denies the allegations.

31. Paragraph 30 is a statement of law that does not require a response, but to the extent that it does, Defendant denies the allegations.

32. As to Paragraph 31, Defendant admits so much of the paragraph as alleges that the Employment Agreement does not contain a "no solicitation" provision, but denies all remaining allegations.

33. As to Paragraph 32, Defendant denies the allegations.

FOR A THIRD DEFENSE
(Waiver)

34. Defendant realleges the preceding paragraphs as fully as if repeated verbatim herein.

35. As an Affirmative Defense to the Complaint and to each and every cause of action contained therein, Defendant alleges that Plaintiffs have waived their right to assert the claims alleged herein.

36. Plaintiffs have received compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

37. Plaintiffs failed to raise any objections as to compensation paid, and thereby have waived the right to assert any claims for such compensation.

38. Plaintiffs have received directorship fees or compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

39. Plaintiffs failed to raise any objections as to directorship compensation, and thereby have waived the right to assert any claims for such compensation.

FOR A FOURTH DEFENSE
(Laches)

40. As an Affirmative Defense to the Complaint and to each and every cause of action contained therein, Defendant alleges that Plaintiffs' claims are barred by the doctrine of laches.

41. Plaintiffs have received compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

42. Plaintiffs failed to raise any objections as to compensation paid, and thereby, are now barred from asserting any claims for such compensation under the doctrine of laches.

43. Plaintiffs have received directorship fees or compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

44. Plaintiffs failed to raise any objections as to directorship compensation, and thereby, are now barred from asserting any claims for such compensation under the doctrine of laches.

FOR A FIFTH DEFENSE
(Estoppel)

45. Defendant realleges the preceding paragraphs as fully as if repeated verbatim herein.

46. As an Affirmative Defense to the Complaint and to each and every cause of action contained therein, Defendants allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

47. Plaintiffs have received compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

48. Plaintiffs failed to raise any objections as to compensation paid. By accepting the compensation without objection, Plaintiffs are now estopped from asserting any claims for such

compensation.

49. Plaintiffs have received directorship fees or compensation in accord with the Employment Agreement and payment plan observed by the Defendant and in fact, been paid more was proper.

50. Plaintiffs failed to raise any objections as to directorship compensation. By accepting the compensation without objection, Plaintiffs are now estopped from asserting any claims for such compensation.

FOR A SIXTH DEFENSE
(By Way of First Counterclaim)
(Unjust Enrichment)

51. Defendant realleges the preceding paragraphs as fully as if repeated verbatim herein.

52. Plaintiffs have been paid compensation in excess of the amounts to which they were entitled.

53. Plaintiffs' acceptance and retention of those funds is inequitable.

54. By engaging in the acts and conduct described above, Plaintiffs have been unjustly enriched.

55. Plaintiffs should be required to disgorge the gains it obtained through this unjust enrichment and repay the monies to Defendant.

FOR A SEVENTH DEFENSE
(By Way of Second Counterclaim)
(Breach of Contract)

56. Defendant realleges the preceding paragraphs as fully as if repeated verbatim herein.

57. Defendant Columbia Heart Clinic, P.A. is a professional association formed and organized under the laws of the state of South Carolina with its principal place of business in Richland County, South Carolina.

58. Plaintiff J. Kevin Baugh is a shareholder/employee of Defendant Columbia Heart

Clinic, P.A.

59. Plaintiff Barry J. Feldman is a shareholder/employee of Defendant Columbia Heart Clinic, P.A.

60. Plaintiff Baugh joined Columbia Heart Clinic, P.A. in 1996 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Baugh.

61. Plaintiff Feldman joined Columbia Heart Clinic, P.A. in 1993 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Feldman.

62. On or about July 15, 2004, Plaintiff Feldman and Plaintiff Baugh entered into Shareholder Physician Employment Agreements ("Contracts") with Defendant. Attached as Exhibits A and B are copies of their respective Contracts.

63. On January 22, 2006, Plaintiffs gave 90 days written notice to Defendant of their intent to resign from employment.

64. The Contracts contain a Restrictive Covenant (Article 5 of Employment Agreement) whereby the Plaintiffs promised that should Plaintiffs leave the employ of Defendant, Plaintiffs will either not compete with Defendant for a twelve month period or Plaintiffs will, prior to competing with Defendant, pay Defendant restitution for Defendant's investment in Plaintiffs' practice and liquidated damages.

65. Section 5.4 (a) of the Contracts provides:

> In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance in practicing in violation of that Section of an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed by Physicians against amounts owed by Physician to Medical Group hereunder. For purpose of this agreement, "Physicians's Income"

shall mean the average W-2 compensation of physicians-shareholders of Medical Group of the calender year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach in an partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything of the contrary stated herein, payment of such liquidated damages (together with forfeiture described in Article 4 above) will entitle the Physician to practice with breach of the provisions contained in Sections 5.1 without further liability to Medical Group for such breach.

66. Plaintiffs have established a practice in Lexington County in competition with Defendant's practice in breach of the Contracts.

67. Under 4.5(i), the Employment Agreement provided that if the Physician began practicing in competition with Defendant, then the Physician would "forfeit any monies payable to Physician[.]" including salary and accounts receivable. Therefore, Plaintiffs are not entitled to any further salary or a prorata share of the accounts receivable.

68. Plaintiffs have been paid compensation in excess of the amounts to which they were entitled under the Employment Agreement and in fact, owe money to Defendant.

69. Plaintiffs have a duty of good faith and fair dealing in performing their duties under the Contracts.

70. Plaintiffs have unjustifiably breached the Contracts by, inter alia, refusing to pay Defendant compensation and liquidated damages in advance of competing with Defendant as required by the Contracts.

71. Plaintiffs have breached their duty of good faith and fair dealing by initiating this litigation in bad faith solely in an attempt to avoid the bargained for and agreed to terms of the Contracts and

to avoid paying the compensation and liquidated damages due to Defendant under paragraph 5.4 (a).

72. Defendant has satisfied all obligations owed under the Contracts to Plaintiffs.

73. As a direct and proximate result of the breaches by Plaintiffs, Defendant has suffered damages. Defendants are entitled to prejudgment interest as a result of Plaintiffs breaches.

FOR A EIGHT DEFENSE
(By way of Third Counterclaim)
(Breach of Fiduciary Duty)

74. Defendant repeats and realleges each and every previous paragraph of the Answer and Counterclaims as though fully set forth here at length.

75. Defendant placed trust and special confidence in Plaintiffs and expected that Plaintiffs would act fairly in Plaintiffs' dealings with Defendant.

76. Plaintiffs were aware that the Defendant was placing trust and special confidence in Plaintiffs and were aware of the expectation of fair dealing.

77. Plaintiffs owed Defendant fiduciary duties.

78. Plaintiffs breached the fiduciary duties owed Defendant.

79. Plaintiffs breached the fiduciary duties owed Defendant by, inter alia, actively working to establish a competing business and to undermine Defendant's business prior to Plaintiffs leaving Defendant's employ.

80. Plaintiffs breached the fiduciary duties owed Defendant by, inter alia, actively soliciting Defendant's base of referring physicians prior to Plaintiffs leaving Defendant's employ.

81. Plaintiffs breached the fiduciary duties owed Defendant by, upon information and belief, taking confidential medical records, patient names and other information which was the property

of Defendant.

82. Plaintiffs breached the fiduciary duties owed Defendant by, upon information and belief, soliciting Defendant's employees to work for Plaintiffs competing practice, while Plaintiffs were still employed by Defendant.

83. As a direct and proximate result of the breaches of fiduciary duty owed by Plaintiffs, Defendant has suffered damages.

WHEREFORE, having fully responded to the Plaintiffs' Complaint, Defendant respectfully prays that this Court:

1. Dismiss the Complaint with Prejudice;

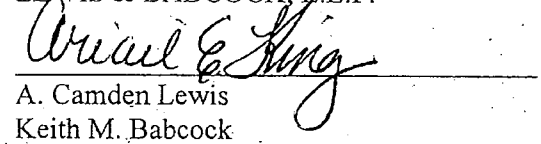
2. Find for Defendant on the Counterclaims;

3. Award actual, liquidated and compensatory damages;

2. For attorneys fees and costs as set forth in the Employment Agreement;

3. For such other and further relief as the court may deem just and proper.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Defendant

Columbia, South Carolina
May 26, 2006

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2006-CP-32-1497
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, vs. Columbia Heart Clinic, P.A., Defendants.	**CERTIFICATE OF SERVICE**

I, Patricia K, McCright, paralegal with the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served the **Answer and Counterclaims of Defendants** upon opposing counsel by depositing a copy of same in the U.S. Mail to said opposing counsel at the following address:

Charles F. Thompson, Jr., Esquire
Malone Thompson & Summers, LLC
1312 Gadsden Street
Columbia, South Carolina 29201

Patricia K. McCright

This 26th day of May, 2006

Filed
2006 MAY 31 AM 8:56
Beth A. Carrigg
Clerk of Court
Lexington, SC

STATE OF SOUTH CAROLINA)) COUNTY OF LEXINGTON)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., **Plaintiffs,** **v.** **Columbia Heart Clinic, P.A.** **Defendant.**	**C. A. No. 2006-CP32-371** **AMENDED COMPLAINT** **(Jury Trial Demanded)**

Plaintiffs J. Kevin Baugh and Barry J. Feldman (Drs. Baugh and Feldman or Physician) complain of the above-named defendant, Columbia Heart Clinic P.A. and state as follows:

AS TO ALL CAUSES OF ACTION

1. Drs. Baugh and Feldman are citizens and residents of South Carolina and practice cardiology in Lexington County, South Carolina.

2. The Defendant, Columbia Heart Clinic, P.A. (the Defendant, Practice, or P.A.) is a professional corporation organized and existing under the laws of the state of South Carolina with, at the time this action was commenced and at all times stated in this Complaint, an office in Lexington County, South Carolina.

3. On or about July 15, 2004, Drs. Baugh and Feldman, respectively, each signed a Shareholder Physician Employment Agreement (hereinafter the Contract) between himself and the P.A., copies of which are attached as Exhibit A to the first Complaint filed in this matter.

4. Article 5 of the Contract describes certain restrictive covenants (hereinafter the Non-competition Covenant) that provides that, for a period of 12 months immediately following the date of the termination of the contract, Drs. Baugh and Feldman shall not compete with the

defendant within a 20 mile radius of any office at which physician routinely provided services during the year prior to the date of termination or expiration of this contract.

5. By the terms of section 5.2 of the Contract, "compete" means, "assisting any person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the business in the territory." Section 5.1 of the Contract defines "business" to mean the "practice of medicine in the field of cardiology." "Territory" is defined in section 5.2 of the Contract as "the area within a 20 mile radius of any office at which physician routinely provided services during the year prior to the date of termination or expiration of this contract." Drs. Baugh and Feldman routinely provided services in Lexington, Columbia, and Winnsboro offices during the year prior to the date of termination.

6. The contract also provides in section 5.4 that, should Drs. Baugh and Feldman wish to work in violation of the Non-competition Covenant described in article 5, they would be obligated to pay the defendant 100% of the physician's income. Section 5.4 of the contract defines "the physician's income" as "the average W-2 compensation of physician-shareholders of [the Defendant] in the calendar year prior to the date of termination or expiration of this agreement."

7. The contract also provides in section 4.5 that, in the event that Dr. Baugh or Dr. Feldman terminated the contract without cause, they will receive all salary earned or accrued but unpaid, and "physicians prorata share of the current year's actual collection percentage of the Accounts Receivable of [the defendant], computed on the date of termination of this agreement." However, if Drs. Baugh or Feldman violated the terms of the Contract's Non-competition covenant, section 4.5 states that Drs. Baugh and Feldman shall "forfeit any monies payable to physician pursuant to this section 4.5."

8. Therefore, as part of the penalty for violating the non-competition covenant described in article 5, Drs. Baugh and Feldman would also forfeit compensation described in sections 4.5 of the Contract in addition to the liquidated damages demanded in section 5.4 of the Contract. In fact, the Contract explicitly states in section 5.4 that "payment of such liquidated damages (together with the forfeiture described in article 4 above) will entitle physician to practice in breach of the provisions contained in section 5.1 without further liability to [the defendant] for such breach."

9. Drs. Baugh and Feldman gave the Defendant the appropriate 90 days written notice of the termination of their respective contracts without clause, pursuant to section 4.4 of the Contract, on January 22, 2006.

10. The Defendant, through its officers and agents, has notified Drs. Baugh and Feldman that if it intends to enforce all provisions of the contract, including the non-competition covenant and the sections there to which penalize Drs. Baugh and Feldman for allegedly violating the Non-competition covenant in the Contract.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

11. The Non-competition Covenant is unenforceable because it extends far beyond the scope reasonably necessary to protect legitimate business interests of the Defendant. For instance, the Non-competition Covenant prevents Drs. Baugh and Feldman from working as an "employee" in any capacity -- even as a business manager or custodian -- for an entity that provides cardiology services in the territory.

12. The Non-competition Covenant is also unenforceable because the territory it seeks to restrict is ambiguous, since neither Dr. Baugh nor Dr. Feldman could determine, when the contract was signed, the extent of the territorial restriction.

13. The Non-competition Covenant is also unenforceable because the territory it seeks to restrict is overly broad and beyond that which is reasonably necessary to protect legitimate business interests of the defendant.

14. The liquidated damages and forfeiture provisions referenced in section 5.4 of the Contract are far in excess of actual damages that the defendant might suffer if Drs. Baugh and Feldman were to offer cardiology services to the citizens of Lexington County. As such, the provisions are and unenforceable penalty.

15. The Con-competition Covenant is unenforceable due to lack of consideration in that the purported consideration for this provision was illusory and never paid.

16. Because the Defendant, through its officers and agents, have indicated they will seek to enforce the Non-competition Covenant and forfeiture provisions of the contract, a justiciable controversy now exists.

17. Drs. Baugh and Feldman file this action pursuant to the Uniform Declaratory Judgments Act, SC Code Ann. 15-53-10 and Rule 65 SCRCP, requesting that this court declare the rights and duties of the parties in this action under the contract; find the non-competition covenant and forfeiture provisions void as against public policy; find the non-competition covenant is also unenforceable because the territory it seeks to restrict is ambiguous, find that the non-competition covenant is unenforceable because it extends far beyond the scope reasonably necessary to protect the legitimate business interests of the defendant; find that the Contract's liquidated damages and forfeiture provisions are unenforceable penalties; and issue both a temporary and permanent injunction enjoining the defendant from taking any action to enforce or attempt to enforce the non-competition covenant and forfeiture provisions of the Contract against Drs. Baugh and Feldman.

Second Cause of Action
(Breach of Contract)

18. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 17 of this complaint.

19. Paragraph 1.1 of the Shareholder Physician Employment Agreement is entitled "Compensation." This section provides that the Medical Group shall pay to physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of the Medical Group from time to time. While the Employment Agreement indicates that physician compensation policies are attached to the Employment Agreement as "Exhibit A," no such policies were attached to the respective Employment Agreements of Drs. Baugh and Feldman.

20. Drs. Baugh and Feldman, as physicians employed by the practice, provided medical services to the practice through April 22, 2006, and are entitled to appropriate compensation for their services which necessarily includes salary, bonus compensation, and

21. "Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, calculated on the date of termination of this Agreement."

22. Drs. Baugh and Feldman have been advised that they will not be paid the compensation to which they are entitled for providing medical services on behalf of the medical group.

23. Drs. Baugh and Feldman are entitled to directorship compensation that has not been paid to them. The Medical Group has improperly and repeatedly failed to pay and denied Dr. Feldman directorship compensation dating back to 2005. Dr. Feldman has been advised that the Medical Group does not intend to provide Dr. Feldman with his directorship compensation.

24. Drs. Baugh and Feldman assert that the non-competition provisions set forth in the Agreement are unenforceable for multiple reasons, and that such provisions are not a proper

basis for refusing to provide compensation due to them in exchange for their provision of medical services to the medical group.

25. Drs. Baugh and Feldman assert that they are entitled to all compensation due to them in exchange for their provision of medical services to the medical group.

Second Cause of Action
(Violation of State Wage Payment Statute, S.C. Code § 41-10-10 *et seq.*)

26. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 25 of this complaint.

27. Drs. Baugh and Feldman provided medical services on behalf of defendant Medical Group and are entitled to the compensation promised to them for providing such services.

28. Defendant medical group has failed to provide directorship compensation to Dr. Feldman and Dr. Baugh although both Dr. Feldman and Dr. Baugh have provided directorship services for which the Medical Group received compensation or other benefits.

29. Defendant Medical Group has expressly communicated to Dr. Feldman that he will not receive directorship compensation, despite the fact that defendant Medical Group has acknowledged its repeated failure to provide such compensation to Dr. Feldman.

30. Defendant Medical Group has advised Drs. Baugh and Feldman that they will not be receiving the remainder of salary owed to them through April 22, 2006, their last day of employment.

31. Defendant Medical Group, through its words and actions, has indicated that the medical group will not provide Drs. Baugh and Feldman with compensation based on "Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, calculated on the date of termination of this Agreement," as set forth in section 4.5(f) of the Employment Agreement.

32. Drs. Baugh and Feldman assert that the non-competition provisions set forth in the Agreement are unenforceable for multiple reasons, and that such provisions are not a proper basis for refusing to provide compensation due to them in exchange for their provision of medical services to the Medical Group.

33. Drs. Baugh and Feldman assert that they are entitled to three (3) times the amount of unpaid compensation, plus reasonable attorneys' fees, as damages resulting from defendant Medical Group's failure to compensate Drs. Baugh and Feldman for their services.

Third Cause of Action
(Quantum Meruit)

34. Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 33 of this complaint.

35. Drs. Baugh and Feldman provided medical services on behalf of defendant Medical Group and are entitled to the compensation promised to them for providing such services. The best indicator of the fair market value of the services provided by Drs. Baugh and Feldman is the compensation agreed upon by the parties.

36. Defendant Medical Group has advised Drs. Baugh and Feldman that they will not be receiving the remainder of salary and pro-rata share of accounts receivable owed to them through April 22, 2006, their last day of employment.

37. Drs. Baugh and Feldman assert that they are entitled to the fair market value of the medical services they provided on behalf of defendant medical group.

FOR A FOURTH CAUSE OF ACTION BY DR. BAUGH AGAINST DEFENDANT
(For a Declaration of Rights and to Recover the Value of Shares)

38. Dr. Baugh owns shares of the P.A.

39. Although some other shareholders of the P.A. signed shareholder agreements that restricted the value of shares issued to them to book value, Dr. Baugh did not, nor was he ever asked to, sign such an agreement prior to, or after, becoming a shareholder of the P.A..

40. Under the default provisions of the South Carolina Professional Corporation Act, SC Code Ann. 33-19-102, and related provisions, Dr. Baugh is entitled to the fair market value of his shares of the P.A. including accounts receivable, goodwill, and all other assets.

41. The P.A. has asserted that it is only required to pay Dr. Baugh the book value of his shares, and, in fact, that the book value of these shares is negative.

42. Dr. Baugh is no longer entitled to hold ownership in the P.A. given the termination of his employment.

43. The P.A. has excluded Dr. Baugh from shareholder meetings and from access to accounting records since the termination of his employment.

44. Therefore, Dr. Baugh seeks a declaration of his right to receive the fair value of his shares, for access to accounting records of the P.A., and for a judgment for the fair value of his shares.

PRAYER FOR RELIEF

WHEREFORE, Drs. Baugh and Feldman pray that the following recovery and relief be Granted including:

1. A declaratory judgment declaring that the non-competition covenant and forfeiture provisions of the contract are invalid and unenforceable for the reasons mentioned above;
2. Issue a temporary and permanent injunction enjoining the defendant from attempting to enforce the unenforceable non-competition covenant and forfeiture provisions of the

contract; Award attorneys fees and costs of this action; and award Drs. Baugh and Feldman other such relief as the court making just and proper;

3. that the court grant Drs. Baugh and Feldman a judgment in an amount equal to three times the amount of unpaid compensation, plus reasonable attorneys' fees, as damages resulting from defendant Medical Group's failure to compensate Drs. Baugh and Feldman for their services;
4. that the court award Drs. Baugh and Feldman reasonable attorneys' fees;
5. a declaratory judgment that Dr. Baugh is entitled to the fair market value of his shares of the P.A.;
6. that the court award Dr. Baugh the fair value of his shares of the P.A., and
7. that the court award Drs. Baugh and Feldman costs and such other appropriate relief as the court deems just and proper.

Respectfully submitted,

Michael D. Malone
Charles F. Thompson, Jr.
Lake E. Summers
MALONE, THOMPSON & SUMMERS L.L.C.
1312 Gadsden Street
Columbia, S.C. 29229
(803) 254-3300
(803) 254-0309

ATTORNEYS FOR THE PLAINTIFFS

This 27th day of December, 2007.
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	C. A. NO. 2006-CP32-0371
J. KEVIN BAUGH M.D. AND BARRY J.)	
FELDMAN M.D.)	
Plaintiffs,)	
v.)	
COLUMBIA HEART CLINIC P.A.)	
Defendant.)	

CERTIFICATE OF SERVICE

I certify that the foregoing Plaintiffs' Amended CDomplaint was served by depositing the same in the United States Mail postage prepaid and addressed to:

Arial King
Lewis, Babcock, & Hawkins
1512 Hampton Street
Columbia, SC 29201

Columbia, South Carolina
December 27, 2007

COPY

FILED
2008 JAN 14 P 12:10
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	CIVIL ACTION NUMBER: 2006-CP32-0371
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	**ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIMS OF DEFENDANT** (Jury Trial Demanded)

Defendant Columbia Heart Clinic, P.A. , hereby answering the Amended Complaint, subject to and reserving their Motions pursuant in Rule 12(b), SCRCP, and Counterclaiming against Plaintiffs, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every allegation in the Amended Complaint not specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.

2. Upon information and belief, Defendant Columbia Heart Clinic, P.A. admits the allegations of Paragraph 1.

3. Defendant Columbia Heart Clinic, P.A. admits the allegations in Paragraph 2 and 3 of the Amended Complaint.

4. In answering Paragraphs 4, 5, 6, 7, 8, and 9 Defendant admits only so much of said paragraphs as alleges or infers that the parties entered into Shareholder Physician Employment Agreements ("Contracts") and that said Contracts speak for themselves, and therefore, Defendant

craves reference to the documents. Defendant denies the allegations in Paragraphs 4, 5, 6, 7, and 8 that are inconsistent with the terms of the Contracts. Defendant denies the remaining allegations contained in Paragraphs 4, 5, 6, 7, and 8.

5. Defendant Columbia Heart Clinic, P. A. admits the allegations in Paragraphs 9 and 10 of the Amended Complaint.

6. Defendant Columbia Heart Clinic, P.A. denies the allegations in Paragraphs 11, 12, 13,14, and 15 of the Amended Complaint.

7. Defendant Columbia Heart Clinic, P.A. admits the allegations in Paragraph 16 of the Amended Complaint.

8. Paragraph 17 does not contain allegations directed at the Defendant. Accordingly, no response is required. However, to the extent that a response is required the allegations are denied.

9. In response to Paragraph 18, Defendant realleges the preceding paragraphs as if set forth herein verbatim.

10. In answering Paragraphs 19, Defendant admits only so much as alleges that Exhibit A was not attached to the Employment Agreement, but asserts that Exhibit A had been attached to the previous Employment Agreement. Defendant further asserts that the compensation policy had been in effect for several years without any material changes. Defendant craves reference to the Employment Agreement as to the provisions cited by Plaintiffs. Any remaining allegations are denied.

11. Paragraphs 20 and 21 appear to be one complete paragraph. As to the allegations of Paragraphs 20 and 21, Defendant admits only so much as alleges that Baugh and Feldman were employees of Defendant and provided medical services through April 22, 2006, and crave reference

to the Employment Agreement for the terms of the compensation to be paid to Plaintiffs. The remaining allegations are denied.

12. Defendant admits only so much of Paragraph 22 as alleges that Plaintiffs provided medical services on behalf of Defendant and asserts that Plaintiffs have been fully compensated for such. The remaining allegations are denied.

13. Defendant denies the allegations of Paragraph 23 and demands strict proof thereof. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant.

14. Defendant denies the allegations of Paragraph 24 and demands strict proof thereof. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant.

15. Defendant denies the allegations of Paragraph 25 and demands strict proof thereof. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant.

16. As to the allegations of Paragraph 26, Defendant realleges the preceding paragraphs as if set forth herein verbatim.

17. Defendant admits only so much of Paragraph 27 as alleges that Plaintiffs provided medical services on behalf of Defendant and asserts that Plaintiffs have been fully compensated for such. The remaining allegations are denied.

18. Defendant denies the allegations of Paragraph 28 and demands strict proof thereof. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant.

19. Defendant admits so much of Paragraph 29 as alleges that Plaintiffs will not receive additional compensation, but asserts that Plaintiffs have received all compensation to which they are entitled under the Employment Agreement. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant. The remaining allegations are denied.

20. Defendant admits so much of Paragraph 30 as alleges that Plaintiffs will not receive additional salary, but asserts that Plaintiffs have received all compensation to which they are entitled under the Employment Agreement. Defendant also asserts that any compensation is set-off by the amounts Plaintiffs owe to Defendant. The remaining allegations are denied.

21. Defendant admits so much of Paragraph 31 as alleges that Plaintiffs will not receive additional compensation, but asserts that Plaintiffs have received all compensation to which they are entitled under the Employment Agreement. The remaining allegations are denied.

22. Defendant denies the allegations of Paragraph 32 and demands strict proof thereof.

23. Defendant denies the allegations of Paragraph 33 and demands strict proof thereof.

24. As to the allegations of Paragraph 34, Defendant realleges the preceding paragraphs as if set forth herein verbatim.

25. Defendant admits only so much of Paragraph 35 as alleges that Plaintiffs provided medical services on behalf of Defendant and asserts that Plaintiffs have been fully compensated for such. The remaining allegations are denied.

26. Defendant admits so much of Paragraph 36 as alleges that Plaintiffs will not receive additional salary, but asserts that Plaintiffs have received all compensation to which they are entitled under the Employment Agreement. The remaining allegations are denied. The remaining allegations are denied.

27. Defendant denies the allegations of Paragraph 37 and demands strict proof thereof.

28. Defendant admits the allegations of Paragraph 38.

29. Defendant admits the allegations of Paragraph 39, but assert that Baugh is a *de facto* shareholder and therefore bound by the terms of the Shareholder Agreement.

30. Defendant denies the allegations of Paragraph 40.

31. Defendant admits only so much of Paragraph 41 as alleges or infers that Defendant must only pay the value of the shares as set forth in the Shareholder Agreement and denies the remaining allegations.

32. Defendant admits the allegations of Paragraph 42.

33. Defendant admits so much of Paragraph 43 as alleges that Dr. Baugh has not attended shareholder meetings. The remaining allegations are denied.

34. Paragraph 44 is not directed to Defendant and therefore does not require a response. To the extent that a response is required, the allegations are denied.

FOR A SECOND DEFENSE
(Affirmative Defense of Set-off)

35. Plaintiffs owe Defendant money for violating the non-complete clause of their Employment Agreements and any recovery Plaintiffs assert against Defendant should be offset by Plaintiffs by the amounts Plaintiffs owe.

FOR A THIRD DEFENSE AND FIRST COUNTERCLAIM
(Breach of Contract)

36. Defendant Columbia Heart Clinic, P.A. is a professional association formed and organized under the laws of the state of South Carolina with its principal place of business in Richland County, South Carolina.

37. Plaintiff J. Kevin Baugh was a shareholder/employee of Defendant Columbia Heart Clinic, P.A.

38. Plaintiff Barry J. Feldman was a shareholder/employee of Defendant Columbia Heart Clinic, P.A.

39. Plaintiff Baugh joined Columbia Heart Clinic, P.A. in 1996 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Baugh.

40. Plaintiff Feldman joined Columbia Heart Clinic, P.A. in 1993 and since that time Defendant has invested substantial sums and time in fostering and developing the practice of Plaintiff Feldman.

41. On or about July 15, 2004, Plaintiff Feldman and Plaintiff Baugh entered into Shareholder Physician Employment Agreements ("Contracts") with Defendant. Attached as Exhibits A and B are copies of their respective Contracts.

42. The Contracts contain a Restrictive Covenant whereby the Plaintiffs promised that should Plaintiffs leave the employ of Defendant, Plaintiffs will either not compete with Defendant for a twelve month period or Plaintiffs will, prior to competing with Defendant, pay Defendant restitution for Defendant's investment in Plaintiffs' practice and liquidated damages.

43. Section 5.4 (a) of Plaintiffs' Contracts with Defendant provides:

> In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance in practicing in violation of that Section of an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed by Physicians against amounts owed by Physician to Medical Group hereunder. For purpose of this agreement, "Physicians's Income" shall mean the average W-2 compensation of physicians-shareholders of Medical Group of the calender year prior to the date of termination or expiration of this Agreement.
>
> These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach in an partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything of the contrary stated herein, payment of such liquidated damages (together with forfeiture described in Article 4 above) will entitle the Physician to practice with breach of the provisions contained in Sections 5.1 without further liability to Medical Group for such breach.

44. On January 22, 2006, Plaintiffs gave 90 days written notice to Defendant of their intent to

resign from employment.

45. Plaintiffs also notified Defendant that they intended to set up a competing practice in Lexington County in violation of the Contracts' provisions, and in fact, did set up a competing practice in May 2006.

46. Plaintiffs have not paid and, upon information and belief have no plans to pay Defendant the monies due as restitution and liquidated damages under Section 5.4(a) of the Contracts.

47. Plaintiffs initiated this litigation in a bad faith attempt to avoid the bargained for terms in their Contract including their promise to pay Defendant under Section 5.4(a).

48. Plaintiffs, while in the employ of Defendant, have acted disloyal and taken affirmative acts towards undermining Defendant's business and establishing a competing business.

49. Plaintiffs, while in the employ of Defendant, secretly and/or overtly solicited Defendant's base of referring physicians.

50. Plaintiffs had binding Contracts with Defendant Columbia Heart Clinic, P.A. whereby Plaintiffs promised, inter alia, not to compete with Defendant Columbia Heart Clinic, P.A.

51. Plaintiffs also promised that if Plaintiffs elected to compete with Defendant Columbia Heart Clinic, P.A. that Plaintiffs would first pay Defendant compensation and liquidated damages.

52. Plaintiffs have a duty of good faith and fair dealing in performing their duties under the Contracts.

53. Plaintiffs have opened an office in Lexington County, South Carolina and are competing with Defendant's practice in breach of the Contracts.

54. As result of the Plaintiffs' improper competition with Defendant, Defendant was forced to close its Lexington County location.

55. Plaintiffs have unjustifiably breached the Contracts by, *inter alia*, refusing to pay Defendant restitution and liquidated damages in advance of competing with Defendant as required by the Contracts in Section 5.4 (a).

56. Plaintiffs have breached their duty of good faith and fair dealing by initiating this litigation in bad faith solely in an attempt to avoid the bargained for and agreed to terms of the Contracts and to avoid paying the restitution and liquidated damages due to Defendant.

57. Defendant has satisfied all obligations owed under the Contracts to Plaintiffs.

58. As a direct and proximate result of the breaches by Plaintiffs, Defendant has suffered damages. In addition, Defendants are entitled to prejudgment interest as a result of Plaintiffs breaches.

FOR A FOURTH DEFENSE AND SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

59. The allegations set forth in paragraphs 36 though 58 above are incorporated herein as if set forth verbatim.

60. Defendant placed trust and special confidence in Plaintiffs and expected that Plaintiffs would act fairly in Plaintiffs' dealings with Defendant.

61. Plaintiffs were aware that the Defendant was placing trust and special confidence in Plaintiffs and were aware of the expectation of fair dealing.

62. Plaintiffs owed Defendant fiduciary duties as members and employees of a professional P.A.

63. Plaintiffs breached the fiduciary duties owed Defendant.

64. Plaintiffs breached the fiduciary duties owed Defendant by, *inter alia*, actively working to

establish a competing business and to undermine Defendant's business prior to Plaintiffs leaving Defendant's employ.

65. Plaintiffs breached the fiduciary duties owed Defendant while in the employ of Defendant, by, *inter alia*, directly or indirectly soliciting Defendants' employees to work in Plaintiffs' new competing medical practice.

66. Plaintiffs breached the fiduciary duties owed Defendant by, *inter alia*, actively soliciting Defendant's base of referring physicians prior to Plaintiffs leaving Defendant's employ.

67. As a direct and proximate result of the breaches of fiduciary duty owed by Plaintiffs, Defendant has suffered damages.

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendant Columbia Heart Clinic, P.A. prays that:

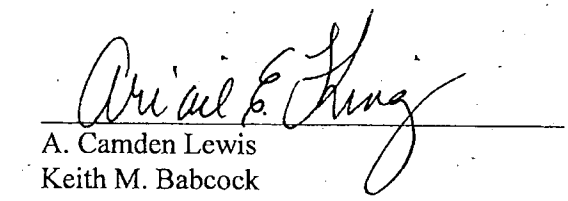
a. Plaintiffs' Amended Complaint be dismissed with prejudice along with attorney's fees and costs;

b. Defendant be awarded actual damages and prejudgment interest pursuant to Defendant's Counterclaim for Breach of Contract;

c. Defendant be awarded actual damages pursuant to Defendant's Counterclaim for Breach of Fiduciary Duty; and

d. the Court issue such further relief as the Court deems just and proper.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Keith M. Babcock
Ariail E. King

1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Columbia Heart Clinic, P.A.

Columbia, South Carolina

January 11, 2008

COPY

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE FIFTH JUDICIAL CIRCUIT
COLUMBIA HEART CLINIC, PA Plaintiffs, v. J. KEVIN BAUGH, MD., AND BARRY J. FELDMAN, M.D., Defendant.	)	CIVIL ACTION NO.: 2006-CP-32-0371 **CERTIFICATE OF SERVICE**

I, Kathy A. Collins, an employee to the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served the foregoing Answer to Amded Complaint and Counterclaims of Defendant in the above-captioned action upon opposing counsel, this 11th day of January, 2008, by placing a copy of same in the United States mail, first-class postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following address:

Michael D. Malone, Esquire
Charles F. Thompson, Jr., Esquire
Malone Thompson & Summers, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Kathy A. Collins

Columbia, South Carolina

January 11, 2008.

FILED
2008 JAN 14 P 12:10
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
2006 MAR -7 P 4:42
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2006-CP32-0371

J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,

Plaintiffs,

v.

Columbia Heart Clinic, P.A.

Defendant.

DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION

TO: CHARLES F. THOMPSON, JR. AND MICHAEL D. MALONE ATTORNEYS FOR PLAINTIFFS J. KEVIN BAUGH, M.D. AND BARRY J. FELDMAN, M.D.:

YOU WILL PLEASE TAKE NOTICE that on ten days notice, or as soon thereafter as counsel can be heard before the Presiding Judge, at the Lexington County Courthouse, Lexington, South Carolina, Defendant Columbia Heart Clinic, P.A. will move before the Court for an Order pursuant to Rule 65, SCRCP, granting a preliminary injunction to the Defendant. This motion is made pursuant to the following grounds:

1. Plaintiffs in this action have stated that they intend to violate their non-compete and confidentiality provisions in their Employment Agreements with Defendant. Furthermore, Plaintiff have refused to execute their option to compete with Defendant after paying compensation and liquidated damages. Essentially, Plaintiff seeks to avoid its obligation to pay liquidated damages under the Employment Agreements. Defendant is entitled to a preliminary injunction preventing the Plaintiffs from violating the non-compete and confidentiality provisions in the Employment Agreements.

2. A preliminary injunction is reasonably necessary to protect Defendant from irreparable harm during the pendency of this litigation. Defendant in its Answer and Counter Claims has presented a prima facie showing demonstrating a likelihood of success on the merits. Defendant lacks an adequate remedy at law and will suffer irreparable harm in the absence of an injunction.

Based on the foregoing, these Defendant seeks an Order pursuant to Rule 65, SCRCP, granting a preliminary injunction preventing the Plaintiffs from violating the non-compete and confidentiality provisions in their Employment Agreements during the pendency of this litigation. This motion is supported by affidavit of Benjamin Jones, M.D. and may be supported by additional affidavits and memorandum submitted prior to the hearing.

LEWIS & BABCOCK, L.L.P.

A. Camden Lewis
Keith M. Babcock
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for the Columbia Heart Clinic, P.A.

Columbia, South Carolina

March 7, 2006

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED
2008 APR 18
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-32-0371

J. Kevin Baugh, M.D. and Barry J. Feldman, M.D.

Plaintiffs,

vs.

Columbia Heart Clinic, P.A.,

Defendant.

DEFENDANT'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

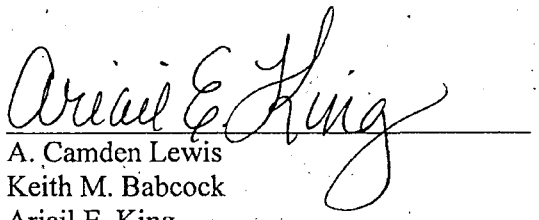
TO: CHARLES THOMPSON, ESQUIRE AND MICHAEL MALONE, ESQUIRE, ATTORNEYS FOR PLAINTIFFS:

Defendant Columbia Heart Clinic, P.A. will, within 10 days following service of this motion or as soon thereafter as they may be heard, respectfully move this Court under Rule 56, SCRCP, for an Order granting summary judgment in favor of Columbia Heart Clinic, P.A. on Plaintiffs' claim for Declaratory Judgment and Columbia Heart Clinic's counterclaim for Breach of Contract. The basis of this motion is that there is no genuine issue of material fact and the Defendant is entitled to summary judgment on Plaintiffs' claim for Declaratory Judgment and the counterclaim of Breach of Contract. Both the claim for Declaratory Judgment and the Breach of Contract counterclaim center on the enforceability of a covenant not to compete contained in the contract between the Plaintiffs and Defendant.

This motion for summary judgment is further supported by the attached affidavits and will be further supported by a detailed memorandum of law, deposition testimony, documents, applicable case law, applicable statutes, and other such available evidence as may be admitted at

the hearing on this matter.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Attorneys for Defendant

Columbia, SC
April 18 , 2008

CERTIFICATE OF SERVICE

I, Kathy A. Collins, an employee with the law firm of Lewis & Babcock, L.L.P., hereby certify that I have this 18th day of April, 2008, served the foregoing Defendant's Notice of Motion and Motion for Partial Summary Judgment by hand-delivering a copy of same to counsel for Plaintiffs, addressed as follows:

Michael D. Malone, Esquire
Charles F. Thompson, Jr., Esquire
Malone Thompson & Summers, LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201

Kathy A. Collins

Columbia, South Carolina

April 18, 2008.

FILED
2008 APR 18 P 4:13
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NUMBER: 2006-CP32-0371
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,	)	
Plaintiffs,	)	**AFFIDAVIT OF BENJAMIN R. JONES, M.D.**
v.	)	
Columbia Heart Clinic, P.A.	)	
Defendant.	)	

PERSONALLY APPEARED before me, Benjamin R. Jones, M.D., being duly sworn, deposes and states that:

1. I am a shareholder and employed physician in Columbia Heart Clinic, P.A. ("Columbia Heart").

2. J. Kevin Baugh, M.D. joined Columbia Heart's practice in 1996. On or about July 15, 2004, Columbia Heart and Dr. Baugh entered into a "Shareholder Physician Employment Agreement" a copy of which is attached as Exhibit A.

3. Barry J. Feldman , M.D. joined Columbia Heart's practice in 1993. On or about July 15, 2004, Columbia Heart and Barry J. Feldman entered into a "Shareholder/Physician Employment Agreement," a copy of which is hereby attached as Exhibit B (collectively Baugh and Feldman's Shareholder Physician Employment Agreements are referred to as "Employment Agreements").

4. Each Employment Agreement contained a covenant in which each shareholder physician agreed that he would not practice in the field of cardiology (or act as owner, director, officer of a business engaged in cardiology) for twelve months following the termination of the Agreement for

any reason. Section 5.1 and 5.2., Exhibits A and B. This agreement not to compete applied to the area within a twenty (20) mile radius of the Columbia Heart office at which Physician routinely provided services during the year prior to the date of termination or expiration of the Agreement. Section 5.2, Exhibits A and B.

5. However, a departing physician could compete with Columbia Heart upon certain conditions. More specifically, the physician could compete by paying the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination of the Agreement. Section 5.4.

6. A covenant not to compete was important to Columbia Heart because of the losses that would occur when a doctor leaves Columbia Heart, such as the loss of collections and the loss of the contribution to overhead. In addition, during 2004, Columbia Heart entered into a fifteen year lease for a medical office building ("Richland Office") to be constructed adjacent to the new Heart Hospital at Palmetto Health Richland Campus. The building is owned by Palmetto Heart MOB, LLC. An entity owned by shareholder physicians from Columbia Heart, CHC MOB, LLC, owns 92% of Palmetto Heart. All of the shareholder physicians of Columbia Heart signed personal guarantees on the loan for the building. The loan was for approximately $20 million.

7. Because the construction of the Richland Office and long term lease associated with it were major investments for the shareholder physicians, we wanted to insure that all of the other shareholder physicians would continue to work for Columbia Heart, or in the alternative, would pay Columbia Heart compensation to help shoulder the burden of the major investment in the Richland office.

8. In November 2004, Columbia Heart entered into a fifteen year lease for the Richland Office. Under the lease, Columbia Heart will pay one million one hundred twenty two thousand five hundred and thirteen dollars ($1,122,513) per year for the first five years to rent space at the Richland Office. The amount of Columbia Heart's payments is subject to review and is expected to increase every five years.

9. Construction of the Richland Office began in 2004 and the current office opened in mid-December 2005. Richland Office has an appraised value of $19.4 million.

10. The investment in the Richland Office was in addition to the substantial investment Columbia Heart has in its Lexington Office.

11. In 2000, Columbia Heart opened a new Lexington Office in part at the request of Dr. Baugh and Dr. Feldman.

12. The Lexington Office was designed for three cardiologists. Dr. Baugh, Dr. Feldman, and I were the three doctors that practiced out of the Lexington office.

13. Columbia Heart paid approximately two hundred and fifty thousand dollars ($250,000) for a nuclear machine, approximately one hundred thousand ($100,000) for an echo machine, approximately twenty thousand ($20,000) for two EKG machines, approximately fifty thousand ($50,000) for an X-ray machine, all of which were purchased for the Lexington Office.

14. Columbia Heart also hired staff for the Lexington Office. The Lexington Office employed approximately 16 employees and Columbia Heart paid them approximately five hundred ($500,000) per year.

15. Columbia Heart paid one hundred seventy five thousand ninety three dollars and ten cents ($175,093.10) per year to lease the Lexington Office. This lease was entered into in 2003.

16. In addition, Columbia Heart expended over two hundred thousand dollars ($200,000) for furnishings and computers for the Lexington Office.

17. From the year 2000 until 2006, Baugh and Feldman routinely provided services as part of their employment with Columbia Heart at the Lexington Office.

18. On January 22, 2006, Baugh and Feldman gave Columbia Heart written notice of their intent to resign employment pursuant to Section 4.4 of the Employment Agreements, effective 90 days from the date of notice. Exhibit C.

19. In accordance with Section 4.4 of the Employment Agreements, Baugh and Feldman ceased employment with Columbia Heart on April 22, 2006.

20. The terms of Article 5 of the Employment Agreements prohibit Baugh and Feldman from competing with Columbia Heart during a period of 12 months following the date of termination of the Employment Agreement between these parties (April 22, 2006) in an area defined to be a 20-mile radius from the Lexington Office. The Agreements provided that Baugh and Feldman could compete despite the covenant upon payment of the contractually agreed upon price in the amount equal to the average income for all Physician Employee Shareholders as shown on the W-2s for the preceding year. The average income for the Physician Employee Shareholders as shown on the W-2's for 2005 (the year preceding Plaintiffs' departure) is five hundred ninety one thousand seven hundred nine dollars and seventy four cents ($591,709.74). Exhibit D (Physician Employee Shareholder W-2's).

21. On or around May 1, 2006, Baugh and Feldman opened a competing practice in Lexington County, known as Lexington Heart Clinic, in breach of the Employment Agreement. Baugh and Feldman also refused to pay the contractually agreed upon price to compete, and they have not paid

us.

22. In September 2006, Columbia Heart was forced to close the Lexington Office. However, despite the departure of Drs. Baugh and Feldman, Columbia Heart had expenses related to the Lexington Office that could not be cut. Those expenses amount to $186, 886.00. In addition, each shareholder physician has pro-rata share of Columbia Heart's debt. When Drs. Baugh and Feldman departed, the remaining shareholder physicians had to assume that debt.

23. Furthermore, Columbia Heart has suffered a substantial loss of referrals from Lexington medical providers. The lost collections from those referrals are estimated to be in excess of $5.5 million.

AND FURTHER THE AFFIANT SAITH NOT.

Benjamin R. Jones, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME

this 15 day of April, 2008

Teresa Elliott Roberson
Notary Public for South Carolina
My Commission Expires: 04-24-2016

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **J. KEVIN BAUGH, M.D.** ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

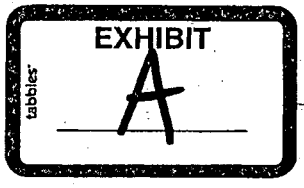
ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical



education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
J. Kevin Baugh, M.D.
10 Cotton Hope Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **BARRY J. FELDMAN, M.D.** ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical



education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
Barry J. Feldman, M.D.
5 Castle Hall Court
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
Barry J. Feldman, MD

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

10 Cotton Hope Lane
Columbia, South Carolina 29209

January 22, 2006

HAND DELIVERED
Benjamin R. Jones, M.D.
President
Columbia Heart Clinic, P.A.
Columbia, South Carolina 29203

RE: Resignation of Employment

Dear Ben:

This is to formerly notify you of my decision to resign my employment with the Columbia Heart Clinic, P.A., pursuant to Section 4.4 of my Employment Agreement, effective ninety (90) days from today.

I have enjoyed my professional association with you and the other cardiologists affiliated with the Columbia Heart Clinic, P.A. but believe the time has come for me to pursue my chosen profession in a smaller organization.

It is my intent to fulfill all of my contractual and professional responsibilities over the next ninety (90) days. Similarly, I intend to do everything reasonably possible to make my transition as smooth as possible both for you and my colleagues at Columbia Heart Clinic, P.A. and for my patients.

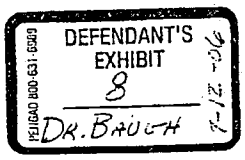
As we move forward, I hope we can all work together, in good faith, to minimize the financial impact of my decision and keep quality patient care in the forefront of our discussions.

With kindest regards, I am

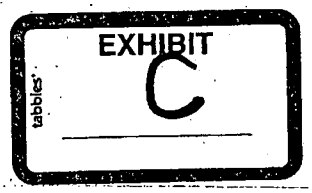
Sincerely,

J. Kevin Baugh

J. Kevin Baugh, M.D.



00046



04421
Confidential

5 Castle Hall Court
Columbia, South Carolina 29209

January 22, 2006

HAND DELIVERED
Benjamin R. Jones, M.D.
President
Columbia Heart Clinic, P.A.
Columbia, South Carolina 29203

RE: Resignation of Employment

Dear Ben:

This is to formerly notify you of my decision to resign my employment with the Columbia Heart Clinic, P.A., pursuant to Section 4.4 of my Employment Agreement, effective ninety (90) days from today.

I have enjoyed my professional association with you and the other cardiologists affiliated with the Columbia Heart Clinic, P.A. but believe the time has come for me to pursue my chosen profession in a smaller organization.

It is my intent to fulfill all of my contractual and professional responsibilities over the next ninety (90) days. Similarly, I intend to do everything reasonably possible to make my transition as smooth as possible both for you and my colleagues at Columbia Heart Clinic, P.A. and for my patients.

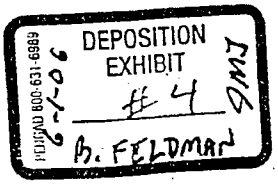
As we move forward, I hope we can all work together, in good faith, to minimize the financial impact of my decision and keep quality patient care in the forefront of our discussions.

With kindest regards, I am

Sincerely,

Barry J. Feldman, M.D.

03934
Confidential



00048

a Control number 000051 E1S | Void ☐ | OMB No. 1545-0008 E1S | 000100 000051

b Employer identification number (EIN): 56-2050356

c Employer's name, address, and ZIP code:
COLUMBIA HEART CLINIC
P A
1655 BERNADIN AVE ST 220
COLUMBIA SC 29204

d Employee's social security number: 251-76-5683

e Employee's first name and initial: M DONALD | Last name: ALEXANDER JR

f Employee's address and ZIP code:
1815 SENATE STREET
COLUMBIA,SC 29201

1 Wages, tips, other compensation	526558.37
2 Federal income tax withheld	159524.42
3 Social security wages	90000.00
4 Social security tax withheld	5580.00
5 Medicare wages and tips	544558.37
6 Medicare tax withheld	7896.10
7 Social security tips	
8 Allocated tips	
9 Advance EIC payment	
10 Dependent care benefits	
11 Nonqualified plans	
12a See instructions for box 12 — C	16989.51
13 Statutory employee ☐ / Retirement plan ☒ / Third-party sick pay ☐	
12b — D	18000.00
14 Other	
12c	
12d	

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC	25367205 7	526558.37	37222.38			

Form **W-2** Wage and Tax Statement 2005

Department of the Treasury—Internal Revenue Service

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

Copy D—For Employer.

a Control number 000052 E1S | Void ☐ | OMB No. 1545-0008 E1S | 000100 000052

b Employer identification number (EIN): 56-2050356

c Employer's name, address, and ZIP code:
COLUMBIA HEART CLINIC
P A
1655 BERNADIN AVE ST 220
COLUMBIA SC 29204

d Employee's social security number: 249-08-3274

e Employee's first name and initial: J KEVIN | Last name: BAUGH

f Employee's address and ZIP code:
10 COTTON HOPE LN.
COLUMBIA,SC 29209

1 Wages, tips, other compensation	691256.17
2 Federal income tax withheld	180600.43
3 Social security wages	90000.00
4 Social security tax withheld	5580.00
5 Medicare wages and tips	705256.09
6 Medicare tax withheld	10226.21
7 Social security tips	
8 Allocated tips	
9 Advance EIC payment	
10 Dependent care benefits	
11 Nonqualified plans	
12a See instructions for box 12 — C	10230.00
13 Statutory employee ☐ / Retirement plan ☒ / Third-party sick pay ☐	
12b — D	13999.92
14 Other	
12c	
12d	

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC	25367205 7	691256.17	9185.75			

Form **W-2** Wage and Tax Statement 2005

Department of the Treasury—Internal Revenue Service

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D

Copy D—For Employer.

EXHIBIT D

06197
Confidential

a Control number	Void ☐	OMB No. 1545-0008 E1S	000100	000055
000055 E1S				

b Employer identification number (EIN)	1 Wages, tips, other compensation	2 Federal income tax withheld
56-2050356	609771.83	149425.38

c Employer's name, address, and ZIP code	3 Social security wages	4 Social security tax withheld
COLUMBIA HEART CLINIC P A 1655 BERNADIN AVE ST 220 COLUMBIA SC 29204	90000.00	5580.00
	5 Medicare wages and tips 627771.83	6 Medicare tax withheld 9102.69
	7 Social security tips	8 Allocated tips

d Employee's social security number	9 Advance EIC payment	10 Dependent care benefits
250-04-1121		

e Employee's first name and initial / Last name	11 Nonqualified plans	12a See instructions for box 12
H WADE COLLINS III 11 HEATHWOOD CIRCLE COLUMBIA,SC 29205		Code C 21048.57
	13 Statutory employee ☐ Retirement plan ☒ Third-party sick pay ☐	12b Code D 18000.00
	14 Other	12c Code
		12d Code

f Employee's address and ZIP code

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC	25367205 7	609771.83	36853.92			

Form **W-2** Wage and Tax Statement 2005

Department of the Treasury—Internal Revenue Service

Copy D—For Employer.

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

a Control number	Void ☐	OMB No. 1545-0008 E1S	000100	000056
000056 E1S				

b Employer identification number (EIN)	1 Wages, tips, other compensation	2 Federal income tax withheld
56-2050356	551653.34	144629.18

c Employer's name, address, and ZIP code	3 Social security wages	4 Social security tax withheld
COLUMBIA HEART CLINIC P A 1655 BERNADIN AVE ST 220 COLUMBIA SC 29204	90000.00	5580.00
	5 Medicare wages and tips 565653.26	6 Medicare tax withheld. 8201.97
	7 Social security tips	8 Allocated tips

d Employee's social security number	9 Advance EIC payment	10 Dependent care benefits
034-44-7214		

e Employee's first name and initial / Last name	11 Nonqualified plans	12a See instructions for box 12
BARRY J FELDMAN 5 CASTLE HALL COURT COLUMBIA,SC 29209		Code C 13998.40
	13 Statutory employee ☐ Retirement plan ☒ Third-party sick pay ☐	12b Code D 13999.92
	14 Other	12c Code
		12d Code

f Employee's address and ZIP code

15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
SC	25367205 7	551653.34	35014.17			

Form **W-2** Wage and Tax Statement 2005

Department of the Treasury—Internal Revenue Service

Copy D—For Employer.

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D

06199
Confidential

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NUMBER: 2006-CP32-0371
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	)	**AFFIDAVIT OF DAVID B. SUMMER, JR.**

PERSONALLY APPEARED before me, David B. Summer, Jr., being duly sworn, deposes and states that to the best of his knowledge and belief:

1. He is an attorney and partner with the law firm of Parker Poe Adams & Bernstein LLP whose practice focuses on health care law.

2. In 1996, Parker Poe Adams & Bernstein LLP (hereinafter referred to as "Counsel") was retained by Columbia Heart Clinic, P.A. ("Columbia Heart"). During 2004, Columbia Heart entered into a fifteen year lease for space in a medical office building ("Richland Office") to be constructed adjacent to the new Heart Hospital at Palmetto Health Richland Campus.

3. The building is owned by Palmetto Heart MOB, LLC ("Palmetto Heart"). CHC MOB, LLC, an entity owned by doctors from Columbia Heart, owns 92% of Palmetto Heart. All of the shareholder physicians of Columbia Heart signed personal guarantees on the loan for the building. The loan was for approximately $20 million.

4. Because the construction of the Richland Office and long-term lease associated with it were major investments for the shareholder physicians, Columbia Heart asked Counsel to draft revised shareholder employment agreements with covenants not to compete. Drs. Baugh

and Feldman, along with all other shareholder physicians, signed a Shareholder Physician Employment Agreement ("the Agreement") Counsel drafted. (**Exhibits A and B**).

5. The Agreement contained a covenant pursuant to which each shareholder physician agreed that he would not practice in the field of cardiology (or act as owner, director, officer of a business engaged in cardiology) for twelve months following the termination of the Agreement for any reason. Section 5.1 and 5.2., **Exhibits A and B**. This agreement not to compete applied to the area within a twenty (20) mile radius of the Columbia Heart office at which Physician routinely provided services during the year prior to the date of termination or expiration of the Agreement. Section 5.2, **Exhibits A and B**.

6. However, under the terms of the Agreement, a departing physician could compete with Columbia Heart upon certain conditions. The physician could compete by paying the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination of the Agreement. Section 5.4. **Exhibits A and B.**

7. The Agreement contained an acknowledgment of reasonableness, in which the physician agreed that the restrictions were "fair and reasonably required for the protection of Medical Group." Section 5.5, **Exhibits A and B**.

8. Columbia Heart approved the language of the covenant that Counsel drafted on or about July 15, 2004. (See letter to Lynn Privette, dated July 15, 2004, attached hereto as **Exhibit C**). Affiant met with members of Columbia Heart on or about August 4, 2004 to discuss the language and enforcement of the covenants, as well as the consideration for the covenant. Some time after that meeting, all of the shareholder physicians signed the Agreements, which had an effective date of July 15, 2004.

9. The covenants were to be included in the new Agreements to protect the group from potential losses to Columbia Heart if a physician shareholder departed the practice. Those

losses included the loss of collections and the cost to cover the overhead, as well as forcing Columbia Heart to incur the expense of recruiting a replacement physician. In addition, in constructing a new medical office building Columbia Heart and the shareholder physicians were undertaking a major investment. The shareholder physicians wanted to insure that all of the other shareholder physicians would continue to work for Columbia Heart, or in the alternative, would pay Columbia Heart compensation to help shoulder the burden of the major investment in the Richland office.

10. Since the Agreements were to be signed by physicians who already were employees and shareholders of Columbia Heart, additional consideration for the Agreement and non-compete clause was included in the Agreement.

11. The terms of Article 5 of the Agreements prohibit departing physicians from competing with Columbia Heart during a period of 12 months following the date of termination of the Agreement between the parties in an area defined to be a 20-mile radius from each office at which the departing physician routinely provided services during the year prior to the date of termination of the Agreement.

12. The scope of the covenant is limited to the field of cardiology. Thus, a departing physician can practice in any other field of medicine, and the scope of the covenant is appropriately limited.

13. The geographic limitation was also carefully considered. Because Columbia Heart has offices in different counties, a radius was used as the limitation. In South Carolina, restrictions of 25 miles have been upheld. In affiant's opinion, twenty miles from the office in which a departing physician provided services (in this case, the Lexington office) is a reasonable radius.

14. Furthermore, the covenant is limited in time to one year. In South Carolina, covenants of two years or more have been found to be reasonable. Thus, the time limitation contained in the New Agreements is appropriate.

15. Article 5 also provides that a departing physician can compete upon payment of "One Hundred Percent (100%) of Physician's income," which is defined as "the average W-2 compensation of physician shareholders . . . in the calendar year prior to the date of termination or expiration of this Agreement."

16. The amount selected as the payment required to compete was determined by reviewing the annual salary of each shareholder-physician, the loss of collections, and the cost to cover the overhead. If a departing physician takes all of his patients with him to a competing practice, the loss of that income to Columbia Heart is substantial. In addition, generally the only time that Columbia Heart can replace a departing physician is in July, when residency programs end. If a physician departs in the fall, after residents have been hired by other practices, Columbia Heart must wait until the following July to fill the vacancy left by the departing physician.

17. Furthermore, the covenant that Drs. Baugh and Feldman are now challenging is almost identical to the one that bound them prior to 2004. Both Drs. Baugh and Feldman signed Employment Agreements prior to 2004 ("the Old Agreements", attached as **Exhibits D and E**). The Old Agreements also contained a covenant not to compete which prohibited the practice of cardiology in Richland and Lexington Counties for the twelve months following the termination of the Old Agreement. However, under the Old Agreement, Drs. Baugh and Feldman had no alternatives. Under the new Agreement, Drs. Baugh and Feldman are permitted to compete upon payment of the contractually agreed-upon price.

FURTHER AFFIANT SAYETH NOT.

David B. Summer, Jr.

SWORN to before me this 17th day
of April, 2008

_____(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/2c 2012

CLAUDIA SAGE
NOTARY
PUBLIC
My Commission Expires: 12-8-12
SOUTH CAROLINA

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **J. KEVIN BAUGH, M.D.** ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical

education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
J. Kevin Baugh, M.D.
10 Cotton Hope Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **BARRY J. FELDMAN, M.D.** ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical

education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
Barry J. Feldman, M.D.
5 Castle Hall Court
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
Barry J. Feldman, MD

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

PARKER POE

PARKER POE ADAMS & BERNSTEIN L.L.P.

Attorneys and Counselors at Law

David B. Summer, Jr.
Partner
Telephone: 803.253.8910
Direct Fax: 803.255.8017
davidsummer@parkerpoe.com

1201 Main Street
Suite 1450
P.O. Box 1509
Columbia, SC 29202-1509
Telephone 803.255.8000
Fax 803.255.8017
www.parkerpoe.com

July 15, 2004

Via E-mail lprivette@columbiaheartclinic.com
Ms. Lynn D. Privette
Chief Operating Officer
Columbia Heart Clinic, P.A.
1655 Bernardin Avenue, Suite 220
Columbia, SC 29204

Re: Consideration for Covenant Not to Compete

Dear Lynn:

As we discussed, where an employee has an existing employment relationship with a business, independent consideration must be granted for a covenant not to compete. We have previously drafted for you shareholder employment agreements for your existing shareholders which now contain a non-competition clause. You have indicated that your group has approved the form of agreement and now wishes to execute these documents.

As we discussed in our telephone conference yesterday, there are several ways to achieve this goal. The consideration for the covenant can be executory. In other words, rather than paying some sum at time of execution, the physician can accept a contract right to receive additional compensation at time of termination. You have indicated that such an approach might be more practical for the group, and you have asked that we propose contract language to achieve this goal. Therefore, we would propose the following:

> 4.5(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

EXHIBIT C tabbies

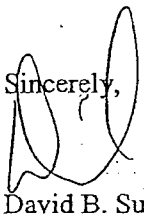
00236
Confidential

CHARLESTON, SC
CHARLOTTE, NC
RALEIGH, NC
SPARTANBURG, SC

If the foregoing is accepted by the Group, you may add this language into the Agreement or we will be happy to do so and e-mail the same to you. Please feel free to contact me if you have any questions.

With best regards, I am

Sincerely,



David B. Summer, Jr.

DBSjr/ccq

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 1st day of July, 1999, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **J. KEVIN BAUGH, M.D.**, a resident of Richland County, South Carolina ("Physician").

PREMISES:

A. Medical Group has been formed as a group medical practice to provide medical and other health care services to its patients in the State of South Carolina.

B. Physician is a physician duly licensed to practice medicine in the State of South Carolina and has been an employee of Medical Group or its predecessor since July 1, 1997.

C. Physician has become a shareholder in Medical Group as of the date hereof, and as a condition to becoming a shareholder, Physician and Medical Group have agreed to enter into this Agreement to replace and supersede all prior employment agreements.

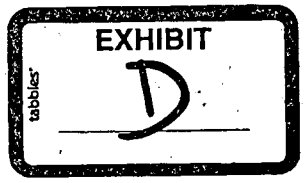
NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.



1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may

be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 1, 1999 and shall continue for a period up to and including December 31, 1999, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional

terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct and competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability

insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the

remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of the Accounts Receivable Purchase Price (as defined in Section 6.9(b)), then there shall be deducted from the amounts due to Physician pursuant to

Sections 4.5 (a), (b), (c), (d), and (f) the remaining balance of such Accounts Receivable Purchase Price. In the event the remaining balance of the Accounts Receivable Purchase Price exceeds the amount owed by Medical Group to Physician under the provisions of this Agreement, then Physician shall pay the difference to Medical Group immediately upon termination of this Agreement.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event Physician continues or commences the active practice of medicine in the field of cardiology within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following the termination (for any reason, whether with or without Cause) of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "tail coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell, and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

CONFIDENTIAL INFORMATION

5.1. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by Medical Group is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of Medical Group, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information; or

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of the Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.1. shall survive the expiration or termination of this Agreement for any reason.

5.2. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1. according to the following provisions:

(a) The parties agree that a breach by Physician of any of the provisions of Section 5.1. of this Agreement would cause irreparable damage to Medical Group. Therefore,

Medical Group shall be entitled to a temporary restraining order and/or preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.1. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(b) Physician expressly consents to entry of a temporary restraining order, preliminary injunction order, and permanent injunction order against Physician in the event that Physician violates the provisions of Section 5.1. above. Such order shall be in addition to any other remedies available to Medical Group at law or in equity.

(c) The provisions of this Paragraph 5.2. shall survive the expiration or termination for any reason of this Agreement.

5.3. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1. and 5.2., are fair and reasonably required for the protection of Medical Group.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
J. Kevin Baugh, M.D.
209 Tombee Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto, including but not limited to the employment agreement dated July 1, 1997.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such

organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9 Acquisition of Common Stock; Buy-in of Accounts Receivable.

(a) Physician shall, purchase from the current shareholders of Medical Group (the "Current Shareholders") and own Ninety-Three and Three/Fourths (93¾) shares of the common stock of Medical Group (the "Shares") in accordance with the terms and provisions of that certain Stock Subscription Agreement executed contemporaneously herewith among the Current Shareholders and Physician.

(b) Physician shall purchase his pro-rata share of the accounts receivable of Medical Group at a purchase price of $248,525.00 (the "Accounts Receivable Purchase Price"), which shall be paid to Medical Group over a period of not less than twelve (12) nor more than twenty-four (24) monthly installments commencing July 1, 1999, until the Accounts Receivable Purchase Price is paid in full. Medical Group may withhold such payments from any funds due Physician from Medical Group, including any sums due to Physician as basic or incentive compensation or due to Physician upon his death, disability or other termination of employment hereunder. Physician may prepay the outstanding balance of the Accounts Receivable Purchase Price or any portion thereof at any time.

6.10. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.11. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

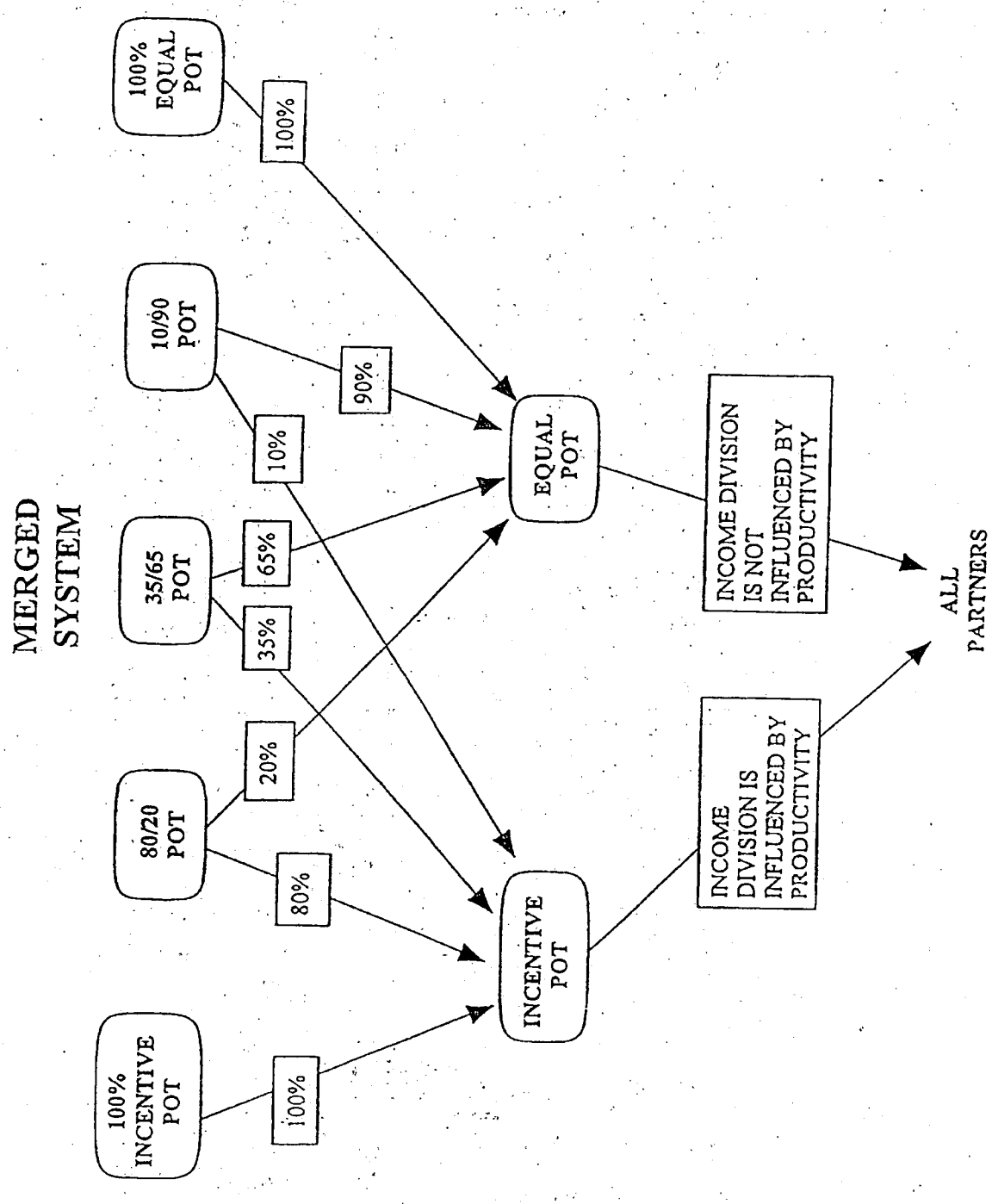
By: _____
President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS



14510
Confidential

incent98

INCENTIVE POT - MERGED GROUP

CPT	Description
90060A	Office Visit - No Charge
101	Disability Form Completion
32000	Thoracentesis
33010	Pericardiocentesis
33010	Pericardiocentesis
33011	Pericardiocentesis-Subsequent
7693026	Pericardiocentesis-Supv. & Int.
33210	Temp. Pacemaker - Single
36489	Central Venous Catheter
36620	Arterial Catheterization
92950	CPR
92960	Cardioversion
92977	Thrombolytic, IV Infusion
93018	Interp. & Report of Treadmill
93233	Holter - Interp only
93503	Swan Ganz
94656	Ventilation Assist. & Mgmt.
99199	Completion of Forms
99202	New Office Visit - 2
99203	New Office Visit - 3
99204	New Office Visit - 4
99205	New Office Visit - 5
99212	Office Visit - 2
99213	Office Visit - 3
99214	Office Visit - 4
99215	Office Visit - 5
99217	O/P Obser. D/C w Ovrnight
99218	O/P Observation - 1
99219	O/P Observation - 2
99220	O/P Observation - 3
99221	Admission-1
99222	Admission - 2
99223	Admission - 3
99231	Hospital Visit - 1
99232	Hospital Visit - 2
99233	Hospital Visit - 3
99238	Hospital Discharge
99239	Hospital Discharge > 30 min.
99243	Office Consult - 3
99244	Office Consult - 4
99245	Office Consult - 5
99252	Hospital Consult - 2
99253	Hospital Consult - 3
99254	Hospital Consult - 4
99255	Hospital Consult - 5
99261	Hospital Reconsult - 1
99262	Hospital Reconsult - 2

INCENTIVE POT - MERGED GROUP

99263	Hospital Reconsult - 3
99275	Confirmatory Consult
99284	Emerg. Room Visit - 4
99285	Emerg. Room Visit - 5
99291	Critical Care 1st 30 Min.
99292	Critical Care/Addtl. 30
99311	Nursing Home Visit - 1
99352	Home Visit - Est. Pt. Mod.
9330726	Echo Interp Only
9331226	Transesophageal Echo Interp.
9332026	Doppler Echo Interp.
9332526	Color Flow Interp.

80% INCENTIVE 20% EQUAL POT - MERGED GROUP

CPT	Description
93731-DR	Pacemaker Check/Dual - Dr.
93732-DR	Pacemaker Reprog/Dual - Dr.
93734-DR	Pacemaker Check/Single - Dr.
93735-DR	Pacemaker Reprog/Single - Dr.
93737-DR	ICD Check - Dr.
93738-DR	ICD Check/Reprog - Dr.
G0004	King-of-Hearts Medicare
G0005	King-of-Hearts Medicare
33015	Tube Pericardiostomy
36620	Arterial Catheterization
71010	Chest X-Ray, PA
71020	Chest X-Ray, PA & Lat.
93000	EKG - Complete
93005	EKG Tracing Only
93010	EKG Interp & Report
93015	C.V. Stress Test
93016	Treadmill-Phys. Supv.
93040	Rhythm Strip
93224	Holter Monitor
93230	Holter Monitor
93268	King-of-Hearts
93270	Prince of Hearts Hookup
93272	Prince of Hearts Interp.
93278	Signal Averaged EKG
94010	Spirometry
94070	Multiple Spirometry w/Exercise
94150	Vital Capacity
94681	CO2/O2 Analysis
94761	Pulse Oximetry

65-35_98

35% INCENTIVE 65% EQUAL - MERGED GROUP

CPT	Description
xxxxxx	All Non-Invasive PV Studies
93307	2-D , M-Mode Echo & Inter
93308	Echo Follow-Up Study
93320	Doppler Echocardiography
93321	Doppler Echo-Limited Study
93325	Color Flow Mapping
93350	Stress Echo

10-90_9S

10% INCENTIVE 90% EQUAL - MERGED GROUP

CPT	Description
78465	Spect., Multiple Studies
7846526	Spect, Interp. & Report
78472	MUGA
78473	Stress MUGA
78890	Generation/Interp. of Auto.Data
93015A	Treadmill w/ Spect Study
78471	MUGA

EQUAL POT - MERGED GROUP

CPT	Description
71020TC	Chest X-Ray Tech. Comp.
9330726A	Echo Interp - Lovelace
9332026A	Doppler Echo Interp - Lovelace
9332526A	Color Flow Interp - Lovelace
93737A	Ventritex/Cadence Tiered ICD
A4641	Provision/Diag. Radionuc.
A464176	Addnl. Provision/Diag. Radio.
A9500	Provision/Diag. Radionuc.
A950076	Addnl. Provision/Diag.
A9505	Thallous Cloride TL201
G0001	Venipuncture-Medicare
G0008	Admin flu vaccine Mcare
G0009	Admin Pneumon. Vac.
J1245	Persantine
J1940	Lasix - 20 mg
Q0022	Physician Review & Interp.
xxxxxx	All lab work done on-site
xxxxxx	All Peripheral Vascular Angioplasties
102	Copy of Records to Atty.
104	Richland Hospital Fees
105	Voc. Rehab. Medical Information
115	Fairfield Hospital Fees
134	Moncrief Fees
145	Providence Fees
148	Fishman EKG's
150	Lexington Fees
161	Baptist Fees
162	J. Robinson-Chester Fees
170	Byerly Fees
31500	Intubation
33206	Implant Pacemaker - Atrial
33207	Implant Pacemaker-Vent.
33208	Implant Pacemaker-AV Sequen.
33210	Transvenous Pacer Elec.
33212	Replace Pacemaker - Atrial/Vent.
33213	Replace Pacemaker - AV Sequen.
33214	Upgrade PM-Single to Dual
33216	Lead Change - Single
33217	Lead Change - Dual
33218	Repair Pmkr Electr. - Single
33219	Repair Pacemaker Generator
33220	Repair Pmkr Electr. - Dual
33222	Revision or Relocation of PM Pckt.
33232	Removal of Permanent PM
33233	Remove Pacemaker Generator
33234	Remove PM Generator& Elec.-Sngl

EQUAL POT - MERGED GROUP

33235	Remove PM Generator& Elec.-Dual
36415	Venipuncture
37202	Transcatheter Infusion
71034	Flouro 4 view chest
75724	Angiography, Renal, Rad. S&I
75754	Supv. & Interp.
75756	Angiography. LIMA
75766	Supv./Interp. LC w/
78990	Provision/Diag. Radionuc.
80003	Automated Channel Test
80061	Lipid Panel
83718	HDL Cholesterol
86585	PPD Skin Test
90724	Flu vaccine
90732	Pneumon. Vac.
90746	Hepatitus Vaccine (3Inj.)
92975	Thrombolysis/Coronary w/Angio.
92978	Intravascular Ultrsound-Init.
92979	Intravascular Ultrasound-Addnl.
92980	Stent Placement
92981	Stent Placement-Each Addt'l Vessel
92982	PTCA/Single Vessel
92984	PTCA/Each Add. Vessel
92995	Coronary Atherectomy/Single
92996	Atherectomy-Each Addt'l Vessel
93017	C.V. Stress Test -Tech. Comp.
93024	Ergonovine Provocation Test
93227	Holter Monitor Interp.
93501	Right Heart Cath
93505	Endomyocardial Biopsy
93510	Left Heart Cath
93511	Left Heart Cath - CD
93526	Right & Left Heart Cath
93536	Insert of Intra-Aortic Balloon
93539	Injection for Arterial Grafts
93540	Injection for Venous Grafts
93541	Pulmonary Angiogram
93542	Rt. Vent or Rt. Atrial Angiogram
93543	Left Vent. or Lft Atrial Angiogram
93544	Aortography/Aortogram
93545	Selective Coronary Angiogram
93555	S&I - Ventriculography
93556	S&I Coronary Angiography
93561	Dilution Studies
93562	Dilution Studies w/ Output
93600	Bundle of HIS Recording
93602	Intra-Atrial Recording
93603	Right Ventricular Recording

EQUAL POT - MERGED GROUP

93607	Left Ventricular Recording
93609	Intra-Vent Mapping of Tachy.
93610	Intr-Atrial Pacing
93612	Intraventricular Pacing
93618	Induction of Arrhythmia
93619	EPS w/o Induction of Arrhythmia
93620	Comprehensive EP w/ Induct. of Arrhyth.
93621	EPS w/ Left Atrial Recording
93622	EPS w/ Left Ventricular Recording
93623	EPS After Drug Infusion
93624	Follow-Up EPS
93640	EPS/ICD/Lead
93641	EPS/ICD/Generator
93642	EPS/ICD - Evaluation
93650	Ablation - AV Node
93651	Ablation - Atrial
93652	Ablation/Vent. Tachy
93660	EPS/Tilt Table Test
93724	Electronic Analysis-PM System
93731	Pacemaker Check/Dual
93732	Pacemaker Reprog/Dual
93733	Pacemaker Analysis - Phone/Dual
93734	Pacemaker Check/Single
93735	Pacemaker Reprog/Single
93736	Pacemaker Analysis - Phone/Single
93737	ICD Analysis w/o Reprog.
93738	ICD Analysis with Reprog.
93799	Unlisted Cardiovasc. Procedure
99211	EM w/o Phys.
7109026	Fluoroscopy S&SI
7847226	MUGA Interp.
7899076	Addtl. Provision/Radionucl.
7899076	Addnl. prov. - Radionuclide
9298222	PTCA Multiple Lesions
9302426	Ergonovine Provocation Test
9323326	Holter Monitor Interp.
9330026	M-Mode Echo Interp.
9352726	Rt. Heart Cath & Transeptal LC

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

5. Professional directorships at hospitals.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 6th day of October, 1997, between COLUMBIA HEART CLINIC, P.A., a South Carolina professional corporation ("Medical Group"), and BARRY J. FELDMAN, M.D., a resident of Richland County, South Carolina ("Physician").

PREMISES:

A. Medical Group is being formed as a group medical practice to provide medical and other health care services to its patients in the State of South Carolina.

B. Physician is a physician duly licensed to practice medicine in the State of South Carolina.

C. Medical Group desires to employ Physician, and Physician desires to accept employment with Medical Group pursuant to the terms and conditions set forth herein.

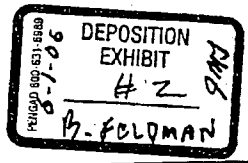
NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

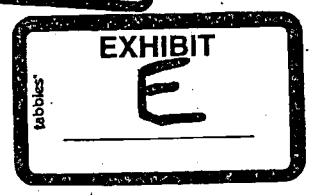
ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.





1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of

Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. A "fulltime" physician shall be defined from time to time by the Board of Directors of Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

03854
Confidential

03903
Confidential

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on January 1, 1998 and shall continue for a period up to and including December 31, 1998, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

03856
Confidential

03905
Confidential

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct and competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection

03859
Confidential

03908
Confidential

Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the collection percentage used will be that for 1997.

(h) Notwithstanding any other provision in this Agreement in the event Physician continues or commences the active practice of medicine in the field of cardiology within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following the termination (for any reason, whether with or without Cause) of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(h). The provisions of this Section 4.5.(h) shall survive the expiration or termination of this Agreement for any reason.

(i) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "tail coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(j) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell, and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(h) is intended as restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

CONFIDENTIAL INFORMATION

5.1. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by Medical Group is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of Medical Group, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information; or

03860
Confidential

03909
Confidential

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of the Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.1. shall survive the expiration or termination of this Agreement for any reason.

5.2. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1. according to the following provisions:

(a) The parties agree that a breach by Physician of any of the provisions of Section 5.1. of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to a temporary restraining order and/or preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.1. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(b) Physician expressly consents to entry of a temporary restraining order, preliminary injunction order, and permanent injunction order against Physician in the event that Physician violates the provisions of Section 5.1. above. Such order shall be in addition to any other remedies available to Medical Group at law or in equity.

(c) The provisions of this Paragraph 5.2. shall survive the expiration or termination for any reason of this Agreement.

5.3. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1. and 5.2., are fair and reasonably required for the protection of Medical Group.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group: Columbia Heart Clinic, P.A.
One Richland Medical Park, Suite 420
Columbia, SC 29203
Attention: President

To Physician: Barry J. Feldman, M.D.
One Richland Medical Park, Suite 420
Columbia, SC 29203

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

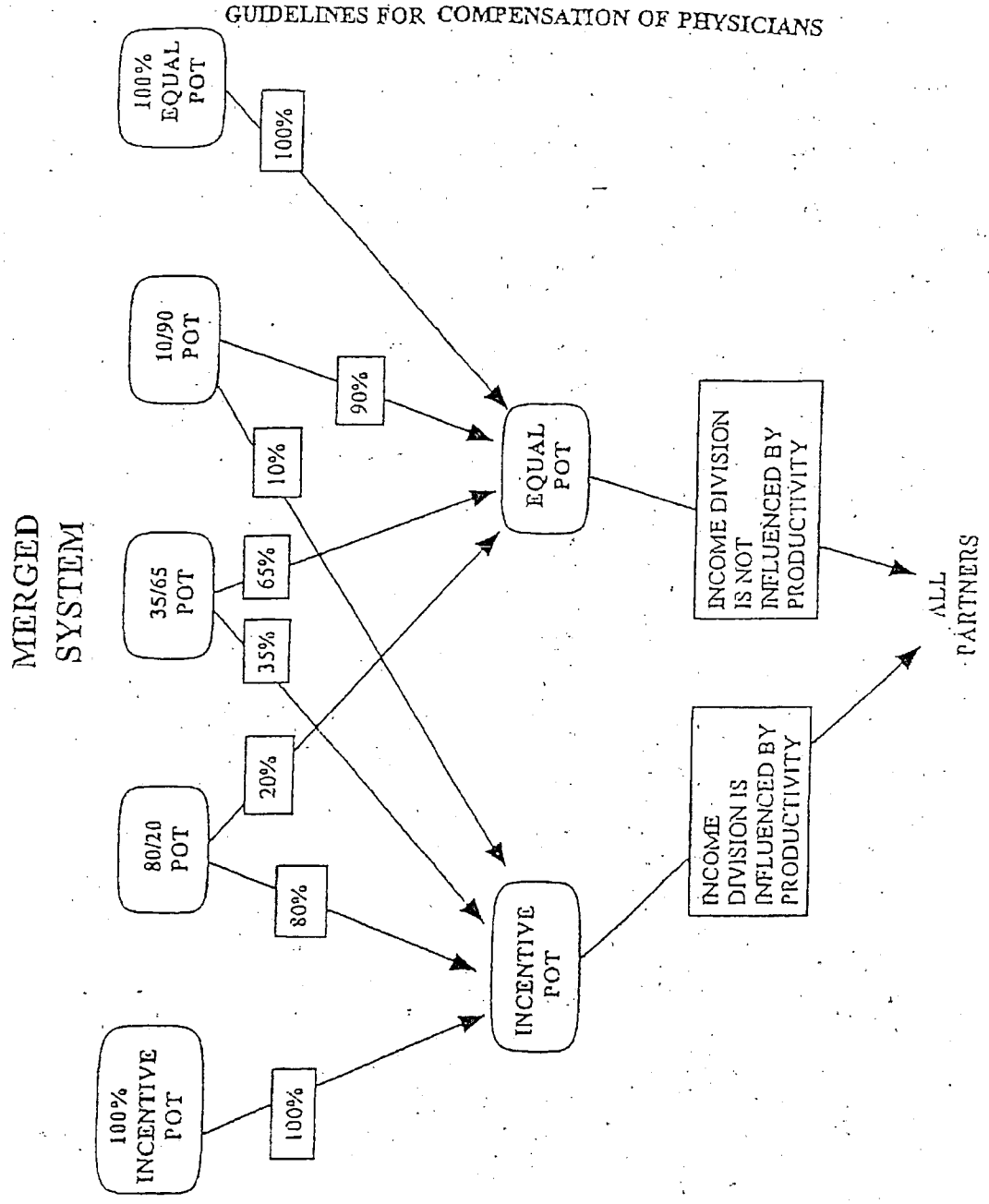
By: _____
President

PHYSICIAN

_____ (SEAL)
Barry J. Feldman, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS



03864
Confidential

03913
Confidential

incent98

INCENTIVE POT - MERGED GROUP

CPT	Description
90060A	Office Visit - No Charge
101	Disability Form Completion
32000	Thoracentesis
33010	Pericardiocentesis
33010	Pericardiocentesis
33011	Pericardiocentesis-Subsequent
7693026	Pericardiocentesis-Supv. & Int.
33210	Temp. Pacemaker - Single
36489	Central Venous Catheter
36620	Arterial Catheterization
92950	CPR
92960	Cardioversion
92977	Thrombolytic, IV Infusion
93018	Interp. & Report of Treadmill
93233	Holter - Interp only
93503	Swan Ganz
94656	Ventilation Assist. & Mgmt.
99199	Completion of Forms
99202	New Office Visit - 2
99203	New Office Visit - 3
99204	New Office Visit - 4
99205	New Office Visit - 5
99212	Office Visit - 2
99213	Office Visit - 3
99214	Office Visit - 4
99215	Office Visit - 5
99217	O/P Obser. D/C w Ovrnight
99218	O/P Observation - 1
99219	O/P Observation - 2
99220	O/P Observation - 3
99221	Admission-1
99222	Admission - 2
99223	Admission - 3
99231	Hospital Visit - 1
99232	Hospital Visit - 2
99233	Hospital Visit - 3
99238	Hospital Discharge
99239	Hospital Discharge > 30 min.
99243	Office Consult - 3
99244	Office Consult - 4
99245	Office Consult - 5
99252	Hospital Consult - 2
99253	Hospital Consult - 3
99254	Hospital Consult - 4
99255	Hospital Consult - 5
99261	Hospital Reconsult - 1
99262	Hospital Reconsult - 2

03865
Confidential

03914
Confidential

INCENTIVE POT - MERGED GROUP

99263	Hospital Reconsult - 3
99275	Confirmatory Consult
99284	Emerg. Room Visit - 4
99285	Emerg. Room Visit - 5
99291	Critical Care 1st 30 Min.
99292	Critical Care/Addtl. 30
99311	Nursing Home Visit - 1
99352	Home Visit - Est. Pt. Mod.
9330726	Echo Interp Only
9331226	Transesophageal Echo Interp.
9332026	Doppler Echo Interp.
9332526	Color Flow Interp.

03866
Confidential

03915
Confidential

20-80_98

80% INCENTIVE 20% EQUAL POT - MERGED GROUP

CPT	Description
93731-DR	Pacemaker Check/Dual - Dr.
93732-DR	Pacemaker Reprog/Dual - Dr.
93734-DR	Pacemaker Check/Single - Dr.
93735-DR	Pacemaker Reprog/Single - Dr.
93737-DR	ICD Check - Dr.
93738-DR	ICD Check/Reprog - Dr.
G0004	King-of-Hearts Medicare
G0005	King-of-Hearts Medicare
33015	Tube Pericardiostomy
36620	Arterial Catheterization
71010	Chest X-Ray, PA
71020	Chest X-Ray, PA & Lat.
93000	EKG - Complete
93005	EKG Tracing Only
93010	EKG Interp & Report
93015	C.V. Stress Test
93016	Treadmill-Phys. Supv.
93040	Rhythm Strip
93224	Holter Monitor
93230	Holter Monitor
93268	King-of-Hearts
93270	Prince of Hearts Hookup
93272	Prince of Hearts Interp.
93278	Signal Averaged EKG
94010	Spirometry
94070	Multiple Spirometry w/Exercise
94150	Vital Capacity
94681	CO2/O2 Analysis
94761	Pulse Oximetry

65-35_98

35% INCENTIVE 65% EQUAL - MERGED GROUP

CPT	Description
xxxxxx	All Non-Invasive PV Studies
93307	2-D , M-Mode Echo & Inter
93308	Echo Follow-Up Study
93320	Doppler Echocardiography
93321	Doppler Echo-Limited Study
93325	Color Flow Mapping
93350	Stress Echo

03868
Confidential

03917
Confidential

10-90_98

10% INCENTIVE 90% EQUAL - MERGED GROUP

CPT	Description
78465	Spect., Multiple Studies
7846526	Spect, Interp. & Report
78472	MUGA
78473	Stress MUGA
78890	Generation/Interp. of Auto.Data
93015A	Treadmill w/ Spect Study
78471	MUGA

03869
Confidential

03918
Confidential

equal-98

EQUAL POT - MERGED GROUP

CPT	Description
71020TC	Chest X-Ray Tech. Comp.
9330726A	Echo Interp - Lovelace
9332026A	Doppler Echo Interp - Lovelace
9332526A	Color Flow Interp - Lovelace
93737A	Ventritex/Cadence Tiered ICD
A4641	Provision/Diag. Radionuc.
A464176	Addnl. Provision/Diag. Radio.
A9500	Provision/Diag. Radionuc.
A950076	Addnl. Provision/Diag.
A9505	Thallous Cloride TL201
G0001	Venipuncture-Medicare
G0008	Admin flu vaccine Mcare
G0009	Admin Pneumon. Vac.
J1245	Persantine
J1940	Lasix - 20 mg
Q0022	Physician Review & Interp.
xxxxxx	All lab work done on-site
xxxxxx	All Peripheral Vascular Angioplasties
102	Copy of Records to Atty.
104	Richland Hospital Fees
105	Voc. Rehab. Medical Information
115	Fairfield Hospital Fees
134	Moncrief Fees
145	Providence Fees
148	Fishman EKG's
150	Lexington Fees
161	Baptist Fees
162	J. Robinson-Chester Fees
170	Byerly Fees
31500	Intubation
33206	Implant Pacemaker - Atrial
33207	Implant Pacemaker-Vent.
33208	Implant Pacemaker-AV Sequen.
33210	Transvenous Pacer Elec.
33212	Replace Pacemaker - Atrial/Vent.
33213	Replace Pacemaker - AV Sequen.
33214	Upgrade PM-Single to Dual
33216	Lead Change - Single
33217	Lead Change - Dual
33218	Repair Pmkr Electr. - Single
33219	Repair Pacemaker Generator
33220	Repair Pmkr Electr. - Dual
33222	Revision or Relocation of PM Pckt.
33232	Removal of Permanent PM
33233	Remove Pacemaker Generator
33234	Remove PM Generator& Elec.-Sngl

03870
Confidential

03919
Confidential

EQUAL POT - MERGED GROUP

33235	Remove PM Generator& Elec.-Dual
36415	Venipuncture
37202	Transcatheter Infusion
71034	Flouro 4 view chest
75724	Angiography, Renal, Rad. S&I
75754	Supv. & Interp.
75756	Angiography. LIMA
75766	Supv./Interp. LC w/
78990	Provision/Diag. Radionuc.
80003	Automated Channel Test
80061	Lipid Panel
83718	HDL Cholesterol
86585	PPD Skin Test
90724	Flu vaccine
90732	Pneumon. Vac.
90746	Hepatitus Vaccine (3Inj.)
92975	Thrombolysis/Coronary w/Angio.
92978	Intravascular Ultrsound-Init.
92979	Intravascular Ultrasound-Addnl.
92980	Stent Placement
92981	Stent Placement-Each Addt'l Vessel
92982	PTCA/Single Vessel
92984	PTCA/Each Add. Vessel
92995	Coronary Atherectomy/Single
92996	Atherectomy-Each Addt'l Vessel
93017	C.V. Stress Test -Tech. Comp.
93024	Ergonovine Provocation Test
93227	Holter Monitor Interp.
93501	Right Heart Cath
93505	Endomyocardial Biopsy
93510	Left Heart Cath
93511	Left Heart Cath - CD
93526	Right & Left Heart Cath
93536	Insert of Intra-Aortic Balloon
93539	Injection for Arterial Grafts
93540	Injection for Venous Grafts
93541	Pulmonary Angiogram
93542	Rt. Vent or Rt. Atrial Angiogram
93543	Left Vent. or Lft Atrial Angiogram
93544	Aortography/Aortogram
93545	Selective Coronary Angiogram
93555	S&I - Ventriculography
93556	S&I Coronary Angiography
93561	Dilution Studies
93562	Dilution Studies w/ Output
93600	Bundle of HIS Recording
93602	Intra-Atrial Recording
93603	Right Ventricular Recording

03871
Confidential

03920
Confidential

EQUAL POT - MERGED GROUP

93607	Left Ventricular Recording
93609	Intra-Vent Mapping of Tachy.
93610	Intr-Atrial Pacing
93612	Intraventricular Pacing
93618	Induction of Arrhythmia
93619	EPS w/o Induction of Arrhythmia
93620	Comprehensive EP w/ Induct. of Arrhyth.
93621	EPS w/ Left Atrial Recording
93622	EPS w/ Left Ventricular Recording
93623	EPS After Drug Infusion
93624	Follow-Up EPS
93640	EPS/ICD/Lead
93641	EPS/ICD/Generator
93642	EPS/ICD - Evaluation
93650	Ablation - AV Node
93651	Ablation - Atrial
93652	Ablation/Vent. Tachy
93660	EPS/Tilt Table Test
93724	Electronic Analysis-PM System
93731	Pacemaker Check/Dual
93732	Pacemaker Reprog/Dual
93733	Pacemaker Analysis - Phone/Dual
93734	Pacemaker Check/Single
93735	Pacemaker Reprog/Single
93736	Pacemaker Analysis - Phone/Single
93737	ICD Analysis w/o Reprog.
93738	ICD Analysis with Reprog.
93799	Unlisted Cardiovasc. Procedure
99211	EM w/o Phys.
7109026	Fluoroscopy S&SI
7847226	MUGA Interp.
7899076	Addtl. Provision/Radionucl.
7899076	Addnl. prov. - Radionuclide
9298222	PTCA Multiple Lesions
9302426	Ergonovine Provocation Test
9323326	Holter Monitor Interp.
9330026	M-Mode Echo Interp.
9352726	Rt. Heart Cath & Transeptal LC

03872
Confidential

03921
Confidential

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

03873
Confidential

03922
Confidential

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS
FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

03875
Confidential

03924
Confidential

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.
2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.
3. Educational speaking engagements.
4. Expert witness testimony.
5. Professional directorships at hospitals.

03876
Confidential

03925
Confidential

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, V. Columbia Heart Clinic, P.A. Defendant.	C/A NUMBER: 2006-CP-32-0371 **DEFENDANT COLUMBIA HEART CLINIC'S MEMORANDUM IN SUPPORT OF THE MOTION FOR SUMMARY JUDGEMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COPY

Defendant Columbia Heart Clinic, P.A. submits the following memorandum of law in support of its Motion for Summary Judgment and in opposition to Plaintiffs' Motion for Summary Judgment.

SUMMARY OF ARGUMENTS

1. The contractual provision at issue is not a covenant to compete, as it allows the Plaintiffs to compete upon payment of a contractually agreed upon sum.
2. Even if the contractual provision constitutes a covenant not to compete, it is reasonable as to time, scope of activity, and geographical limitations and is supported by valid consideration. Thus, the covenant should be enforced.
3. Alternatively, if this Court finds that the time, scope of activity, and geographical limitations exceed those limitations permissible by law, Plaintiffs and Defendant have agreed contractually that this Court can modify such terms as to render the covenant reasonable and enforceable.

NATURE OF THE CASE

Defendant Columbia Heart Clinic, P.A. ("Columbia Heart") is a professional medical practice association that provides comprehensive services for the prevention, diagnosis, and treatment of cardiovascular disease. When this case was filed, Columbia Heart had offices in Lexington County,[1] Richland County and Fairfield County. *Tab 1,* Jones Dep. p. 35. Plaintiffs J. Kevin Baugh, M.D., and Barry J. Feldman, M.D. are Board certified physicians specializing in cardiology. Baugh began employment with Columbia Heart in 1996 and Feldman in 1993. *Tab 2* Baugh Dep. 24; *Tab 3,* Feldman Depo. 7. At the time of their departure, both Plaintiffs had been shareholders in Columbia Heart for over 5 years. *Tab 2,* Baugh Depo. 46; *Tab 3,* Feldman Depo. 66.

Columbia Heart opened a new office building in Lexington County in the year 2000, in part at the request of Plaintiffs.[2] *Tab 4,* Jones Aff. ¶11. Under the terms of the lease, the rent was $14,591.09 per month, or $175,093.10 per year. *Tab 4,* Jones Aff. ¶14. In addition, Columbia Heart purchased equipment including nuclear machine for $250,000.00 and an echo machine for $200,000.00 for use in the Lexington office. *Tab 4,* Jones Aff. ¶13. Columbia Heart also employed sufficient staff to assist Baugh and Feldman at a significant cost. *Tab 4,* Jones Aff. ¶13.

In 2004, Columbia Heart decided to build, and in fact did build, a new building in Richland County. *Tab 4,* Jones Aff. ¶2. CHC MOB Manager, LLC, an entity in which Plaintiffs were

---

[1]As a result of the Plaintiffs' departure from the practice, the Defendant's Lexington office has now closed. *Tab 1,* Jones Dep. p. 88.

[2]Columbia Heart had an office location in Lexington, but it was not the fully staffed office that was created in 2000. *Tab 1,* Jones Dep. p. 89.

members and shareholders, owns 92.8% of Palmetto Heart MOB, LLC the company that owns the building.[3] *Tab 4,* Jones Aff. ¶6. In 2004, Columbia Heart entered into a fifteen year lease for the new medical office building ("Richland Office") upon completion of construction. *Tab 4,* Jones Aff. ¶6. Columbia Heart leases certain space in the building for $1,122,513.00 per year for the first five years.[4] *Tab 4,* Jones Aff. ¶8. Plaintiffs, as shareholders of Columbia Heart and members of CHC MOB Manager, LLC, were at all times aware of the plans for the new building and the associated costs. The new Richland County location cost approximately $20 million to build. *Tab 4,* Jones Aff. ¶6. All of the shareholder physicians at Columbia Heart Clinic (including the Plaintiffs) signed personal guaranties for the construction loan. *Tab 5,* Summer Aff. ¶3; *Tab 4,* Jones Aff. ¶6.

At the time the new building was planned, all shareholder physicians entered into new Employment Agreements that contained provisions regarding the termination of their employment by Columbia Heart.[5] *Tab 5,* Summer Aff. ¶8. The Employment Agreement restricted shareholder physicians from employment with any other provider of cardiology services for one year within a 20-mile radius of any Columbia Heart for which the physician routinely provided services for a period of one year. *Tab 5,* Summer Aff. ¶ 14. In the alternative, the exiting physician could pay a contractually agreed upon price to compete:

> In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to

---

[3]The Plaintiffs had an interest in CHC MOB Manager, LLC this entity, but the other members of that entity have reacquired Plaintiffs' interest for payment of $200,000 to each Plaintiff. *Tab 1,* Jones Dep. p. 155-156.

[4]After five years, the rent could be increased. *Tab 4,* Jones Aff. ¶8.

[5]The previous employment agreements also contained covenants not to compete.

> One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

Tab 6, Employment Agreement, Section 5.4.

The shareholder physicians approved the language of the contracts. *Tab 5,* Summer Aff. ¶ 8. In fact, there was a provision in the Employment Agreement in which the shareholder physicians specifically acknowledged the reasonableness of that section.[6] *Tab 6,* Employment Agreement, Sections 5.4; *Tab 5,* Summer Aff. ¶7. The Employment Agreement also specifically provided that if a court found the provisions of the Employment Agreement to be inappropriate as to time period, scope of activity and geographical location and, in effect, rewrite the covenant, the parties agreed that the court could revise the Employment Agreement as to appropriate time period, scope of activity and geographical location *Tab 6,* Section 5.5. Finally, the new Employment Agreement was supported by consideration, in that each shareholder physician that left Columbia Heart's employment but did not join a competing practice would receive a payment of $5,000 per month for twelve months. *Tab 5,* Summer Aff. ¶11.

Prior to the construction of the new facility and the execution of the new agreements, Columbia Heart's then-existing employment contracts contained some restrictive language. *Tab 5,* Summer Aff. ¶¶ 10; 18. For example, Plaintiff Baugh's prior Employment Agreement stated:

> Notwithstanding any other provision of the Agreement in the event Physician continues or commences the active practice of medicine in the field of cardiology

---

[6]There is another provision acknowledging the reasonableness of certain forfeitures which is discussed, *infra.*

> within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following termination (for any reason, whether with or without Cause) of this Agreement, then Physician shall forfeit any monies payable to Physician...

Tab 7, 1999 Agreement. However, in light of the major investment being undertaken in constructing the new building, Columbia Heart needed to strengthen and clarify the covenants. *Tab 4* Jones Aff. ¶7. Because of the size of the investment and importance of the covenants, Columbia Heart retained a lawyer, David Summer of Parker Poe Adams & Bernstein, LLP, to draft the Employment Agreements. *Tab 5,* Summer Aff. ¶1. Both Summer and his firm have expertise in the field of employment law and are well-respected in the community. *Tab 2,* Baugh Dep. 228- 229.

The shareholder physicians needed to ensure that all other shareholder physicians would continue work for, and not against, Columbia Heart, or in the alternative, would pay Columbia Heart compensation to provide the necessary income stream for Columbia Heart to cover the burden of the new building.[7] *Tab 4,* Jones Aff. ¶7; *Tab 5,* Summer Aff. ¶9. The shareholder physicians had meetings in which the drafts of the Employment Agreements were discussed. *Tab 3,* Feldman Dep. p. 92-93; *Tab 2,* Baugh Dep. 72. At one such meeting, the changes to the former employment agreement proposed by Summer were presented as a powerpoint presentation by one of the shareholder physicians. *Tab 8,* Schulze Dep. 13-14. As additional consideration for the covenants, the Agreements provided that any physician who leaves and does not compete with Columbia Heart would receive $5,000 per month for one year, a portion of his accounts receivable, and any accrued, but unpaid, salary. The Plaintiffs signed new Employment Agreements on July 15, 2004. *Tab 6.*

The new Richland County facility was opened in December 2005, just weeks prior to

---

[7]The overhead for each shareholder is $1.1 million per year.

Plaintiffs' announcement in January 2006 that they were leaving Columbia Heart.[8] *Tab 1,* Jones Dep. p. 122; *Tab 4,* Jones Aff. ¶ 9; 18; *Tab 9,* Resignation letters. Plaintiffs also began taking steps to open a practice in Lexington County.[9] In addition, while still employed with Columbia Heart, Plaintiffs spoke to staff members about coming to work for the new practice. *Tab 3,* Feldman Dep. 23-25; *Tab 2,* Baugh Dep. 130-131. Through Dr. Feldman's wife Jennifer, Plaintiffs recruited and hired most of the staff from Columbia Heart's Lexington office. *Tab 3,* Feldman Dep. 17-20;. In fact, at least 12 employees of Baugh and Feldman's new practice had been employed by Columbia Heart just prior to Plaintiffs' departure. *Tab 3,* Feldman Dep. p. 62. As of June 1, 2006, just one month after Lexington Heart Clinic opened, only two employees were not former employees of Columbia Heart. *Tab 3,* Feldman Dep. 63-64.

On or around May 1, 2006, the new medical practice formed by Baugh and Feldman,

---

[8]Plaintiffs claim that Dr. Feldman had to leave after his wife, Jennifer Feldman was not made a shareholder although they had allegedly been told multiple times that her request would be granted. As support, they cite to Jennifer Feldman's original contract with Columbia Heart which provided that if she wanted to become a shareholder, she could convert to a full-time physician and would be admitted as a shareholder after two years. What Plaintiffs fail to mention, however, is that the original contract had expired and the contract binding Jennifer Feldman just prior to her departure from Columbia Heart stated:

> No Expectation of Shareholder Status. Physician acknowledges that neither this Agreement no Physician's Employment Agreement by Medical Group for all or any portion of the term of this Agreement entitles Physician to be a shareholder of Medical Group and that any consideration for shareholder status is in the sole discretion of Medical Group.

Tab 10. Thus, Plaintiffs are not being forthcoming in representing that Jennifer Feldman's contract allowed for her to become a shareholder at any time.

[9]Baugh and Feldman had already formed Lexington Heart Clinic, LLC prior to their resignation and they also began scouting locations, meeting with banks regarding financing, and making other plans. *Tab 3,* Feldman Dep,. 146; 151-153.

Lexington Heart Clinic, LLC, opened to patients. *Tab 2,* Baugh Dep. p. 83; *Tab 3,* Feldman Dep. 7-8; *Tab 4,* Jones Aff. ¶21. However, the Employment Agreements prohibit Plaintiffs from opening a medical practice in Lexington County for one year unless the Plaintiffs pay the required amount of money, which they have refused to do, thereby breaching the contract between the parties and resulting in this litigation.

PROCEDURAL HISTORY OF THE CASE

The Plaintiffs initially filed an action seeking a declaratory judgment that the covenant was not valid or enforceable. Defendant Columbia Heart Clinic filed Counterclaims for Breach of Contract and Breach of Fiduciary Duty. Columbia Heart also sought a temporary restraining order preventing Plaintiffs from operating their new practice in Lexington, or in the alternative, an order requiring Plaintiffs to post a bond. By Order filed April 4, 2006, the Honorable Larry R. Patterson required each Plaintiff to post a bond of $480,000.[10] On April 27, 2006, Plaintiffs filed another Complaint against Columbia Heart, C/A 06-CP-32-1497, with additional claims that has been consolidated with the instant case.[11]

This matter now comes before the Court on Defendant's Motion for Summary Judgment as to the Breach of Contract claim and Plaintiffs' Motion for Summary Judgment on the Declaratory

---

[10]By Consent Order, the parties later agreed that a Letter of Credit would be substituted for the bond.

[11]The Amended Complaint contains causes of action for: Declaratory Judgment, Breach of Contract, Violation of Wage Payment Act, Quantum Meruit, and for a Declaration of Rights and to Recover the Value of Shares. Columbia Heart has asserted counterclaims for Breach of Contract and Breach of Fiduciary Duty.

Judgment.[12] Both motions center on the enforceability of covenant not to compete within the Employment Agreement.

UNDISPUTED FACTS

A. Prior to April 2006, Plaintiffs Baugh and Feldman, were shareholder physicians with Columbia Heart Clinic, P.A. *Tab 2,* Baugh Dep. p. 44; *Tab 3,* Feldman Dep. 7; 66. They operated out of Columbia Heart's Lexington County office. *Tab 2,* Baugh Dep. p. 44; *Tab 4,* Jones Aff. ¶12.

B. Each Plaintiff signed a Shareholder Physician Employment Agreement ("the Employment Agreement") with Columbia Heart, dated July 15, 2004. *Tab 6.*

C. Each Employment Agreement contained a non-compete clause in which a dep arting physician agreed not to practice medicine in the field of cardiology (as specifically defined in the Agreement) in the area covering 20 miles from the Columbia Heart location in which the physician regularly provided medical services. *Tab 6.*

D. The covenant not to compete was to extend for twelve months after the date of termination of the Employment Agreement. *Tab 6.*

E. The Employment Agreement allowed a departing physician to compete despite the existence of the covenant upon payment of a contractually agreed upon price. *Tab 6.*

F. Plaintiffs provided a 90-day notice of their resignations on January 21, 2006 and their last day of employment with Columbia Heart was April 21, 2006. *Tab 9* , Resignation letters.

---

[12]At a status conference on the case, it was determined that both sides should move for summary judgment because resolution on the issue of the contractual provisions would resolve the main issue in the case and completely or partially resolve the other causes of action.

G. Plaintiffs opened a competing practice, Lexington Heart Clinic, within twenty miles of Columbia Heart's Lexington office. *Tab 2,* Baugh Dep. p. 83; *Tab 3,* Feldman Dep. 7-8.

H. Plaintiffs' competing practice opened on or around May 1, 2006, less than one year from the date of the termination of their Employment Agreements with Columbia Heart. *Tab 2,* Baugh Dep. p. 83; *Tab 3,* Feldman Dep. 7-8; *Tab 4,* Jones Aff. ¶21.

I. Plaintiffs did not pay the contractually-agreed upon sum prior to opening the competing practice. *Tab 4,* Jones Aff. ¶21.

ARGUMENTS

"Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder." *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 226 S.E.2d 703 (1976). The party opposing the motion, not the Court, bears the burden of identifying specific facts in the record that establishes a genuine issue of material fact. "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot rely on the mere allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or proof." *Shupe v. Settle,* 315 S.C. 524, 445 S.E.2d 651, 655 (Ct.App. 1994).

Here, both Plaintiffs and Defendant have agreed that the issue is one of interpretation of a contractual provision and the determination of its validity. The material facts are not in dispute and thus, no fact finder is needed.

I. The contractual provision is neither a covenant nor a penalty.

The contractual provision at issue in this case is one that applies only to shareholder physicians. Section 5.4 of the Employment Agreement allows for competition, provided that

Plaintiffs to pay a contractually agreed upon price in order to open a new medical practice in Lexington County:

> In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

Tab 6. Thus, it is not a covenant not compete but simply "a [contractual] business arrangement incident to the continuing practice of the parties ...." *J.W. Hunt and Co. v. Davis,* 313 S.C. 352, 355-356, 437 S.E.2d 557, 560 (Ct. App. 1993). While Plaintiffs argue that *Hunt* does not apply because it involved a partnership agreement, the Employment Agreement at issue here is between professional shareholders (physicians), and it is virtually identical to an agreement between partners. Like a partnership, a professional association such as Defendant has shareholders who are all physicians, which is distinguishable from the normal hierarchical formation in a company with typical employees. Since the provision is nothing more than a term of an ordinary contract, the "reasonableness" test typically applied to covenants not to compete is not necessary. *Id.*

Furthermore, the contractually agreed upon amount does not constitute a penalty. A penalty is one that is for an arbitrary amount, irrespective of the damages sustained; however, where the payment arises out of the nature of the contract and is designed a fair measure of the harm, it will be enforced. *Kirkland Distributing Co. v. United States*, 276 F. 2d 138, 145 (4th Cir. 1960).

Here, the formula in the contract is related to the harm Columbia Heart sustained.[13] Columbia Heart entered into a lease in the new Richland County facility for which Columbia Heart must pay rent of $1,122,513.00 per year for the first five years. *Tab 4,* Jones Aff. ¶ 8. Prior to that, Columbia Heart made substantial investments in the Lexington office for Baugh and Feldman, including $450,000 in equipment; $175,093.10 per year in rent(for five years); and a substantial amount in staffing the office. *Tab 4,* Jones Aff. ¶ 13-14. Finally, Columbia Heart has lost the referrals from Lexington physicians, which provided a source of income to the practice in excess of $5 million. *Tab 4,* Jones Aff. ¶ 23. Thus, the contractually agreed upon payment of $591,709.74 by each Plaintiff is significantly below the harm Columbia Heart sustained, and it cannot be considered an arbitrary penalty.

II. The covenant not to compete should be upheld as it is reasonable and supported by adequate consideration.

A covenant will ordinarily be upheld if it is necessary for protection of the legitimate interest of the employer, it is reasonably limited with respect to time and place, is not unduly harsh and oppressive, it is reasonable, and it is supported by valuable consideration. *Rental Uniform Service of Florence, Inc. v. Dudley,* 278 S.C. 674, 301 S.E.2d 142 (1983). In a case virtually on point with the facts of this case, the North Carolina Court of Appeals upheld the enforcement of a covenant not to compete in a cardiologist's contract. *Calhoun v. WHA Medical Clinic, PLLC,* 632 S.E.2d 563 (N.C.App. 2006). In evaluating the covenant, North Carolina applied a test similar to South Carolina: covenants not to compete are valid and enforceable if they are (1) in writing, (2) made part

[13]An almost identical formula was upheld in a North Carolina case involving departing cardiologists. See, *Calhoun v. WHA Medical Clinic, PLLC,* 632 S.E.2d 563 (N.C.App. 2006).

of a contract of employment, (3) based on valuable consideration, (4) reasonable both as to time and territory, and (5) not against public policy. *Id.* In applying those standards, the *Calhoun* court held that the non-compete covenants in contracts between doctors and their former employer were not against public policy because there was no potential harm to the public health and the doctors were able to pay the liquidated damages provisions in the covenants. *Id.*

A. The covenant is necessary to protect the interest of Columbia Heart.

Plaintiffs freely entered into the Employment Agreements that contained the covenants. The covenant was included in the Employment Agreement specifically because Columbia Heart was preparing to build a new facility in Richland County which would incur significant costs, and such an investment was dependant upon the continued employment and income production of Columbia Heart's physician shareholders. As previously noted, Plaintiffs' previous employment contracts contained restrictions on competing. It was crucial that the employment agreements be strengthened because of the construction of the $20 million medical office building.

With Plaintiffs' departure, Columbia Heart has lost significant income, and in fact, has had to close the Lexington County office. *Tab 1,* Jones Dep. p. 88. Columbia Heart has lost referrals from Lexington physicians and the loss of collections from these referrals is in excess of $5 million. *Tab 4,* Jones Affidavit, ¶ 23. Thus, the provision was clearly designed to protect the interest of Columbia Heart, as acknowledged by the parties in Section 5.5 of the Agreement itself.

B. The covenant is reasonably limited in time and space.

Covenants must be reasonably limited in time and place, and the covenant here is so

limited.[14] *Rental Uniform Service of Florence, Inc. v. Dudley,* 278 S.C. 674, 301 S.E.2d 142 (1983). In fact, Plaintiffs acknowledged the possible damage to Columbia Heart and the need for a covenant in Section 5.4 of the Employment Agreement that noted that these monies would be for "partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician[.]" Again, in Section 5.5, there is an acknowledgment that Plaintiffs have read the provisions of the Agreement and the restrictions set forth therein and that such restrictions "are fair and reasonably required for the protection" of Columbia Heart. This section states that:

> 5.5 Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Section 5.1, 5.2, 5.3, 5.4 (together with the remedy set forth in Article 4) **are fair and reasonably required for the protection of Medical Group.** If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

Tab 6 (emphasis added).

Furthermore, the covenant is limited in time to one year. In South Carolina, covenants of two and three years have been found to be reasonable. *Delmar Studios of the Carolinas v. Kinsey,* 233 S.C. 313, 104 S.E.2d 338 (1958). In fact, a covenant up to five years has been found to be reasonable. *Metts v. Wenberg,* 158 S.C. 411, 155 S.E. 734 (1930) (5 years upheld). A covenant

---

[14]Furthermore, if the court finds the covenant is unenforceable as written, the parties have expressly agreed that the court can modify the covenant. *Tab 6* ,Section 5.5 of the Employment Agreement.

restricting the Plaintiffs for only one year is certainly well within the range of reasonableness.

A geographic restriction is generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers. *Standard Register Company v. Kerrigan,* 238 S.C. 54, 119 S.E.2d 533 (1961). As that court noted,

> it has been said that the most important single asset of most business is their stock of customers. Protection of this asset against appropriation by an employee is recognized as a legitimate interest of the employer. A restrictive covenant, therefore, is reasonable if it is designed to protect the employer against loss of his customers.

Id., 119 S.E.2d at 539. Here, Columbia Heart has, in effect, lost its "customers" as it has lost Lexington patients and the referrals from Lexington physicians.

The geographic limitation of the covenant is also reasonable. The South Carolina courts have upheld territorial restrictions of 25 miles. *South Carolina Finance Corp. of Anderson v. West Side Finance Co.,* 236 S.C. 109, 113 S.E.2d 329 (1960). Here, the covenant only applies to a twenty (20) mile radius. By opening an office in Lexington County within 20 miles of Columbia Heart's Lexington office, Plaintiffs have violated the covenant. As Plaintiffs recognize, Columbia Heart's patients are within a twenty-mile radius;[15] thus, the geographic limitation is rationale and reasonable. In other words, the geographic restriction is limited to the territory from which Columbia Heart's receives referrals and patients.

C. The covenant is not unduly harsh or oppressive.

The covenant here does not prevent Plaintiffs from working at all, only from joining another

---

[15]*Tab 1,* Jones Dep. 52-53.

cardiology practice within the time and geographical limitations. Columbia Heart provides comprehensive services for the prevention, diagnosis, and treatment of cardiovascular disease. The non-compete restricts Plaintiffs from providing those same services in the territory "within a twenty (20) mile radius." Plaintiffs are free to practice outside the geographical limit. The covenant is reasonably related to the needs of Columbia Heart and therefore should not be considered harsh or oppressive.

Plaintiffs claim that the 20 mile radius is actually greater because they are interventional cardiologists who must practice near a hospital in which they can perform certain procedures. However, Plaintiffs can perform heart catheterizations at most hospitals in South Carolina, including hospitals in Sumter, Orangeburg, and Camden. They can also continue to perform other procedures such as implanting pacemakers, conducting stress nuclear studies, and performing electrocardiograms. In fact, only procedures involving stents or angioplasty are required to be performed at hospitals that are authorized to perform invasive procedures (such as Palmetto Richland), and stenting and angioplasty comprise only a small portion of Plaintiffs' caseload. Thus, for Plaintiffs to maintain they would be forced to practice hundreds of miles away in order to continue practicing cardiology is disingenuous.

Plaintiffs also claim that they would have not way to earn a livelihood, taking the absurd position that they could not even take a position as a pharmaceutical sales representative selling cardiac medication. However, Section 5.1 of the Employment Agreement defines "Business as the practice of medicine in the field of cardiology." Under Section 5.2, Plaintiffs are restricted from competing by engaging in the "Business," or assisting anyone engaging in the "Business." A pharmaceutical company is <u>not</u> engaging in the practice of medicine in the field of cardiology, i.e.,

engaging in the "Business," so Plaintiffs are free to accept employment with such a company.[16]

Furthermore, the non-compete clause is not an absolute restriction in that it allows the Plaintiffs to work within the 20 mile restricted area without waiting for one year, provided that Plaintiffs pay the contractually-agreed upon sum to Columbia Heart. South Carolina courts have upheld similar restrictions. In *Caine & Estes Ins. Agency, Inc. v. Watts,* 278 S.C. 207, 209, 293 S.E.2d 859,860 - 861 (1982), the court upheld a covenant that restricted an employee from selling insurance to an employer's customers for three years unless the employee paid the employer part of the commission received. The geographical restriction was for the area where the employer's clients were located. *Id.* The court noted that the employee was free to sell anywhere else, and thus the agreement was not unduly harsh or oppressive.

Likewise, the Plaintiffs here are free to either pay Columbia Heart and remain in the restricted area or to practice outside the area. As already noted, the time and geographical locations are well within the accepted range and the contractually agreed-upon sum is reasonable; in fact, Plaintiffs have already acknowledged the reasonableness in Section 5.5 of the Employment Agreement when they entered into the agreement itself. Significantly, both Baugh and Feldman

---

[16]Because the only thing prohibited here is engaging in or assisting in the practice of medicine in the field of cardiology, the *Faces Boutique, Ltd. v. Gibbs,* 318 S.C. 39, 455 S.E.2d 707 (Ct. App. 1995) does not apply. In that case, the employer attempted to restrict its employee, who was trained to perform facials, from working for any business that providing facials, spa services, cosmetic application or selling cosmetics. Because there employer attempted to categorize selling of cosmetics and multiple other services as "competition", the court found the covenant exceeded protection of "any legitimate business interest[.]" Here, however, there is only one service being restricted -- the practice of medicine in the field of cardiology. Even under the *Faces Boutique* logic, it is obvious that Defendant only seeks protection of its "legitimate business interest."

admit they read the Employment Agreements and objected to them, but ultimately signed them. [17] *See, Maw v. McAlister,* 252, SC. 280, 166 S.E.2d 203 (1969)(One who enters an agreement has a duty to protect himself by reading the agreement); *Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981)(One who is capable of reading and understanding an agreement but fails to read the contract before signing is bound by its terms).

Parties to a contract may stipulate as to the amount owed in the event of nonperformance. *Tate v. Le Master,* 231 S.C. 429, 99 S.E.2d 39 (1957). A stipulated sum will be upheld as long as it is not plainly disproportionate to any probable damage resulting from breach of contract. *Id.*

Here, the damages are "an amount equal to One Hundred Percent (100%) of the Physician's Income" which is "the average W-2 compensation of physician-shareholders" in the medical group. This formula is almost identical to the one in the covenant enforced for the cardiologists in *Calhoun v. WHA Medical Clinic, PLLC,* 632 S.E.2d 563 (N.C.App. 2006). The formula selected as the payment was determined by reviewing, among other things, the annual salary or each shareholder physician, the loss of collections, and the cost of overheard. *Tab 5,* Summers Aff. ¶ 17. If a departing physician takes all of his patients with him to a competing practice, the loss of that income to Columbia Heart is substantial. *Tab 1,* Jones Dep. p. 35; *Tab 4,* Jones Aff. ¶23.

In this case, the amount due has been computed to be $591,709.74 for each Plaintiff. This amount is reasonable in light of the investments Columbia Heart made on the basis of Plaintiffs' continued employment with Columbia Heart and covenant not to compete with Columbia Heart. The investments include the building of the new Richland County facility for which Columbia Heart

---

[17] *Tab 2*, Baugh Dep. 70-71; *Tab 3*, Feldman Dep. 94-99.

must pay rent of $1,122,513.00 per year for the first five years. *Tab 4,* Jones Aff. ¶ 8. Moreover, Columbia Heart made substantial investments in the Lexington office, including $450,000 in equipment and $175,093.10 per year in rent for five years. *Tab 4,* Jones Aff. ¶ 13-14. In addition, Columbia Heart paid to staff the Lexington County office and made other investments in reliance on the continued employment of Plaintiffs. *Tab 4,* Jones Aff. ¶ 13-14. Finally, Columbia Heart has lost the referrals from Lexington physicians, which provided a source of income to the practice in excess of $5 million. *Tab 4,* Jones Aff. ¶ 23. A payment of $591,709.74 by each Plaintiff when Columbia Heart has lost over $5 million is a reasonable payment.

D. The covenant does not violate public policy.

Freedom to contract is a fundamental right. It is not absolute and unlimited, but is subject to such restrictions as the General Assembly may impose under the police power of the state. *Ex parte Hollman,* 60 S.E. 19 (S.C. 1908). In South Carolina, there are **no** legislative restrictions on covenants not to compete. The restrictions as set forth by the case law only require the covenants to be reasonable. Other courts have stressed the importance of freedom to contract and stated that "it is to the best interest of the public that persons should not be unnecessarily restricted in their freedom of contract and that their agreements are not to be held void as against public policy, unless they are clearly contrary to what the constitution, the legislature, or the judiciary have declared to be the public policy or unless they clearly tend to the injury of the public in some way." *Hodnick v. Fidelity Trust Co.*, 183 N.E. 488, 491 (Ind. App. 1932).

In the case of *Calhoun v. WHA Medical Clinic, PLLC,* 632 S.E.2d 563, 573 (N.C.App. 2006), with facts almost identical to this case, the North Carolina Court of Appeals examined restrictive covenants between physicians and a medical practice to determine if public policy was

violated.[18] In that case, like this one, the employment agreements included restrictive covenants with liquidated damages provisions that enabled an employee-physician to stay and compete through payment of a fixed sum designed to compensate the medical practice for its investment in the physician and the expenses associated with the physician's departure. It included as one formula for the liquidated damages the "physician's annual average income as shown on the W-2 or K-1 forms...for the two most recent years preceding termination of Physician's employment...." *Calhoun* at 567. The Court noted that in determining whether a covenant not to compete violates public policy, the following test must be applied:

> If ordering the covenantor to honor his contractual obligation would create a substantial question of potential harm to the public health, that the public interests outweigh the contract interests of the covenantee, and the court will refuse to enforce the covenant. But if ordering the covenantor to honor his agreement will merely inconvenience the public without causing substantial harm, then the covenantee is entitled to have his contract enforced.

Calhoun at 572, citing *Iredell Digestive Disease Clinic v. Petrozza,* 373 S.E.2d 449, 453 (1988). Ultimately, the Court held that:

> Given that there is no potential harm to public health on these facts, there is strong public policy in favor of enforcing the provisions at issue: [P]ublic policy requires the enforcement of contracts deliberately made which do not clearly contravene some positive law or rule of public morals. Since the right of private contract is no small part of the liberty of the citizen, the usual and most important function of courts is to enforce and maintain contracts rather than to enable parties to escape their obligations[.]

Calhoun v. WHA Medical Clinic, PLLC, 632 S.E.2d 563, 573 (N.C.App. 2006)(citing *Tanglewood Land Co. v. Wood,* 252 S.E.2d 546 (N.C. 1979).

---

[18]While Plaintiffs claim that the North Carolina Court of Appeals has rejected covenants as contrary to public policy, the *Calhoun* case specifically found that the covenants there were "not against public policy and should be enforced." *Calhoun*, 632 S.E.2d at 573.

The covenant here is not contrary to public policy.[19] There is no interference with the patient-physician relationship in that Plaintiffs can continue their employment with Columbia Heart or pay the amount specified in the non-compete clause and continue to practice within Lexington and Richland Counties.[20]

E. The Agreement is supported by valuable consideration.

The Supreme Court of South Carolina has held that continued employment with an employer can provide sufficient consideration to support a covenant not to compete in an employment agreement. *Standard Register Company v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961). In *Standard Register*, the employee had been employed for several years, but at the time he signed the covenant, his positions and duties had changed. The Court found that this change was sufficient consideration. The employee received the benefit of continued employment with a promotion; in return the employer received the services of the employee and the benefit of the restrictive covenant. *Id.* The case upon which Plaintiffs rely, *Poole v. Incentives Unlimited, Inc.*, 345 S.C. 378, 548 S.E.2d 207 (2001), does not apply. In *Poole*, the court found that continued at-will employment was not sufficient consideration for a covenant not to compete entered into during an ongoing

---

[19]Furthermore, while Plaintiffs may argue that the American Medical Association discourages covenants not to compete (under CEJA Policy E-9.02), the AMA has not prohibited the use of covenants. This argument was rejected in *Calhoun v. WHA Medical Clinic* as well. . In fact, the use of covenants in physician contracts is common, as noted in an article by the Office of General Counsel for the AMA: "Most physician contracts include a restrictive covenant." *See*, "Restrictive Covenants in Physician Contracts." (http://www.ama-assn.org/ama/pub/category /12716.html)

[20]There is no injury to the citizens of Lexington County either. Had Plaintiffs left Lexington County upon their departure from Columbia Heart, other physicians from Columbia Heart would have provided care for the patients in Lexington County. However, Columbia Heart could not continue operating in Lexington County after Plaintiffs set up a competing practice because there were not enough patients or referrals.

employment relationship where the employee's duties, position and salary did not change. Moreover, in *Poole*, the employee, unlike the Plaintiffs in this case, was not already bound by a covenant not to compete.

In this case, the Plaintiffs entered into an Employee Agreement in order to continue employment, while Columbia Heart would receive the services and the covenant. Prior to executing the 2004 Employment Agreement, each Plaintiff had already signed a previous Employment Agreement. Dr. Feldman's Employment Agreement was signed in 1997 and Dr. Baugh's in 1999. *Tabs 7*. Each of these Agreements contained a covenant not to compete. Under the old Agreements, if either Plaintiff continued or commenced active practice of cardiology in Richland or Lexington counties within 12 months of termination, he would not receive the monies that the Employment Agreement provided, such as his portion of the accounts receivable and any unpaid salary.[21] *Tab 7*, Feldman's Agreement, Sec. 4.4(h); Baugh's Agreement, Sec. 4.5(i). Since Plaintiffs had already signed a covenant not to compete so actually, additional consideration was not needed when the Agreement was revised.

However, in an abundance of caution and to ensure the validity of the covenant, additional consideration was included. The Agreement provides that any physician who leaves and does not compete with Columbia Heart receives $5,000 per month for one year, a portion of his accounts receivable, and any accrued, but unpaid, salary. This is executory consideration, which is permitted

---

[21]Plaintiffs argue that forfeiture provisions must are subject to a reasonableness review. However, Plaintiffs have already conceded that the provisions are reasonable in that the Employment Agreement contained not one, but two, acknowledgments of the reasonableness of Agreement (in particular the covenant) and the forfeiture provisions. Section 4.6 of the agreement acknowledges that the "forfeiture, together with the remedies set forth in Article 5 below is fair and reasonably required for the protection of Medical Group."

in contract law. See, 17 C.J.S. Contracts § 92 ("Executory consideration is a promise to do or to give something, or to forbear from doing something, in return for some other promise or act."); *Evatt v. Campbell,* 234 S.C. 1, 106 S.E.2d 447, 451 (1959)("Mutual promises also constitute g ood consideration). While the accounts receivable and salary provisions were a part of the previous employment agreement, the $5,000 monthly stipend was a new benefit which provided ample consideration to support a covenant not to compete.

Furthermore, as detailed above, the reason for the covenants was the construction of the new $20 million building. CHC MOB Manager, LLC, an entity in which Plaintiffs were members and shareholders, owns 92.8% of Palmetto Heart MOB, LLC the company that owns the building. Thus, Plaintiffs received shares of CHC MOB Manager, LLC as an additional benefit (consideration) for signing the 2004 Employment Agreement. Plaintiffs then sold these shares back to Columbia Heart, with each Plaintiff receiving $200,000. *Tab 1,* Jones Dep. p. 155-156.

II. Alternatively, if this Court finds that the covenant is unreasonable as written, it can modify the terms so as to render the covenant reasonable and enforceable.

Generally, courts cannot alter the covenant entered into by the parties, but can merely find it enforceable or unenforceable. *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958) ("We cannot make a new agreement for the parties into which they did not voluntarily enter."). However, the parties can agree to court modification if set forth expressly in the contract. *Cf., Rockford Mfg. Ltd. v. Bennet*, 296 F.Supp.2d 681 (D.S.C. 2003)(Recognizing that courts can, in certain situations, "blue pencil" any overbroad provisions of the covenant and enforce the narrowly tailored ones.) Such modification is known as "blue penciling," which is "a process whereby a court will rewrite a covenant not to compete which is unreasonable in its restrictions as to time and territory, thereby

transforming the covenant into a reasonable one which is then enforced." *Broadway & Seymour, Inc. v. Wyatt,* 1991 WL 179084, 5 (4th Cir. 1991).

Here, the parties expressly agreed that a court could modify the covenant. Section 5.5 of the Employment Agreement states, in pertinent part:

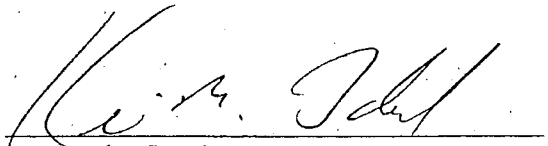
> If any provision of Sections 5.1 and 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

Thus, even if this Court determines that the covenant is unenforceable as written, it can determine the appropriate time period, scope of activity and geographical location and, in effect, rewrite the covenant.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that this Court should enter an Order granting summary judgment in favor of Defendant Columbia Heart Clinic, P.A. on the cause of action for Breach of Contract and denying Plaintiffs' Motion for Summary Judgment on their cause of action for Declaratory Judgment. Furthermore, Plaintiffs should be ordered to pay the contractually agreed upon amount since they opened a competing practice in violation of the covenant between the parties.

LEWIS & BABCOCK, L.L.P.



A. Camden Lewis
Keith M. Babcock
Ariail E. King
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Columbia, South Carolina

July 8, 2008

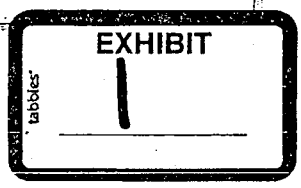
INDEX TO DEFENDANT'S EXHIBITS FOR MEMORANDUM IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT

Baugh & Feldman v. Columbia Heart Clinic
2006-CP-32-0371

Tab No.	Document
1	Excerpts from Deposition of Dr. Ben Jones
2	Excerpts from Deposition of Dr. Kevin Baugh
3	Excerpts from Deposition of Dr. Barry Feldman
4	Affidavit of Dr. Ben Jones
5	Affidavit of David Summer, Esquire
6	2004 Shareholder Physician Employment Agreements of Dr. Baugh and Dr. Feldman
7	Old Shareholder Physician Employment Agreements of Dr. Baugh and Dr. Feldman
8	Excerpts from Deposition of Dr. Robert Schulze
9	Resignation letters of Dr. Baugh and Dr. Feldman
10	2003 Contract of Dr. Jennifer Feldman

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C/A NO. 2006-CP-32-0371
	)	
J. KEVIN BAUGH M.D. and	)	
BARRY J. FELDMAN M.D.,	)	
	)	
Plaintiffs,	)	DEPOSITION
	)	
vs.	)	OF
	)	
COLUMBIA HEART CLINIC	)	BEN JONES, M.D.
P.A.,	)	
	)	
Defendant.	)	
	)	

Deposition on oral examination of BEN JONES, M.D., reported by Jennifer L. Weber, Verbatim Court Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to notice and/or agreement at the law firm of MALONE, THOMPSON, SUMMERS & OTT LLC, 339 Heyward Street, Columbia, South Carolina, on Thursday, the 13th of March, 2008, scheduled to begin at 10:00 a.m. and commencing at 10:11 a.m.



Q. Okay. So for example, in your situation, if it were -- where would you say that you routinely provided services in the -- in the past year?

A. In the past year it would be at the Richland Hospital office.

Q. And right now what are the other locations -- medical group offices?

A. Right. We've closed our Providence and Lexington offices. We still have clinics where we lease space on a day-by-day basis in Clinton and Newberry and Fairfield.

Q. Now, going back to 2004, you did a good amount of work out of the Lexington --

A. Yes, sir.

Q. -- office; correct?

A. Yes, sir.

Q. Okay. And would you say at that time that you and Dr. Baugh and Dr. Feldman would have routinely provided services out of Lexington?

A. Yes, sir.

Q. Okay. And would that also be true -- again I'm talking about yourself and Dr. Baugh and Dr. Feldman -- out of some offices in Columbia?

A. Well, none of us worked in the

Medical Center -- has that changed significantly because of Kevin and Barry's departure?

A. The volume has dramatically declined. The nature -- it's the same patient population.

Q. Do y'all have facilities that you can use that are over there?

A. We use the hospital facilities. We do not have an office, though.

Q. You used to have an office?

A. Yes, sir.

Q. Okay. So what are you using instead of the old office?

A. We just see hospitalized patients there, or emergency room patients, but no office patients.

Q. So any office patients in Lexington County that Columbia Heart is still working with, they need to come to Columbia for their regular appointments?

A. Yes, sir.

Q. Do you have a feel for the area from which your patients come from?

A. Well, it's a broad area. I don't know that there's one specific area.

Q. Okay. Well, I mean --

A. Yeah..

Q. -- most of them, where -- where -- where do they come from?

A. The majority come from Richland and Lexington Counties.

Q. I'll represent to you that we have a list of -- a patient list that indicates where they're coming from. And occasionally you see somebody that is, like, way outside of that -- of that area.

Is there -- is there a pattern why somebody that's a good distance away -- say Rock Hill or Spartanburg or Greenville -- why they would be treated by a physician at Columbia Heart?

A. It would be their choice if they have a good relationship with that physician.

Q. Do you have any patients that are located a far distance from -- something like Rock Hill or Greenville, Spartanburg, Charleston?

A. Some patients. Not many, but some.

Q. And is there a general reason why they continue to see you as opposed to somebody closer to them?

A. Just because of a personal relationship. It's not a medical need; it's a decision they've

ledger or your financial statements, they'd be --

A. I don't know --

Q. -- reflected on your expense account?

A. We don't -- I don't know if we separate that out. I'm not sure.

Q. Would it be correct to say that there are reports generated for each physician's individual profit and loss?

A. We -- we generate a report that is the consequence of applying a formula to charges to determine how much a doctor is paid. But I don't know that we normally look at how much profit and loss on an individual basis has occurred.

Q. Your practice doesn't know what the individual physicians are contributing to the income of the group?

A. Well, we know what their -- what their total charges are and we -- we know what their receipts are. Yes, sir, we do know that.

Q. Okay. And you know their -- the expenses that are attributed to them?

A. Yes. We know that, but we don't -- we average their expenses; we don't vary the expenses from one doctor to another. So we can't tell you exactly what the contribution margin is per

physician.

Q. If a physician were losing money, though, that is something that would pop up, wouldn't it?

A. Yes, sir.

Q. Okay. And it certainly would be measurable, wouldn't it -- the revenue that was no longer there because Kevin and Barry left?

A. Yes, sir.

Q. Let me get you to describe sort of the -- the typical relationship you have with a patient. What are the typical services that you provide and how long the relationship lasts, and sort of the timeline of a typical relationship you would have with a -- with a patient.

A. Well, the two broad categories of service are what might be called evaluation and management -- which is an intellectual function -- and the procedures which are provided, which would include echos, nuclear studies, and then on to cath and so forth.

Depending on the complexity of the individual patient's problem there might be a lot of time spent over many visits with evaluation and discussion. What we call E&M codes -- that kind

A. Yeah. It's not hard to calculate that.

Q. I mean, do you have a rough idea of, you know, when Kevin and Barry were there and how much they -- that Lexington was generating?

A. I can't tell you exact numbers but it was a very productive office and a very busy practice. I was there at the time; the three of us worked hard and we saw a lot of patients.

Q. Okay. And your personal revenue, is that -- did that drop off with Kevin and Barry leaving?

A. Yes, sir.

Q. And why would that be?

A. Well, we had to close our Lexington office; there wasn't enough business to keep it open. And out of sight, out of mind.

Q. I'm not sure what that means. What does that mean?

A. Well, I left Lexington and the business at my office was at Richland subsequently, so many doctors I -- didn't see me in the hallway anymore or -- it's hard to maintain referral lines if people don't see you regularly.

MR. THOMPSON: (To Court Reporter) Let's go off the record for a minute.

[Off the record from 12:18 p.m. until 1:20 p.m.]

THE EXAMINATION BY MR. THOMPSON CONTINUES.

Q. Dr. Jones, how is it that you came to move out to the Lexington office? Was it Barry that sort of recruited you to come out there?

A. Well, we have -- we had had an office at Lexington since -- just about since when I started in Columbia 20 years ago. We had progressed through a series of offices; the building that we were in last was our fourth physical location. We even owned a building in Lexington for a while.

So I had been going there some all along, and then -- and it partly was my friendship with Barry that made me go out there full time, but prior to that I had been going out there regularly for years and years.

Q. But, I mean, was it -- is it correct that he approached you about -- sort of recruited you to come out there full time?

A. Well, he and I talked about it. I don't know if recruiting is the right word because I was already going out there a lot anyways. But I think if Barry wasn't there I probably wouldn't have moved out there, but -- but we had made also

office from April until -- for the next three or four months when it was clear what direction we were headed in. And a decision was made to close, but because of the patients who identified that as their office we wanted to wait a sufficient period of time to notify them that they would have to go to a different office.

These were primarily my patients, but they -- many of them had not been to the Richland location so we had to send out letters and talk to them and so on.

Q. Okay. And the Richland office was also closed; correct?

A. We moved and -- at the end of December of '05 one office was closed simultaneously with a new office being opened. Same --

Q. With the big --

A. -- campus but a new building.

Q. At Richland?

A. Yes, sir.

Q. But you don't have an office in Richland now, or do you?

A. No -- yes, sir, I do. That's where my office is.

Q. Okay. Were any other -- okay. Where's

by Columbia Heart producing the patient contact information in a database form?

A. I remember the discussions; I don't remember exactly what we provided to them. I know we provided some information but I don't recall exactly what we provided.

Q. Fair enough. Were all the shareholders also owners of the MOB -- the new building?

A. Yes, sir.

Q. Including Kevin and Barry?

A. Yes, sir.

Q. Okay. And y'all bought out Kevin and Barry; correct?

A. Yes, sir.

Q. And do you recall if the MOB agreement -- it required that, did it not?

A. My recollection is that the remaining owners had the opportunity but not the obligation to buy out the departing partners.

Q. Do you know if there was a -- sort of a non-compete that was also in the MOB agreement?

A. I'm not sure what sort of non-compete there would be in the MOB agreement. What do you mean exactly?

Q. Was there a provision in there that

would have -- that required Kevin and Barry to offer their ownership back if they violated a --

A. Yes, sir.

Q. -- non-compete? But at any rate the other partners in the MOB bought out Kevin and Barry?

A. Yes, sir.

Q. And how much did they pay Kevin and Barry for their ownership of the building?

A. I don't recall the exact number. It was in the neighborhood of $200,000 apiece.

Q. What was the reason that the other shareholders wanted to buy them out?

A. We felt like decisions in the best interest of the MOB could be made by those who still had a interest in the success of the -- of the practice as well.

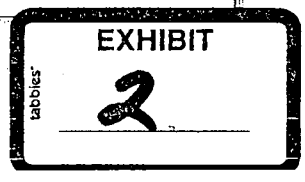
Q. Now, the building is -- okay, well, I'll come back to that. Scratch that. And I assume in the process of that buy-out that Kevin and Barry were relieved of their debt guarantee for the building; correct?

A. As far as I know.

Q. Okay. I mean, there wasn't -- they did have -- they were on the hook, so to speak, for

STATE OF SOUTH CAROLINA	)	IN COURT OF COMMON PLEAS
	)	IN THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CASE NO.: 2006-CP-32-0371
J. Kevin Baugh, M.D. and Barry J. Feldman, M.D.,	)	DEPOSITION OF
Plaintiffs,	)	J. KEVIN BAUGH, M.D.
vs.	)	JULY 12, 2006
Columbia Heart Clinic, P.A.,	)	
Defendant.	)	

Deposition on oral examination of J. Kevin Baugh, M.D., reported by Patricia G. Bachand, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition taken at the law offices of Lewis & Babcock, 1513 Hampton Street, Columbia, South Carolina, on Wednesday, the 12th day of July, 2006, scheduled for eleven o'clock a.m. and commencing at the hour of 11:14 a.m.



Q. And where did you go to med school?

A. University of South Carolina School of Medicine. Graduated in 1990.

Q. And what did you do after you graduated?

A. I did my internal medicine residency at Richland Memorial, in association with the University of South Carolina and the Dorn VA Hospital and -- for three years. Finished that in '93, then did a cardiology fellowship at the same institutions, same affiliations.

Q. And what did you do after that?

A. I joined -- the following week, I joined Columbia Cardiovascular Clinic, which later merged with another group to become Columbia Heart Clinic.

Q. Before you left Columbia Heart in April of this year, which office did you primarily work out of?

A. Well, for the last five or six years, the Lexington office. I had been at the Richland office before that, and briefly at a Baptist office we leased.

Q. And were you and Dr. Feldman both out there for that five-to-six period of time?

A. He was there before I was. I -- and I may have been there a little bit longer. He was there before I was.

Q. Okay. Do you know how long there's been a Lexington office of Columbia Heart Clinic?

as Exhibit 5. And do you recognize that to be the Shareholder Physician Employment Agreement between yourself and Columbia Heart Clinic dated July 15, 2004?

A. I do.

(Defendant's Exhibit No. 6 was marked for identification purposes 6 (25 pages) - Shareholder Physician Employer Agreement)

Q. And I'm going to hand you a document which we marked as Exhibit 6. And do you recognize that document as the previous Shareholder Physician Employment Agreement between yourself and Columbia Heart Clinic, in this case, dated July 1, 1999?

A. I do.

Q. Now, the general methodology by which shareholder physicians have received money from Columbia Heart has been the same for some period of time, hasn't it?

A. There -- it was adjusted -- and I may be off a little bit on the -- certainly, on the dates. When Larry Gold was our CEO, we -- we had some changes. This was in, boy, maybe '99, 2000, things were changed. But generally speaking, since that time, yes.

Q. All right. In terms of your timing here, the July 1st, 1999 agreement sets forth on Exhibit A, a chart of how the guidelines for compensation of

I was over -- and I voted, I -- I guess, would be the -- I don't know that we had a vote, per se. But I did -- I did express disapproval of the concept.

Q. And I want to get to that. Now, the meeting you're talking about, is that when David Summer came and talked to the group?

A. Uh-huh.

Q. That's a "yes"?

A. It's my -- my rec -- yes. I'm sorry. -- my recollection is that's -- I think that's the only meeting we had about it. I -- I think it was just one time. It -- I -- if there's another, I don't recall the other.

Q. All right. So, David Summer, an attorney, who drafted this document --

A. Uh-huh.

Q. -- came and talked to the different physicians at Columbia Heart about this Employment Agreement; correct?

A. Yes.

Q. And during that discussion, as I understand your testimony, you said you objected to the concept of a restrictive covenant?

A. I -- I use that term -- I -- I expressed -- and -- and several others did. There was -- why we --

separate entity; but because you-all have left the group, there's a process now by which you will be leaving that entity in some fashion; correct? The ownership of the other building.

A. At Columbia Heart's request, yes. We -- we were willing to stay in the building. And -- but Columbia Heart has exercised its option to get us out.

Q. Under the terms of the Agreement.

A. Right. Right. I understand, yeah. Oh, I'm sorry. Point of clarity. I shouldn't say "Columbia Heart." The LLC that owns the building has exercised has exercised its right --

Q. Fair enough.

A. -- I should say.

Q. Fair enough. Now, you opened Lexington Heart on -- was it May 1?

A. That's when we first saw patients. We opened the door with training purposes on April 24th.

Q. And you first started seeing patients on May 1.

A. Correct.

Q. And when we took Dr. Feldman's deposition, it was actually on June 1; so you had been open about a month at that point in time. Do you remember me asking him some questions concerning patients who were wanting

A. How did I know about Resource One?

Q. Yeah.

A. Well, we had known Donnie Burkett had actually done some work for our practice some time ago. And I -- I mean, I'd seen the brochures. I mean, I -- I've known about them for years, and -- and what they do. I -- I can't tell you I -- I remember how I found that out. I mean, it's something I've been aware of for a long time. (Cell phone rings) Excuse me.

MR. BABCOCK: Let's go off the record for a minute.

(OFF THE RECORD)

EXAMINATION RESUMED:

BY MR. BABCOCK:

Q. Now, when was the first time that you told any employee of Columbia Heart that you were going to be leaving and starting your own practice over in Lexington?

A. First person I told was Grace Kludo, my nurse practitioner.

Q. And when did you tell her?

A. Boy --

Q. Let's orient you with --

A. Yeah.

Q. -- the January 22nd for the resignation

letter. Was it before or after your letter --

A. It was --

Q. -- of resignation?

A. -- it was before that. It was -- it was after I had made the firm decision to leave. I'm guessing early-January would be -- I believe, would be the time.

Q. Okay. Tell me about that conversation.

A. Well, once I made a very firm decision I was going, I called her and asked her to meet me. And we -- and I just told her, I said, "I'm -- I'm leaving Columbia Heart. I plan to resign sometime in the next few weeks." And she -- asked if she could come with me, and said, "Yes."

Q. Did she ask, initially? Or did you ask her?

A. I believe she asked me. But, I mean, it was -- it was -- she had worked solely for me, and I had hired her out of her training as a nurse practitioner, t out of nurse practitioner school. So I was the only person she'd ever worked for as a nurse practitioner. And we had talked -- we had planned to continue that professional relationship till we both retired.

Q. You had a good working relationship --

A. Very good.

Q. -- is what you're telling me.

A. Certainly, it was. It was incorrect, based on the -- based on the analysis of the data, it was incorrect. It was anecdotal references that did not hold up to be true when you looked at it in any systematic fashion.

Q. And did the false or erroneous statements, in your opinion, did they influence the other physicians who were participating in that meeting?

MR. BABCOCK: Object to the form.

A. Certainly. I mean, it influenced me and my consideration at the time.

Q. You didn't actually work with Dr. Feldman --

A. Well, not --

Q. -- Jennifer Feldman?

A. -- not very often. In recent -- in the last eighteen months or so, because she had been on the Providence campus. And I, virtually, never go there.

Q. So, basically, you were relying on the representations of people who work most closely with her?

A. Correct.

Q. How many years had Jennifer Feldman worked with Columbia Heart Clinic or its predecessor?

A. I believe it was 13.

Q. David Summer is a respected attorney here in

Columbia. And I believe you testified that he met with the board of directors and shareholders for Columbia Heart Clinic? Is that your testimony?

A. That is true.

Q. Did he provide information to you about non-competition agreements?

A. Well -- and my recollection of that meeting, he -- he referenced that non-competition provisions in -- in general, are -- are difficult to enforce among physicians, seemingly difficult, and illegal in a number of states, as I recall. But he -- he -- I believe he said they are notoriously difficult to enforce, was the term he used. He referenced the -- the -- and the reason I remember this phrase is because I had never heard this term before -- but there has to be "due consideration"; meaning, an appropriate payment to the person signing the more restrictive contract to compensate them for taking a more restrictive contract than the one they already had.

Q. You signed a more restrictive contract; correct?

A. I did, indeed.

Q. How much money were you paid to sign that contract?

A. Zero.

State of South Carolina)
) Court of Common Pleas
) 11th Judicial Circuit
County of Lexington) No.: 06-CP-32-0371

J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,

Plaintiff,

vs.

Columbia Heart Clinic, P.A.,

Defendant.

Deposition of
BARRY FELDMAN, M.D.

June 1, 2006

Deposition on oral examination of Barry Feldman, M.D., reported by Jeffrey M. Thomas, Registered Professional Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure, at the Offices of Lewis & Babcock, LLP, 1513 Hampton Street, Columbia, South Carolina, on June 1, 2006, at the hour of 9:00 a.m.

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211
(803) 256-4500



for three years at the New England Deaconess Hospital in Boston, Massachusetts.

Q. And that brings us to 1986?

A. Yes.

Q. All right. What did you do after that?

A. Went to the Mayo Clinic. I did a cardiology fellowship from 1986 to 1989.

Q. And what did you do after you finished there?

A. I served in the United States Air Force.

Q. For how long?

A. Actually -- yes, for four years.

Q. That would be from '89 to '93?

A. Yeah, the end of '92, I believe.

Q. All right. And you then joined Columbia Heart Clinic in 1993?

A. Yes.

Q. And you practiced with Columbia Heart Clinic until April of this year?

A. Yes, April 22nd.

Q. Now, your current -- the name of your current practice is what?

A. Lexington Heart Clinic.

Q. And where are your offices for Lexington Heart Clinic?

A. 120 West Hospital Drive, West Columbia.

Q. And are you -- is that a space that you lease?

A. Yes, sir.

Q. And when did you enter into the lease for that space?

A. I think we signed the lease agreement last week.

Q. When did you move in?

A. May 1st, officially.

Q. You moved some things in before May 1st?

A. Well, not really. Just maybe some medical equipment that was stored, you know, that hadn't been utilized, but May 1st is our official move-in date. And our lease actually -- we just signed a lease, but our original date of opening was May 1st.

Q. All right. Who is the landlord for that space?

A. Lexington Medical Center.

Q. And Columbia Heart Clinic, is that a P.A. or how are you all set up?

A. Columbia Heart Clinic?

Q. I'm sorry. Let me -- I apologize. Lexington Heart Clinic?

A. Lexington Heart Clinic is an L.L.C.

your question actually.

Q. Okay. What I'm asking is you have a number of current employees at Lexington Heart Clinic. How many employees have you got?

A. I think 19 or 20.

Q. Okay. And how many of them were Columbia Heart Clinic employees before they came to work with you?

A. I don't know.

Q. Give me an approximation.

A. Probably three-quarters of them.

Q. Okay. We've got a list here. We'll be going through it later on.

A. That's fine.

Q. But with regard to those individuals --

A. Right.

Q. -- did any of them on your behalf have any interaction with Burkett & Burkett or Lexington Medical Center or anybody else concerning setting up your new office before April 21st, 2006?

A. On my behalf not that I'm aware of.

Q. All right. On your group's behalf?

A. It is possible, but I really don't know for sure because we specifically decided that after my wife Jennifer Feldman left the practice from

Columbia Heart that Dr. Baugh and myself would have no involvement in anything related to the hiring or firing of people until after we left the practice. And that responsibility was strictly relegated to her.

Q. All right. And did she -- what do you know -- well, we'll come to that in a minute. In terms of interaction -- I want to come back to my question and make sure I know the answer.

In terms of interaction with either Lexington Medical Center or Burkett & Burkett, are you aware of anybody of your current employees at Lexington Heart Clinic who had interaction with those groups concerning the establishment of your new practice before April 21st?

A. No.

Q. Now, you said something a minute ago about delegating responsibility to your wife Jennifer Feldman concerning employee issues. Tell me what you mean by that.

A. Well, we felt that -- we had advice from our own counsel that in setting up the practice that we didn't want -- we wanted to maintain all of our energies and interest and focus on practicing where we had our responsibility at the Columbia Heart

Clinic. And really we did not want to be involved in interfering in the day-to-day operations of the Columbia Heart Clinic because that was our first responsibility. So our feeling was at that time that Dr. Jennifer Feldman, when she was no longer an employee of Columbia Heart Clinic, could be relegated the authority to manage all of those issues, but we do not want to be involved with that specifically because we didn't want to have any interference in Columbia Heart Clinic's day-to-day functions.

Q. So when did Dr. Jennifer Feldman leave the practice?

A. That is a good question. I think she left April 1st or something about that time. March 31st, I believe. March 31st.

Q. And I understand she's your wife, so you are going to have a lot of conversations with her in general, but I would like to know what conversations you or Dr. Baugh had with her about recruitment of people or -- well, let's just start with recruitment of personnel. Recruitment of personnel, tell me about that.

A. Well, we had a meeting. And we had minutes of the meeting. We had a board meeting.

And basically at that time relegated her to have the entire responsibility of basically setting up the office as she saw fit. And really she would use Burkett & Burkett as her guidance as far as what she would need as far as types of personnel, what fields, you know, what specialties, you know, what support she needed.

Q. Okay. Now, you said the meeting. That is the meeting when the L.L.C. was formed? Is that the meeting you are talking about or something else?

A. No, we had subsequent meetings.

Q. I want to go to the first time that you discussed with Jennifer Feldman the concept of her role of recruitment of personnel. Do you understand my question?

A. Yes. We had one meeting at -- I don't remember when that was exactly. It was while we were all still employed at Columbia Heart Clinic, I believe. She may not -- she was employed as well. So we had one meeting of the L.L.C.

Q. All right. I'm sorry?

A. We had a meeting of our L.L.C. And that is when we made that decision. It was before she left Columbia Heart Clinic.

Q. How many L.L.C. meetings have you had?

talking to them, asking them to come, anything of those lines?

A. Well, I'd spoken to them, but I did not ask them to come. They asked me.

Q. When did you first --

A. Is that considered recruitment?

Q. In my conversation any -- I'm looking at any conversations you had with Columbia Heart Clinic employees to come to Lexington Heart Clinic.

A. Right.

Q. I'm asking the first time you had such a conversation?

A. Yes. My nurse practitioner who has worked with me for eight years --

Q. What is her name?

A. Phyllis Williamson.

Q. And when did you have the first conversation with her?

A. After we met I believe with Ben Jones or maybe around the time we met with Ben Jones to tell them that they were -- decided to resign. Basically --

Q. Just orient ourselves time-wise. Those letters are either I think January 21st or 22nd that you were giving 90 days notice, correct?

A. Uh-huh. It may have been a week before that I might have mentioned it to her, but I basically told her that I was leaving. And her first question was, "Do I have a job? Can I work with you?"

Q. What did you tell me?

A. I said, "I really can't discuss that with you at this moment because I'm still employed by Columbia Heart Clinic officially, but we will see how things go. But I don't think there will be a problem in the future if you want to discuss it."

Q. All right. And did you have any further discussions with her about coming Lexington Heart Clinic?

A. No.

Q. Never?

A. Subsequent to that?

Q. Yes.

A. Well, we had only one discussion. We had an understanding after that.

Q. You had an understanding after that? What do you mean by that?

A. Just as we said, that when I could speak to her, I was no longer employed by Columbia Heart Clinic, we could work out a situation where she

could be -- consider employment for me if that is what she wanted.

Q. All right. So is it a fair statement that you had an understanding that she would be able to come with you?

A. Uh-huh. There was also another individual. My secretary Thelma Haley, which was my secretary for eight years, and she was also very distraught about leaving. And she had been with the Columbia Heart Clinic for 42 years, but she had been with me for eight years.

And she was also very nervous that she was one of the highest paid employees. And she had been told that she was overpaid for her job by many of the previous Columbia Heart Clinic people. And she was nervous that if I left she would be without a job. And she wanted to know if I would consider taking her on. And I said that I would.

Q. And when was that conversation?

A. That was probably about the same time.

Q. So we are talking January of this year?

A. Yeah. It could have been early January. Let's say January.

Q. All right. And did you similarly have an understanding with her that she would be able to

practitioner.

Q. And she was an employee of Columbia Heart Clinic?

A. Correct.

Q. And she's been with you since you opened your doors?

A. Uh-huh.

Q. That is 12 people. In addition to those 12, are there any other former Columbia Heart Clinic people who are now employed by Lexington Heart Clinic?

A. Dr. Baugh.

Q. I'm going --

A. Dr. Feldman.

Q. With the exception of the three doctors?

A. Not that I can -- yes, there are two other business people.

Q. Who are they?

A. I'm not sure their last names, but one Cheryl is the first name and Joann is her last name -- Joann Jerue I believe is her last name?

Q. Cheryl and Joann are former Columbia Heart Clinic employees?

A. Yes.

Q. And are now Lexington Heart?

A. Yes.

Q. Anybody else?

A. Not of the top of my head. I think you've got them all.

Q. Okay. Now, in addition to those individuals, how many other -- except for those individuals and the three doctors, how many other employees do you have at Lexington Heart Clinic?

A. We are hiring a new secretary starting in a week.

Q. All right.

A. We've hired two -- we have another M.A., medical assistant like Stephanie Price.

Q. All right.

A. And we have another M.A. coming starting next week as well. There is one other young girl who just started a week ago or two weeks ago from Columbia Heart Clinic. Her name is Ashley. She is a phone operator, telephone operator.

Q. Putting aside people who are in the process of being hired, current employees of Lexington Heart Clinic, have you got any current employees who were not former Columbia Heart Clinic employees?

A. Yes.

Q. How many?

A. I think there are two. One or two.

Q. Who are they?

A. I don't know their names yet. Shelly is the first name. I don't know her last name.

Q. What does she do?

A. She's a medical assistant. And Cindy Baker is a secretary who is starting next week.

Q. That is somebody starting. Right now employed?

A. Well, we signed an employment contract.

Q. Okay. Physically at the Lexington Heart Clinic?

A. We will say that is all I can think of right now.

Q. Okay.

A. I think there are others, but I just can't think right now who they are. I think there is one other one.

MR. BABCOCK: Take a quick break.

(Recess from 10:14 to 10:22.)

BY MR. BABCOCK:

Q. We've taken a brief break, Doctor. And you said you wanted to tell me something?

A. Yes. During the brief break, we did hire

an ad as well, I believe, but I'm not certain.

Q. Would Jennifer know the answer to that?

A. Yes.

MR. BABCOCK: All right. Mark these next.

(Deposition Exhibit #1 marked for identification.)

(Deposition Exhibit #2 marked for identification.)

BY MR. BABCOCK:

Q. I'm going to hand you, Doctor, what we've marked Exhibit 1 and 2. And Exhibit 1 is a document dated July 15, 2004, entitled Shareholder Physician Employment Agreement between yourself and Columbia Heart Clinic; is that correct?

A. Yes.

Q. And Exhibit 2 is a document also titled Shareholder Physician Employment Agreement, and it's dated October 6, 1997, between Columbia Heart Clinic and you; is that correct?

A. Correct.

Q. And is it correct that Exhibit 2 was the agreement that was in effect between '97 and your signing the 2004 agreement?

A. I believe that is correct.

really -- you know, it's not really that enforceable, but we just want put it in as a deterrent.

Q. I want to be clear here. Now, David Summers was a lawyer, lawyer in Columbia --

A. That's correct.

Q. Let me finish the question and then you can answer.

A. Excuse me. I'm sorry.

Q. He was a lawyer who drafted this agreement for Columbia Heart Clinic; is that correct?

A. Correct.

Q. And he had a presentation to people at Columbia Heart Clinic about this employment agreement; is that right?

A. It was a committee meeting.

Q. All right. Were you a member of the committee?

A. You know, I don't know. It's so long okay, I can't remember.

Q. Well, obviously at some time before you signed the July documents -- it's dated July 15, 2004. So it would be sometime in that general time period?

A. Right.

Q. Now, I want to be clear here because you are under oath, and you are going to be testifying, and David Summers will be testifying at some point in time.

A. That is fine.

Q. So what is it you said that David Summers said about the enforceability of this provision?

A. He felt that -- it's a long time ago, but he kind of implied or felt to the group that it was a deterrent in that the problem with the contracts were is that we had an existing contract for many years without a no-compete. And they had a serious flaw in the contract because it's hard -- if someone is already employed you really can't change their compensation pattern. You can't change them.

Q. Now, this is what he is saying at this meeting?

A. Yes.

Q. Okay.

A. You cannot change them unless they are compensated some way fairly. And no one wanted to really pay any money at the time. And so he said, well, we'll make this -- we will put a clause in where if someone stays we will -- that is the compensation that they will get so much money, but

the problem with that is that it's deferred and it's conditional that you stay, but without competing. That is one problem. The other issue is -- and this came up --

Q. Is that what he said? I want to be clear on what he said and not what you believe.

A. Okay.

Q. I want -- what I'm asking you is what he said at that meeting?

A. He said that he felt there was a potential problem with the contract because many of us had pre-existing contracts for many years without a no-compete clause. It's very hard to impose a non-compete clause on somebody who has a contract in place for many years. He did say that.

Q. Anything else that he said?

A. I don't remember anything else.

Q. All right. Did you object at that meeting to having the non-compete in the contract?

A. I've always been against no-competes in practice, yes.

Q. That wasn't what I asked.

A. Yes, I did.

Q. Did you object --

A. Yes.

Q. Let me finish my question, please.
A. I didn't realize that you hadn't finished.
Q. Until I stop talking, I'm asking.
A. Okay.
Q. Did you object to the non-compete clause at that meeting?
A. There was not a vote. I just expressed a concern about it.
Q. All right. Concern? Objection? What did you say?
A. I was concerned that I didn't think that we should have a no-compete clause in our contract.
Q. Did you say that at the meeting?
A. I don't recall exactly what I said. It was a long time ago.
Q. Doctor, we are only going back to July of '04.
A. It was a long time ago.
Q. I want to know -- well, you recalled what you said Mr. Summers said. I'm just asking you whether you vocalized an objection to this clause?
A. I expressed concern that I didn't think it was appropriate.
Q. That you didn't think that it was appropriate?

A. To be in the contract.

Q. All right.

A. But that is all I remember, and it was -- because it wasn't a focal point. It wasn't -- right now it's an important point, but at the time my commitment to the group was the focal point. And I felt committed to the group. And I felt that that overrode that concern. I could put up with a few things that it didn't matter to me at the time.

Q. Because in July of '04 you weren't planning to leave?

A. Absolutely.

Q. That happened sometime later?

A. Absolutely.

Q. Any other objections --

A. And I would like to let you know that my decision to leave was not my own. It was --

Q. We are going to get there in a minute?

A. All right. Fine.

Q. We are in July of '04 right now.

A. That's fine.

Q. Anybody else that you objected to at or about the time you signed this agreement concerning the non-compete?

A. Ask that again?

Q. Okay. You told me about some type of statement you might have made at this meeting that David Summers was at. Other than that, did you voice an objection or a concern to anybody else at Columbia Heart Clinic concerning this non-compete at the time that you were signing the agreement?

A. I think I have, but I don't remember to whom.

Q. So as you sit here right now you can't tell me anybody that you did?

A. No, I know I was concerned about it, but I don't know to whom I spoke to about it because it was a long time ago.

Q. Well, this is my one time to ask you questions.

A. I'm trying my best.

Q. I understand that. As you sit here under oath today you can't recall specifically having a conversation with somebody objecting to the non-compete other than this comment you made at the meeting?

A. I think I may have said something to Dr. Steve Humphrey about it in a discussion, but --

Q. What do you think that you said to him?

A. That I didn't think that it was right, and

that he felt that the unity of the group was important that we sign the contract.

Q. Anybody else?

A. No.

Q. I want you to look over on Section 5.5 on Page 12.

A. Exhibit 1?

Q. Exhibit 1.

A. Again, I don't really fully understand all the legal language. Is there any particular sentence you want me to focus in on?

Q. Yes, sir. Have you read the paragraph?

A. Yes.

Q. All right. The first sentence, and I'm going to read it to you.

A. Certainly.

Q. Says, "Physician has carefully read and considered the provisions of this agreement and agrees that the restrictions set forth here in, particularly those in Section 5.1, 5.2, 5.3, and 5.4 together with the remedies set forth in Article 4 are fair and reasonably required for the protection of the medical group." Do you see that?

A. Yes, I do.

Q. All right.

A. What is your question?

Q. Was that sentence true when you signed the agreement?

A. No. I didn't study it. I didn't read it in as much detail as I should have. I didn't have it reviewed by a lawyer.

Q. I didn't ask that. Is that statement true or false?

A. I didn't read it carefully.

Q. So you are saying that statement is false?

A. That I carefully read it?

Q. Yes, sir.

A. I read it carefully, but not to the point that I could be a lawyer to interpret the fine details.

Q. Sir, you signed this agreement, no? You signed this agreement?

A. Right.

MR. THOMPSON: Objection.

MR. BABCOCK: What is your objection?

MR. THOMPSON: It's not signed.

BY MR. BABCOCK:

Q. And I apologize. You did sign Exhibit 1. We may not have a signed copy here, but you did sign Exhibit 1, didn't you?

opening a new heart and vascular hospital and their building. And so my feeling was that in some respects it was more out of timing for the group.

And also we timed it, and I think we discussed it with Ben that day, that the reason that we did it then was we looked at the schedule to see when most of the partners were in town and available so that this could be discussed amongst them and they would be familiar -- we really didn't want to give it on holiday vacation and all of the other issues going on in December and January. So we kind of waited a little bit after that.

Q. Now, I'm trying to recall your testimony from earlier. At the time of your resignation had you formed the Lexington Heart Clinic, L.L.C.?

A. Yes, we did.

Q. You had formed it?

A. Yes.

Q. So it was sometime before January 22, 2006?

A. Yes.

Q. All right. And you did that using the Richardson Plowden firm?

A. Mr. Crawford.

Q. Okay. And did he assist you in preparing

A. Yes.

Q. All right. When did you enter into a contract for that -- either into a contract or order that system?

A. I think in January sometime.

Q. Again, prior to the January 22?

A. I believe so, yes.

Q. Okay.

A. Although I'm not certain. So there is a lot going on, so the exact details and the timing of things may be a little fuzzy, but I believe it was before.

Q. And who -- did Dotty Burkett interact with the Missys folks or how did you actually --

A. Actually Dr. Baugh was the person who was really involved in the purchase of it.

Q. Okay.

A. But, yeah.

Q. So he would have been the one signing any paperwork on behalf of your group?

A. Yes. They also helped us obtain financing for our now practice as well.

Q. Who provided that new financing?

A. NBSC.

Q. And who was the individual at NBSC who

worked with you?

A. Holly Brizzle. I'll have to check the spelling of her name. I think it's Holly Brizzle.

Q. Brizzle? And which office is she with with NBSC?

A. I don't know actually. I've never seen her in an office. I actually speak to her on the phone or we met at Burkett's office. So I don't know. It must be downtown I would think.

Q. And that was also prior to January 22?

A. Yes.

Q. Okay. What other actions did you take in terms of starting your own firm --

A. Actually that may not be. Excuse me. I'm sorry. I'm not sure of the exact date, whether that was before or after, but it was all around the same time.

Q. What other actions did you take in regard to starting your own firm before January 22, 2006?

A. I went -- let's see. I think that is -- I'm trying to think. I think that -- oh, no. Again I'm not sure about the real estate lease with the hospital. I'm not sure when that was, but that was the other big issue.

Q. Right. And we talked about that earlier?

A. Right.

Q. Any other equipment that you would have ordered, telephones or anything, before January 22, 2006?

A. I think that was afterwards. I think we ordered a nuclear camera and an echo machine, but I believe it was afterwards as well. Yeah, I'm sure it was after. In fact, it was well after I think.

Q. Now, we talked earlier today about when Dr. Juk and his group departed. Approximately when did that occur?

A. I'm not certain. And I think it was maybe 19 -- I'm sorry. Maybe about four years ago. Maybe 2000. I would have to check. I don't know exactly, but it was about four years ago. Actually it was three years ago, I think. Three or four years ago.

Q. Fair enough. Regardless of when it was though what was your position concerning Juk and them leaving?

A. Well, I felt that they had a practice that was focused at Providence Hospital, and that -- that it was probably in their best interest long-term to be at Providence Hospital because they really weren't so-called team players in the practice itself.

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NUMBER: 2006-CP32-0371
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D.,	)	
Plaintiffs,	)	**AFFIDAVIT OF BENJAMIN R. JONES, M.D.**
v.	)	
Columbia Heart Clinic, P.A.	)	
Defendant.	)	

PERSONALLY APPEARED before me, Benjamin R. Jones, M.D., being duly sworn, deposes and states that:

1. I am a shareholder and employed physician in Columbia Heart Clinic, P.A. ("Columbia Heart").

2. J. Kevin Baugh, M.D. joined Columbia Heart's practice in 1996. On or about July 15, 2004, Columbia Heart and Dr. Baugh entered into a "Shareholder Physician Employment Agreement" a copy of which is attached as Exhibit A.

3. Barry J. Feldman , M.D. joined Columbia Heart's practice in 1993. On or about July 15, 2004, Columbia Heart and Barry J. Feldman entered into a "Shareholder/Physician Employment Agreement," a copy of which is hereby attached as Exhibit B (collectively Baugh and Feldman's Shareholder Physician Employment Agreements are referred to as "Employment Agreements").

4. Each Employment Agreement contained a covenant in which each shareholder physician agreed that he would not practice in the field of cardiology (or act as owner, director, officer of a business engaged in cardiology) for twelve months following the termination of the Agreement for



any reason. Section 5.1 and 5.2., Exhibits A and B. This agreement not to compete applied to the area within a twenty (20) mile radius of the Columbia Heart office at which Physician routinely provided services during the year prior to the date of termination or expiration of the Agreement. Section 5.2, Exhibits A and B.

5. However, a departing physician could compete with Columbia Heart upon certain conditions. More specifically, the physician could compete by paying the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination of the Agreement. Section 5.4.

6. A covenant not to compete was important to Columbia Heart because of the losses that would occur when a doctor leaves Columbia Heart, such as the loss of collections and the loss of the contribution to overhead. In addition, during 2004, Columbia Heart entered into a fifteen year lease for a medical office building ("Richland Office") to be constructed adjacent to the new Heart Hospital at Palmetto Health Richland Campus. The building is owned by Palmetto Heart MOB, LLC. An entity owned by shareholder physicians from Columbia Heart, CHC MOB, LLC, owns 92% of Palmetto Heart. All of the shareholder physicians of Columbia Heart signed personal guarantees on the loan for the building. The loan was for approximately $20 million.

7. Because the construction of the Richland Office and long term lease associated with it were major investments for the shareholder physicians, we wanted to insure that all of the other shareholder physicians would continue to work for Columbia Heart, or in the alternative, would pay Columbia Heart compensation to help shoulder the burden of the major investment in the Richland office.

8. In November 2004, Columbia Heart entered into a fifteen year lease for the Richland Office. Under the lease, Columbia Heart will pay one million one hundred twenty two thousand five hundred and thirteen dollars ($1,122,513) per year for the first five years to rent space at the Richland Office. The amount of Columbia Heart's payments is subject to review and is expected to increase every five years.

9. Construction of the Richland Office began in 2004 and the current office opened in mid-December 2005. Richland Office has an appraised value of $19.4 million.

10. The investment in the Richland Office was in addition to the substantial investment Columbia Heart has in its Lexington Office.

11. In 2000, Columbia Heart opened a new Lexington Office in part at the request of Dr. Baugh and Dr. Feldman.

12. The Lexington Office was designed for three cardiologists. Dr. Baugh, Dr. Feldman, and I were the three doctors that practiced out of the Lexington office.

13. Columbia Heart paid approximately two hundred and fifty thousand dollars ($250,000) for a nuclear machine, approximately one hundred thousand ($100,000) for an echo machine, approximately twenty thousand ($20,000) for two EKG machines, approximately fifty thousand ($50,000) for an X-ray machine, all of which were purchased for the Lexington Office.

14. Columbia Heart also hired staff for the Lexington Office. The Lexington Office employed approximately 16 employees and Columbia Heart paid them approximately five hundred ($500,000) per year.

15. Columbia Heart paid one hundred seventy five thousand ninety three dollars and ten cents ($175,093.10) per year to lease the Lexington Office. This lease was entered into in 2003.

16. In addition, Columbia Heart expended over two hundred thousand dollars ($200,000) for furnishings and computers for the Lexington Office.

17. From the year 2000 until 2006, Baugh and Feldman routinely provided services as part of their employment with Columbia Heart at the Lexington Office.

18. On January 22, 2006, Baugh and Feldman gave Columbia Heart written notice of their intent to resign employment pursuant to Section 4.4 of the Employment Agreements, effective 90 days from the date of notice. Exhibit C.

19. In accordance with Section 4.4 of the Employment Agreements, Baugh and Feldman ceased employment with Columbia Heart on April 22, 2006.

20. The terms of Article 5 of the Employment Agreements prohibit Baugh and Feldman from competing with Columbia Heart during a period of 12 months following the date of termination of the Employment Agreement between these parties (April 22, 2006) in an area defined to be a 20-mile radius from the Lexington Office. The Agreements provided that Baugh and Feldman could compete despite the covenant upon payment of the contractually agreed upon price in the amount equal to the average income for all Physician Employee Shareholders as shown on the W-2s for the preceding year. The average income for the Physician Employee Shareholders as shown on the W-2's for 2005 (the year preceding Plaintiffs' departure) is five hundred ninety one thousand seven hundred nine dollars and seventy four cents ($591,709.74). Exhibit D (Physician Employee Shareholder W-2's).

21. On or around May 1, 2006, Baugh and Feldman opened a competing practice in Lexington County, known as Lexington Heart Clinic, in breach of the Employment Agreement. Baugh and Feldman also refused to pay the contractually agreed upon price to compete, and they have not paid

us.

22. In September 2006, Columbia Heart was forced to close the Lexington Office. However, despite the departure of Drs. Baugh and Feldman, Columbia Heart had expenses related to the Lexington Office that could not be cut. Those expenses amount to $186, 886.00. In addition, each shareholder physician has pro-rata share of Columbia Heart's debt. When Drs. Baugh and Feldman departed, the remaining shareholder physicians had to assume that debt.

23. Furthermore, Columbia Heart has suffered a substantial loss of referrals from Lexington medical providers. The lost collections from those referrals are estimated to be in excess of $5.5 million.

AND FURTHER THE AFFIANT SAITH NOT.

Benjamin R. Jones, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME

this 15 day of April, 2008

Teresa Elliott Robinson
Notary Public for South Carolina
My Commission Expires: 04-24-2016

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NUMBER: 2006-CP32-0371
J. Kevin Baugh, M.D., and Barry J. Feldman, M.D., Plaintiffs, v. Columbia Heart Clinic, P.A. Defendant.	)	**AFFIDAVIT OF DAVID B. SUMMER, JR.**

PERSONALLY APPEARED before me, David B. Summer, Jr., being duly sworn, deposes and states that to the best of his knowledge and belief:

1. He is an attorney and partner with the law firm of Parker Poe Adams & Bernstein LLP whose practice focuses on health care law.

2. In 1996, Parker Poe Adams & Bernstein LLP (hereinafter referred to as "Counsel") was retained by Columbia Heart Clinic, P.A. ("Columbia Heart"). During 2004, Columbia Heart entered into a fifteen year lease for space in a medical office building ("Richland Office") to be constructed adjacent to the new Heart Hospital at Palmetto Health Richland Campus.

3. The building is owned by Palmetto Heart MOB, LLC ("Palmetto Heart"). CHC MOB, LLC, an entity owned by doctors from Columbia Heart, owns 92% of Palmetto Heart. All of the shareholder physicians of Columbia Heart signed personal guarantees on the loan for the building. The loan was for approximately $20 million.

4. Because the construction of the Richland Office and long-term lease associated with it were major investments for the shareholder physicians, Columbia Heart asked Counsel to draft revised shareholder employment agreements with covenants not to compete. Drs. Baugh



and Feldman, along with all other shareholder physicians, signed a Shareholder Physician Employment Agreement ("the Agreement") Counsel drafted. (**Exhibits A and B**).

5. The Agreement contained a covenant pursuant to which each shareholder physician agreed that he would not practice in the field of cardiology (or act as owner, director, officer of a business engaged in cardiology) for twelve months following the termination of the Agreement for any reason. Section 5.1 and 5.2., **Exhibits A and B**. This agreement not to compete applied to the area within a twenty (20) mile radius of the Columbia Heart office at which Physician routinely provided services during the year prior to the date of termination or expiration of the Agreement. Section 5.2, **Exhibits A and B**.

6. However, under the terms of the Agreement, a departing physician could compete with Columbia Heart upon certain conditions. The physician could compete by paying the average W-2 compensation of the Physician shareholders of Medical Group in the calendar year prior to the date of termination of the Agreement. Section 5.4. **Exhibits A and B**.

7. The Agreement contained an acknowledgment of reasonableness, in which the physician agreed that the restrictions were "fair and reasonably required for the protection of Medical Group." Section 5.5, **Exhibits A and B**.

8. Columbia Heart approved the language of the covenant that Counsel drafted on or about July 15, 2004. (See letter to Lynn Privette, dated July 15, 2004, attached hereto as **Exhibit C**). Affiant met with members of Columbia Heart on or about August 4, 2004 to discuss the language and enforcement of the covenants, as well as the consideration for the covenant. Some time after that meeting, all of the shareholder physicians signed the Agreements, which had an effective date of July 15, 2004.

9. The covenants were to be included in the new Agreements to protect the group from potential losses to Columbia Heart if a physician shareholder departed the practice. Those

losses included the loss of collections and the cost to cover the overhead, as well as forcing Columbia Heart to incur the expense of recruiting a replacement physician. In addition, in constructing a new medical office building Columbia Heart and the shareholder physicians were undertaking a major investment. The shareholder physicians wanted to insure that all of the other shareholder physicians would continue to work for Columbia Heart, or in the alternative, would pay Columbia Heart compensation to help shoulder the burden of the major investment in the Richland office.

10. Since the Agreements were to be signed by physicians who already were employees and shareholders of Columbia Heart, additional consideration for the Agreement and non-compete clause was included in the Agreement.

11. The terms of Article 5 of the Agreements prohibit departing physicians from competing with Columbia Heart during a period of 12 months following the date of termination of the Agreement between the parties in an area defined to be a 20-mile radius from each office at which the departing physician routinely provided services during the year prior to the date of termination of the Agreement.

12. The scope of the covenant is limited to the field of cardiology. Thus, a departing physician can practice in any other field of medicine, and the scope of the covenant is appropriately limited.

13. The geographic limitation was also carefully considered. Because Columbia Heart has offices in different counties, a radius was used as the limitation. In South Carolina, restrictions of 25 miles have been upheld. In affiant's opinion, twenty miles from the office in which a departing physician provided services (in this case, the Lexington office) is a reasonable radius.

14. Furthermore, the covenant is limited in time to one year. In South Carolina, covenants of two years or more have been found to be reasonable. Thus, the time limitation contained in the New Agreements is appropriate.

15. Article 5 also provides that a departing physician can compete upon payment of "One Hundred Percent (100%) of Physician's income," which is defined as "the average W-2 compensation of physician shareholders . . . in the calendar year prior to the date of termination or expiration of this Agreement."

16. The amount selected as the payment required to compete was determined by reviewing the annual salary of each shareholder-physician, the loss of collections, and the cost to cover the overhead. If a departing physician takes all of his patients with him to a competing practice, the loss of that income to Columbia Heart is substantial. In addition, generally the only time that Columbia Heart can replace a departing physician is in July, when residency programs end. If a physician departs in the fall, after residents have been hired by other practices, Columbia Heart must wait until the following July to fill the vacancy left by the departing physician.

17. Furthermore, the covenant that Drs. Baugh and Feldman are now challenging is almost identical to the one that bound them prior to 2004. Both Drs. Baugh and Feldman signed Employment Agreements prior to 2004 ("the Old Agreements", attached as **Exhibits D and E**). The Old Agreements also contained a covenant not to compete which prohibited the practice of cardiology in Richland and Lexington Counties for the twelve months following the termination of the Old Agreement. However, under the Old Agreement, Drs. Baugh and Feldman had no alternatives. Under the new Agreement, Drs. Baugh and Feldman are permitted to compete upon payment of the contractually agreed-upon price.

FURTHER AFFIANT SAYETH NOT.

David B. Summer, Jr.

SWORN to before me this 17th day of April, 2008

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9 Dec 2012

CLAUDIA SAGE
NOTARY
PUBLIC
My Commission Expires: 12-9-12
SOUTH CAROLINA

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between COLUMBIA HEART CLINIC, P.A., a South Carolina professional corporation ("Medical Group"), and J. KEVIN BAUGH, M.D. ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical

education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit F, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group: Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician: J. Kevin Baugh, M.D.
10 Cotton Hope Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 15 day of July, 2004, between COLUMBIA HEART CLINIC, P.A., a South Carolina professional corporation ("Medical Group"), and BARRY J. FELDMAN, M.D. ("Physician").

PREMISES:

A. Medical Group is a group medical practice providing medical and other health care services to its patients in the State of South Carolina.

B. Physician and Medical Group wish to enter into this Employment Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

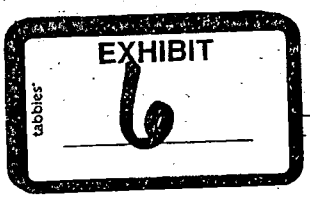
ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein. Physician shall meet the annual continuing medical



education requirements as established by the Board of Directors.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to

Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group. In addition, if Physician qualifies to stop taking night call according to the Medical Group policy attached as Exhibit E, Physician may opt to cease taking night call (on the terms set forth in such policy) by written notice to Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees. Physician acknowledges that the Board of Directors of Medical Group has adopted a policy that payments for medical directorships are payments belonging to Medical Group and not to the individual physician receiving the payment, except as otherwise expressly agreed in writing by Medical Group.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement

Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician.

employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 15, 2004, and shall continue for a period up to one (1) year, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical

Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct or competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of

this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following

Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of any amounts owed by Physician to Medical Group, then there shall be deducted from the amounts due to Physician pursuant to Sections 4.5 (a), (b), (c), (d), and (f) the amount owed to Medical Group.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the

collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event at any time during the twelve (12) month period immediately following the expiration or termination (for any reason, whether with or without Cause) of this Agreement Physician continues or commences the active practice of medicine in the field of cardiology within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of expiration or termination of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "Tail Coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

(l) Notwithstanding anything to the contrary stated herein, in addition to any other amounts payable upon termination, Physician shall be paid Five Thousand and No/100 Dollars ($5,000.00) per month for each of the twelve (12) months following termination, so long as the Physician is not in violation of Article V of this Agreement. In the event that the Physician violates Article V, no amount shall be payable pursuant to this Section 4.5(l), and any amounts previously paid to Physician pursuant to this section shall be refunded to the Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as partial restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture, together with the remedies set forth in Article 5 below, is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

RESTRICTIVE COVENANT AND CONFIDENTIAL INFORMATION

5.1. Restrictive Covenant.

(a) The parties stipulate that Medical Group is engaged in the practice of medicine in the field of cardiology (the "Business") in the Territory (as defined in Section 5.2 below).

(b) Physician, in the event of termination or expiration of this Agreement for any reason, during the twelve (12) month period immediately following the date of termination or expiration of this Agreement, shall not Compete (defined in Section 5.2 below) with Medical Group.

(c) The provisions of this Section 5.1 shall survive the expiration or termination of this Agreement for any reason.

5.2. Definitions. For purposes of Article 5 of this Agreement, the terms defined below shall have the respective meaning specified, and the following definitions shall be equally applicable to the singular and plural forms of the terms defined:

(i) "Compete" means directly or indirectly, on his own behalf or on behalf of any other Person, other than at the direction of Medical Group and on behalf of Medical Group: (A) organizing or owning any interest in a business which engages in the Business in the Territory; (B) engaging in the Business in the Territory; or (C) assisting any Person (as a director, officer, employee, agent, consultant, lender, lessor or otherwise) to engage in the Business in the Territory.

(ii) "Person" means any entity, including, without limitation, any natural person, company, partnership, corporation, trust, association, organization or governmental unit.

(iii) "Territory" means the area within a twenty (20) mile radius of any Medical Group office at which Physician routinely provided services during the year prior to the date of termination or expiration of this Agreement.

5.3. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by the Board of Directors is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of the Board of Directors, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information;

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information; or

(iii) Fail to follow the reasonable suggestions made by the Board of Directors from time to time regarding the confidential and proprietary nature of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, strategic planning information, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.3 shall survive the expiration or termination of this Agreement for any reason.

5.4. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1, 5.2 or 5.3 according to the following provisions:

(a) In the event that Physician, at his or her option, desires to practice in violation of the provisions contained in Section 5.1, Physician shall pay Medical Group liquidated damages in advance of practicing in violation of that Section in an amount equal to One Hundred Percent (100%) of Physician's Income (defined below). Medical Group may offset any amounts owed to Physician against amounts owed by Physician to Medical Group hereunder. For purposes of this Agreement, "Physician's Income" shall mean the average W-2 compensation of physician-shareholders of Medical Group in the calendar year prior to the date of termination or expiration of this Agreement.

These damages are in partial restitution for the loss or damage which Medical Group will suffer as a result of such breach and in partial recovery of its investment in the practice of Physician, which together constitute full payment of such losses or damages. Notwithstanding anything to the contrary stated herein, payment of such liquidated damages (together with the forfeiture described in Article 4 above) will entitle Physician to practice in breach of the provisions contained in Section 5.1 without further liability to Medical Group for such breach.

(b) The parties agree that a breach by Physician of any of the provisions of Section 5.3 of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.3 of this Agreement. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(c) Except as provided in Section 5.4(a) above, the remedies available to Medical Group under this Agreement are cumulative. Medical Group may, at its sole discretion, elect to pursue all or any of such remedies. Such remedies are in addition to any given by law or

equity and may be enforced successively or concurrently.

(d) The provisions of this Section 5.4 shall survive the expiration or termination of this Agreement for any reason.

5.5. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1, 5.2, 5.3, and 5.4 (together with the remedy set forth in Article 4), are fair and reasonably required for the protection of Medical Group. If any provision of Sections 5.1 or 5.2 relating to the restrictive periods, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Agreement.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group: Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician: Barry J. Feldman, M.D.
5 Castle Hall Court
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This

Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

Dr. Stephen H. Humphrey, President

PHYSICIAN:

_____ (SEAL)
Barry J. Feldman, MD

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS

[Attached]

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

EXHIBIT F

CESSATION OF NIGHT CALL

Upon at least 180 days prior written notice, a physician-shareholder of Medical Group may opt to stop taking night call on the terms set forth herein when the physician's age plus his combined years as an employee of Medical Group and Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A. equal or exceed 75.

In exchange for physician's cessation of night call, the physician's compensation under this Agreement shall be reduced as of the effective date of such cessation by (a) 15% for the initial year of cessation of night call, (b) 20% for the second year of cessation of night call, and (c) 25% for the third year of cessation of night call. Effective upon the fourth year of cessation of night call, Physician shall be required to sell all of his issued and outstanding stock in Medical Group to Medical Group.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 1st day of July, 1999, between **COLUMBIA HEART CLINIC, P.A.**, a South Carolina professional corporation ("Medical Group"), and **J. KEVIN BAUGH, M.D.**, a resident of Richland County, South Carolina ("Physician").

PREMISES:

A. Medical Group has been formed as a group medical practice to provide medical and other health care services to its patients in the State of South Carolina.

B. Physician is a physician duly licensed to practice medicine in the State of South Carolina and has been an employee of Medical Group or its predecessor since July 1, 1997.

C. Physician has become a shareholder in Medical Group as of the date hereof, and as a condition to becoming a shareholder, Physician and Medical Group have agreed to enter into this Agreement to replace and supersede all prior employment agreements.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.



1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may

be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. "Fulltime" shall be defined from time to time by the Board of Directors of Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on July 1, 1999 and shall continue for a period up to and including December 31, 1999, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional

terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct and competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability

insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the

remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) In the event that this Agreement is terminated for any reason prior to the payment in full by Physician of the Accounts Receivable Purchase Price (as defined in Section 6.9(b)), then there shall be deducted from the amounts due to Physician pursuant to

Sections 4.5 (a), (b), (c), (d), and (f) the remaining balance of such Accounts Receivable Purchase Price. In the event the remaining balance of the Accounts Receivable Purchase Price exceeds the amount owed by Medical Group to Physician under the provisions of this Agreement, then Physician shall pay the difference to Medical Group immediately upon termination of this Agreement.

(h) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the collection percentage used will be that for 1997.

(i) Notwithstanding any other provision in this Agreement in the event Physician continues or commences the active practice of medicine in the field of cardiology within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following the termination (for any reason, whether with or without Cause) of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(i). The provisions of this Section 4.5.(i) shall survive the expiration or termination of this Agreement for any reason.

(j) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "tail coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(k) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell, and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(i) is intended as restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

CONFIDENTIAL INFORMATION

5.1. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by Medical Group is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of Medical Group, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information; or

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of the Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.1. shall survive the expiration or termination of this Agreement for any reason.

5.2. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1. according to the following provisions:

(a) The parties agree that a breach by Physician of any of the provisions of Section 5.1. of this Agreement would cause irreparable damage to Medical Group. Therefore,

Medical Group shall be entitled to a temporary restraining order and/or preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.1. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(b) Physician expressly consents to entry of a temporary restraining order, preliminary injunction order, and permanent injunction order against Physician in the event that Physician violates the provisions of Section 5.1. above. Such order shall be in addition to any other remedies available to Medical Group at law or in equity.

(c) The provisions of this Paragraph 5.2. shall survive the expiration or termination for any reason of this Agreement.

5.3. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1. and 5.2., are fair and reasonably required for the protection of Medical Group.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group:
Columbia Heart Clinic, P.A.
1655 Brabham Avenue, Suite 220
Columbia, SC 29204
Attention: President

To Physician:
J. Kevin Baugh, M.D.
209 Tombee Lane
Columbia, SC 29209

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto, including but not limited to the employment agreement dated July 1, 1997.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such

organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9 Acquisition of Common Stock; Buy-in of Accounts Receivable.

(a) Physician shall, purchase from the current shareholders of Medical Group (the "Current Shareholders") and own Ninety-Three and Three/Fourths (93¾) shares of the common stock of Medical Group (the "Shares") in accordance with the terms and provisions of that certain Stock Subscription Agreement executed contemporaneously herewith among the Current Shareholders and Physician.

(b) Physician shall purchase his pro-rata share of the accounts receivable of Medical Group at a purchase price of $248,525.00 (the "Accounts Receivable Purchase Price"), which shall be paid to Medical Group over a period of not less than twelve (12) nor more than twenty-four (24) monthly installments commencing July 1, 1999, until the Accounts Receivable Purchase Price is paid in full. Medical Group may withhold such payments from any funds due Physician from Medical Group, including any sums due to Physician as basic or incentive compensation or due to Physician upon his death, disability or other termination of employment hereunder. Physician may prepay the outstanding balance of the Accounts Receivable Purchase Price or any portion thereof at any time.

6.10. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.11. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

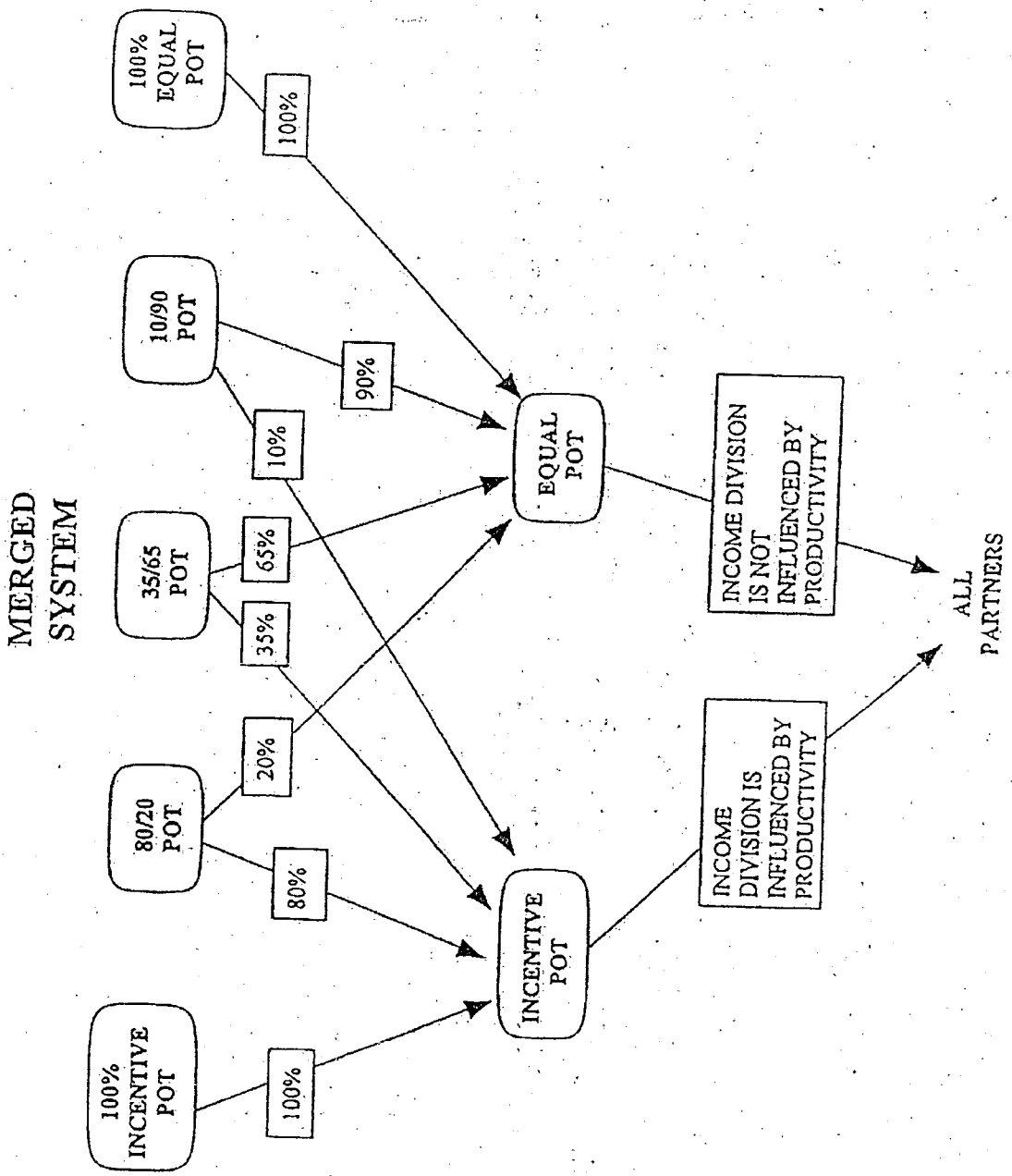
By: _____
President

PHYSICIAN:

_____ (SEAL)
J. Kevin Baugh, M.D.

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS



14510
Confidential

incent98

INCENTIVE POT - MERGED GROUP

CPT	Description
90060A	Office Visit - No Charge
101	Disability Form Completion
32000	Thoracentesis
33010	Pericardiocentesis
33010	Pericardiocentesis
33011	Pericardiocentesis-Subsequent
7693026	Pericardiocentesis-Supv. & Int.
33210	Temp. Pacemaker - Single
36489	Central Venous Catheter
36620	Arterial Catheterization
92950	CPR
92960	Cardioversion
92977	Thrombolytic, IV Infusion
93018	Interp. & Report of Treadmill
93233	Holter - Interp only
93503	Swan Ganz
94656	Ventilation Assist. & Mgmt.
99199	Completion of Forms
99202	New Office Visit - 2
99203	New Office Visit - 3
99204	New Office Visit - 4
99205	New Office Visit - 5
99212	Office Visit - 2
99213	Office Visit - 3
99214	Office Visit - 4
99215	Office Visit - 5
99217	O/P Obser. D/C w Ovrnight
99218	O/P Observation - 1
99219	O/P Observation - 2
99220	O/P Observation - 3
99221	Admission-1
99222	Admission - 2
99223	Admission - 3
99231	Hospital Visit - 1
99232	Hospital Visit - 2
99233	Hospital Visit - 3
99238	Hospital Discharge
99239	Hospital Discharge > 30 min.
99243	Office Consult - 3
99244	Office Consult - 4
99245	Office Consult - 5
99252	Hospital Consult - 2
99253	Hospital Consult - 3
99254	Hospital Consult - 4
99255	Hospital Consult - 5
99261	Hospital Reconsult - 1
99262	Hospital Reconsult - 2

INCENTIVE POT - MERGED GROUP

99263	Hospital Reconsult - 3
99275	Confirmatory Consult
99284	Emerg. Room Visit - 4
99285	Emerg. Room Visit - 5
99291	Critical Care 1st 30 Min.
99292	Critical Care/Addtl. 30
99311	Nursing Home Visit - 1
99352	Home Visit - Est. Pt. Mod.
9330726	Echo Interp Only
9331226	Transesophageal Echo Interp.
9332026	Doppler Echo Interp.
9332526	Color Flow Interp.

20-80_98

80% INCENTIVE 20% EQUAL POT - MERGED GROUP

CPT	Description
93731-DR	Pacemaker Check/Dual - Dr.
93732-DR	Pacemaker Reprog/Dual - Dr.
93734-DR	Pacemaker Check/Single - Dr.
93735-DR	Pacemaker Reprog/Single - Dr.
93737-DR	ICD Check - Dr.
93738-DR	ICD Check/Reprog - Dr.
G0004	King-of-Hearts Medicare
G0005	King-of-Hearts Medicare
33015	Tube Pericardiostomy
36620	Arterial Catheterization
71010	Chest X-Ray, PA
71020	Chest X-Ray, PA & Lat.
93000	EKG - Complete
93005	EKG Tracing Only
93010	EKG Interp & Report
93015	C.V. Stress Test
93016	Treadmill-Phys. Supv.
93040	Rhythm Strip
93224	Holter Monitor
93230	Holter Monitor
93268	King-of-Hearts
93270	Prince of Hearts Hookup
93272	Prince of Hearts Interp.
93278	Signal Averaged EKG
94010	Spirometry
94070	Multiple Spirometry w/Exercise
94150	Vital Capacity
94681	CO2/O2 Analysis
94761	Pulse Oximetry

65-35_98

35% INCENTIVE 65% EQUAL - MERGED GROUP

CPT	Description
xxxxxx	All Non-Invasive PV Studies
93307	2-D , M-Mode Echo & Inter
93308	Echo Follow-Up Study
93320	Doppler Echocardiography
93321	Doppler Echo-Limited Study
93325	Color Flow Mapping
93350	Stress Echo

10-90_9S

10% INCENTIVE 90% EQUAL - MERGED GROUP

CPT	Description
78465	Spect., Multiple Studies
7846526	Spect, Interp. & Report
78472	MUGA
78473	Stress MUGA
78890	Generation/Interp. of Auto.Data
93015A	Treadmill w/ Spect Study
78471	MUGA

EQUAL POT - MERGED GROUP

CPT	Description
71020TC	Chest X-Ray Tech. Comp.
9330726A	Echo Interp - Lovelace
9332026A	Doppler Echo Interp - Lovelace
9332526A	Color Flow Interp - Lovelace
93737A	Ventritex/Cadence Tiered ICD
A4641	Provision/Diag. Radionuc.
A464176	Addnl. Provision/Diag. Radio.
A9500	Provision/Diag. Radionuc.
A950076	Addnl. Provision/Diag.
A9505	Thallous Cloride TL201
G0001	Venipuncture-Medicare
G0008	Admin flu vaccine Mcare
G0009	Admin Pneumon. Vac.
J1245	Persantine
J1940	Lasix - 20 mg
Q0022	Physician Review & Interp.
xxxxxx	All lab work done on-site
xxxxxx	All Peripheral Vascular Angioplasties
102	Copy of Records to Atty.
104	Richland Hospital Fees
105	Voc. Rehab. Medical Information
115	Fairfield Hospital Fees
134	Moncrief Fees
145	Providence Fees
148	Fishman EKG's
150	Lexington Fees
161	Baptist Fees
162	J. Robinson-Chester Fees
170	Byerly Fees
31500	Intubation
33206	Implant Pacemaker - Atrial
33207	Implant Pacemaker-Vent.
33208	Implant Pacemaker-AV Sequen.
33210	Transvenous Pacer Elec.
33212	Replace Pacemaker - Atrial/Vent.
33213	Replace Pacemaker - AV Sequen.
33214	Upgrade PM-Single to Dual
33216	Lead Change - Single
33217	Lead Change - Dual
33218	Repair Pmkr Electr. - Single
33219	Repair Pacemaker Generator
33220	Repair Pmkr Electr. - Dual
33222	Revision or Relocation of PM Pckt.
33232	Removal of Permanent PM
33233	Remove Pacemaker Generator
33234	Remove PM Generator& Elec.-Sngl

EQUAL POT - MERGED GROUP

33235	Remove PM Generator& Elec.-Dual
36415	Venipuncture
37202	Transcatheter Infusion
71034	Flouro 4 view chest
75724	Angiography, Renal, Rad. S&I
75754	Supv. & Interp.
75756	Angiography. LIMA
75766	Supv./Interp. LC w/
78990	Provision/Diag. Radionuc.
80003	Automated Channel Test
80061	Lipid Panel
83718	HDL Cholesterol
86585	PPD Skin Test
90724	Flu vaccine
90732	Pneumon. Vac.
90746	Hepatitus Vaccine (3Inj.)
92975	Thrombolysis/Coronary w/Angio.
92978	Intravascular Ultrsound-Init.
92979	Intravascular Ultrasound-Addnl.
92980	Stent Placement
92981	Stent Placement-Each Addt'l Vessel
92982	PTCA/Single Vessel
92984	PTCA/Each Add. Vessel
92995	Coronary Atherectomy/Single
92996	Atherectomy-Each Addt'l Vessel
93017	C.V. Stress Test -Tech. Comp.
93024	Ergonovine Provocation Test
93227	Holter Monitor Interp.
93501	Right Heart Cath
93505	Endomyocardial Biopsy
93510	Left Heart Cath
93511	Left Heart Cath - CD
93526	Right & Left Heart Cath
93536	Insert.of Intra-Aortic Balloon
93539	Injection for Arterial Grafts
93540	Injection for Venous Grafts
93541	Pulmonary Angiogram
93542	Rt. Vent or Rt. Atrial Angiogram
93543	Left Vent. or Lft Atrial Angiogram
93544	Aortography/Aortogram
93545	Selective Coronary Angiogram
93555	S&I - Ventriculography
93556	S&I Coronary Angiography
93561	Dilution Studies
93562	Dilution Studies w/ Output
93600	Bundle of HIS Recording
93602	Intra-Atrial Recording
93603	Right Ventricular Recording

EQUAL POT - MERGED GROUP

93607	Left Ventricular Recording
93609	Intra-Vent Mapping of Tachy.
93610	Intr-Atrial Pacing
93612	Intraventricular Pacing
93618	Induction of Arrhythmia
93619	EPS w/o Induction of Arrhythmia
93620	Comprehensive EP w/ Induct. of Arrhyth.
93621	EPS w/ Left Atrial Recording
93622	EPS w/ Left Ventricular Recording
93623	EPS After Drug Infusion
93624	Follow-Up EPS
93640	EPS/ICD/Lead
93641	EPS/ICD/Generator
93642	EPS/ICD - Evaluation
93650	Ablation - AV Node
93651	Ablation - Atrial
93652	Ablation/Vent. Tachy
93660	EPS/Tilt Table Test
93724	Electronic Analysis-PM System
93731	Pacemaker Check/Dual
93732	Pacemaker Reprog/Dual
93733	Pacemaker Analysis - Phone/Dual
93734	Pacemaker Check/Single
93735	Pacemaker Reprog/Single
93736	Pacemaker Analysis - Phone/Single
93737	ICD Analysis w/o Reprog.
93738	ICD Analysis with Reprog.
93799	Unlisted Cardiovasc. Procedure
99211	EM w/o Phys.
7109026	Fluoroscopy S&SI
7847226	MUGA Interp.
7899076	Addtl. Provision/Radionucl.
7899076	Addnl. prov. - Radionuclide
9298222	PTCA Multiple Lesions
9302426	Ergonovine Provocation Test
9323326	Holter Monitor Interp.
9330026	M-Mode Echo Interp.
9352726	Rt. Heart Cath & Transeptal LC

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section 1.1. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.

2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.

3. Educational speaking engagements.

4. Expert witness testimony.

5. Professional directorships at hospitals.

SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT

THIS SHAREHOLDER PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 6th day of October, 1997, between COLUMBIA HEART CLINIC, P.A., a South Carolina professional corporation ("Medical Group"), and BARRY J. FELDMAN, M.D., a resident of Richland County, South Carolina ("Physician").

PREMISES:

A. Medical Group is being formed as a group medical practice to provide medical and other health care services to its patients in the State of South Carolina.

B. Physician is a physician duly licensed to practice medicine in the State of South Carolina.

C. Medical Group desires to employ Physician, and Physician desires to accept employment with Medical Group pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

COMPENSATION AND BENEFITS

1.1. Compensation. Throughout the term of this Agreement, Medical Group shall pay to Physician basic compensation and incentive compensation in accordance with the policies regarding physician compensation adopted by the Board of Directors of Medical Group from time to time. The policies for physician compensation in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit A attached hereto and incorporated by reference herein.

1.2. Employee Benefits. Physician shall participate in all employee benefits as are provided by Medical Group and as established and modified from time to time by the Board of Directors of Medical Group as long as Physician is otherwise eligible to participate and desires to be covered and so participate. Nothing contained in this Section shall be construed to obligate Medical Group in any manner to provide special benefits to Physician. Benefit plans in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit B attached hereto and incorporated by reference herein.

DEPOSITION EXHIBIT 42 8-7-06 B. FELDMAN

EXHIBIT 7 tabbies

1.3. Vacations and Professional Meetings. Physician shall be entitled each year to such time out of the office and away from Physician's professional duties for vacation and attendance at professional meetings as shall be consistent with policies established and modified from time to time by the Board of Directors of Medical Group. The policies for vacation and professional meetings in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit C attached hereto and incorporated by reference herein.

1.4. Retirement, Death and Disability. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning retirement from Medical Group, including notice requirements for retirement. The Board of Directors of Medical Group shall establish from time to time the standards for and provisions concerning the benefits, if any, to be provided upon the temporary or permanent disability or death of physician employees of Medical Group. Physician shall comply with all such standards and provisions. The policies for retirement, death and disability in effect at the commencement of the initial term of this Agreement, which may be amended from time to time by the Board of Directors, are set forth on Exhibit D attached hereto and incorporated by reference herein.

1.5. Malpractice Insurance; Tail Insurance Coverage.

(a) Medical Group shall carry malpractice insurance covering Physician with minimum limits of $1,000,000 per incident and $3,000,000 in the aggregate, or such higher limits and including such terms and conditions as the Board of Directors of Medical Group may from time to time determine to be reasonable and necessary. Physician shall at all times cooperate with the malpractice insurance carrier by providing in a timely manner any information, records or data reasonably requested.

(b) Upon the expiration or termination of this Agreement due to the death, retirement or total and permanent disability of Physician, in the event Medical Group has in force "claims made" insurance covering Physician at the time of the expiration or termination of this Agreement, Medical Group shall pay for the appropriate reporting endorsement (known as "Tail Coverage") for medical malpractice insurance carried by Medical Group on Physician if determined to be necessary by Medical Group. Upon the expiration or termination of this Agreement for any other reason, Physician shall pay for any Tail Coverage deemed necessary by Medical Group and deliver to Medical Group a certificate evidencing same. In the event Physician fails to purchase such Tail Coverage, Medical Group may withhold from any funds due to Physician an amount sufficient to purchase such Tail Coverage.

ARTICLE 2

DUTIES AND RESPONSIBILITIES

2.1. Physician Duties. Physician shall actively practice medicine on behalf of Medical Group and perform such other clinical, administrative and management duties as may be assigned to Physician from time to time by Medical Group. Physician acknowledges that certain rules and regulations must be established and maintained by the Board of Directors of

Medical Group from time to time for the efficient operation of a quality group practice. Physician therefore agrees that:

(a) The Board of Directors of Medical Group shall have the authority to establish policies, procedures and operational guidelines regarding the acceptance and treatment of patients of Medical Group. Physician shall perform services for those patients assigned to Physician and advise and assist any of the other physicians or employees of Medical Group in the diagnosis or treatment of any case as reasonably directed by the Board of Directors of Medical Group in accordance with such guidelines.

(b) The Board of Directors of Medical Group, or a subcommittee of physicians as delegated by the Board of Directors of Medical Group, shall establish quality assurance procedures for the Medical Group from time to time, and Physician agrees to comply with and be bound by the recommendations and requirements of any quality assurance program so established.

(c) The Board of Directors of Medical Group, in consultation with Physician, shall establish the office location(s) where and the schedule, including the night and weekend "call" schedule, according to which Physician shall perform Physician's duties under this Agreement; provided, however, Physician shall devote fulltime efforts to the practice of medicine on behalf of Medical Group. A "fulltime" physician shall be defined from time to time by the Board of Directors of Medical Group.

(d) Physician shall adhere faithfully to all professional ethics and customs, shall avoid all acts, habits and usages which might injure in any way, directly or indirectly, the professional reputation of Medical Group or any of the physicians or other employees of Medical Group, and shall follow and abide by all federal, state and municipal ordinances and laws relating to or regulating the practice of medicine in the State of South Carolina and shall comply with all requirements of liability insurance policies of Medical Group insuring Physician.

2.2. Exclusive Service. Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of medicine with Medical Group. Physician shall not engage in professional work in Physician's individual capacity or in association with others not employed by Medical Group, nor receive any compensation therefor, without the express written consent of the Board of Directors of Medical Group or as otherwise set forth on Exhibit E attached hereto and incorporated by reference herein. Medical Group, however, shall, from time to time, establish and/or modify policies regarding the treatment of honoraria, royalties, reasonable gifts, military reserve duty compensation, and all similar activities undertaken by physician employees.

2.3. Representations and Warranties of Physician. Physician represents and warrants to Medical Group that:

03854
Confidential

03903
Confidential

(a) Physician is a physician duly licensed to practice medicine in the State of South Carolina and is board certified in cardiology, and Physician will maintain such board certification and licensure during the term of this Agreement. Physician has never had Physician's license to practice medicine in any state or Physician's State Drug Enforcement Agency number revoked, suspended (or otherwise restricted), or terminated, and Physician has never surrendered Physician's license to practice medicine in any state.

(b) Physician has, and will maintain during the term of this Agreement, all necessary staff privileges, permits and credentials necessary for Physician to practice medicine (including an unrestricted right to prescribe controlled substances and medication) in such ambulatory, acute and tertiary care settings within the State of South Carolina as may be designated from time to time by the Board of Directors of Medical Group.

(c) Physician is not currently a party to any lawsuits involving Physician's medical practice, except as previously disclosed to Medical Group, and knows of no facts which would cause Physician reasonably to believe that such an action would be filed.

(d) Physician has never been censured, reprimanded or placed on probation for reasons relating to professional competence or conduct by any medical licensing board, any federal, state or local government agency, or any professional society or specialty board.

(e) Physician is not now and has never been the object of any investigation or other proceeding by any payor involving claims of fraudulent billing practices or any violation of the Medicare or Medicaid laws or regulations.

(f) Physician has not had Physician's clinical privileges at any hospital or other health care facility suspended, terminated, restricted or revoked (other than suspensions of thirty (30) days or less as a sanction for administrative infractions) or surrendered such clinical privileges while Physician was under an investigation relating to possible incompetencies or improper professional conduct or in return for not concluding such investigation.

2.4. Compliance with Rules and Regulations. Physician shall comply with all resolutions, directives, rules and regulations as may be established and modified by Medical Group pertaining to the business operation and the medical practice of Medical Group. Physician further shall comply with all laws and regulatory requirements applicable to the practice of medicine. Physician agrees to provide medical services at least consistent with generally accepted professional standards for the practice of medicine in the community in which Physician practices.

2.5. Physician-Patient Relationships. Medical Group agrees that none of the terms of this Agreement shall interfere, or are intended to interfere, with the physician-patient relationship, or to interfere with the practice of medicine by Physician in accordance with applicable laws and professional medical standards.

ARTICLE 3

ADMINISTRATIVE MATTERS

3.1. Fees, Collections and Billings. Medical Group shall establish, and modify from time to time, all professional fees for services rendered by Physician or any other physician employee of Medical Group, and Physician agrees to cooperate on all billing matters and assist in collection efforts as necessary. Medical Group shall own and control all collections and billings arising pursuant to the rendering of medical services by Physician or any other employee. All fees and compensation received or realized by Medical Group as a result of the rendering of services by Physician and other employees shall belong, be paid and be delivered to Medical Group.

3.2. Custodial Responsibility With Respect to Records and Accounts. Physician shall keep full and accurate medical records and accounts and records of all professional work performed by Physician or under Physician's supervision in a timely fashion in accordance with guidelines established by the Board of Directors of Medical Group. All such records are the exclusive property of Medical Group. Physician holds such records in trust for Medical Group and shall promptly relinquish any such records in Physician's control to the Medical Group on demand.

3.3. Provision of Office Space, Equipment, and Other Necessary Items. Medical Group shall furnish, as Medical Group deems necessary and appropriate, office space, equipment, instruments, supplies, medicines, and support personnel for the practice of Physician under the terms of this Agreement. The Board of Directors of Medical Group shall establish policies from time to time regarding payment for Physician's professional license fees for the State of South Carolina and related expenses.

3.4. Administration and Hiring of Personnel. Medical Group shall have full and complete authority and responsibility with respect to the administration of the business of the Medical Group and the hiring of personnel for the operation of Medical Group.

ARTICLE 4

TERM AND TERMINATION

4.1. Term. The term of this Agreement hereunder shall commence on January 1, 1998 and shall continue for a period up to and including December 31, 1998, unless otherwise terminated as provided in this Agreement. This Agreement shall be automatically renewed for additional terms of one (1) year each, unless one of the parties hereto notifies the other in writing of the intention not to renew this Agreement no less than ninety (90) days prior to the expiration of the then current term.

03856
Confidential

03905
Confidential

4.2. Termination for Cause. This Agreement may be terminated for Cause (as hereinafter defined) by the party not providing such Cause, at any time without notice. "Cause" means:

(a) Failure of Physician to comply with reasonable directives of Medical Group, or the policies, standards and regulations established from time to time by Medical Group, provided any such violation has continued uncured for a period of more than ten (10) days after Medical Group has given written notice of such violation to Physician;

(b) Willful misconduct of Physician resulting in damage to Medical Group;

(c) Physician is determined to have committed any criminal, unethical or fraudulent act by any entity or governmental agency of competent jurisdiction;

(d) The final determination of loss, suspension or restriction of the license of Physician to practice medicine in the State of South Carolina;

(e) Physician's license to prescribe controlled drugs is suspended, revoked or restricted in any manner;

(f) Permanent loss, after all appeals, of any hospital staff privileges by Physician at any hospital for reasons of professional conduct and competence;

(g) Inability to insure Physician against medical malpractice as provided in Section 1.5. hereof on reasonable financial terms; or

(h) Material breach or default of either party under the terms of this Agreement, which shall remain uncured ten (10) days after receipt of written notice of default from the non-defaulting party.

4.3. Termination upon Death or Disability of Physician.

(a) This Agreement shall terminate immediately upon the death of Physician.

(b) Medical Group may terminate this Agreement upon any disability of Physician in accordance with the standards and provisions concerning disability established from time to time by Medical Group pursuant to Section 1.4. of this Agreement. Disability, and the procedures for determining disability, shall be defined in the long term disability insurance policy insuring Physician, if any, or as otherwise defined by the Board of Directors of Medical Group. In the event this Agreement is terminated pursuant to this Section 4.3.(b), Physician shall continue to be entitled to all short term and long term disability benefits as provided in Physician's disability insurance policy. If Physician's disability should cease at any time after the termination of this Agreement, the rehiring of the Physician shall be consistent with all applicable state and federal laws and regulations.

4.4. Termination Without Cause.

(a) Physician may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon ninety (90) days' prior written notice to Medical Group.

(b) Medical Group may terminate this Agreement without Cause (other than as provided in Section 4.3.) upon thirty (30) days' prior written notice to Physician.

4.5. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, the parties agree as follows:

(a) Except as provided in this Section 4.5., Physician shall have no right to any payment for services Physician renders or orders beyond that payable by Medical Group in its ordinary course of business as of the last regular pay period covering Physician's final period of employment or association.

(b) In the event of the termination of this Agreement under Section 4.3.(a) as a result of the death of Physician, Medical Group shall pay to the Physician's estate:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) A death benefit equal to Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's death. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's death and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's death.

(c) In the event of the termination of this Agreement under Section 4.3.(b) as a result of the disability of Physician, Medical Group shall pay to Physician Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the last day of Physician's employment by Medical Group. Medical Group shall pay Physician 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement. This benefit shall be in addition to any disability benefits payable to Physician pursuant to any other provision of this Agreement or pursuant to any disability insurance policy maintained for Physician's benefit.

(d) In the event of the termination of this Agreement as a result of the retirement of Physician from the active practice of medicine after the attainment of fifty (50) years of age, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's retirement; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of Physician's retirement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following Physician's retirement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following Physician's retirement.

(e) In the event of the termination of this Agreement by Medical Group for Cause as provided in Section 4.2., Medical Group shall pay to Physician the compensation provided in Section 4.5.(a) above as Physician's sole benefit.

(f) In the event of the termination of this Agreement (1) by Physician for Cause as provided in Section 4.2.(h), (2) by Physician without Cause under Section 4.4.(a) or (3) by Medical Group without Cause under Section 4.4.(b) other than for retirement, Medical Group shall pay to Physician:

(i) All salary earned or accrued but unpaid as of the date of Physician's death; and

(ii) Physician's Prorata Share of the Current Year's Actual Collection Percentage of the accounts receivable of Medical Group, computed on the date of termination of this Agreement. Medical Group shall pay 1/24th of this benefit each month for twelve (12) months commencing with the month following the termination of this Agreement and shall pay the remaining 12/24ths of this benefit in the thirteenth (13th) month following the termination of this Agreement.

(g) As used herein:

(i) "Physician's Prorata Share" means that fraction, the numerator of which is the number of shares of stock in Medical Group which Physician owns and the denominator of which is the total number of shares of stock of Medical Group issued and outstanding at the time of the calculation.

(ii) "Current Year's Actual Collection Percentage" means the amount determined as of the close of business on the last day of the fiscal year of Medical Group by dividing total payments of Medical Group by total charges of Medical Group to arrive at a percentage (rounded to the nearest whole percent). This percentage shall be the "Current Year's Actual Collection

Percentage" for purposes of this Section 4.5. for the next fiscal year. For example, if a shareholder dies in 1998, the collection percentage used will be that for 1997.

(h) Notwithstanding any other provision in this Agreement in the event Physician continues or commences the active practice of medicine in the field of cardiology within Richland or Lexington Counties, South Carolina at any time during the twelve (12) month period immediately following the termination (for any reason, whether with or without Cause) of this Agreement, then Physician shall forfeit any monies payable to Physician pursuant to this Section 4.5. following Physician's continuation or commencement of the practice of medicine in violation of this Section 4.5.(h). The provisions of this Section 4.5.(h) shall survive the expiration or termination of this Agreement for any reason.

(i) In the event Medical Group has in force "claims made" insurance covering Physician at the time of the termination or expiration of this Agreement, then in such event, the appropriate party shall pay the "tail coverage" for medical malpractice insurance as provided in Section 1.5. hereof.

(j) Upon the termination of this Agreement for any reason, with or without Cause, Physician shall sell, and Medical Group shall purchase Physician's Stock as provided in the Shareholders' Agreement for Medical Group.

4.6. Acknowledgment of Reasonableness. Physician acknowledges that the forfeiture described in Section 4.5.(h) is intended as restitution for the damages which Medical Group will suffer as a result of competition by Physician with Medical Group. Physician further acknowledges that such forfeiture is fair and reasonably required for the protection of Medical Group.

ARTICLE 5

CONFIDENTIAL INFORMATION

5.1. Covenant Not to Disclose Confidential Information. Physician acknowledges and stipulates that: (A) during the term of this Agreement, Physician will be placed in a position by Medical Group to become acquainted with various aspects of the Confidential Information (defined below); (B) the use or disclosure of the Confidential Information by Physician except as expressly authorized by Medical Group is prohibited and would seriously damage Medical Group; and (C) in addition to being given access to the Confidential Information, Physician will receive material benefits as a result of this Agreement, including compensation and experience. Therefore, Physician agrees as follows:

(a) During the term of this Agreement and thereafter, Physician shall not, without the prior written consent of Medical Group, directly or indirectly:

(i) Divulge, furnish or make accessible to any Person or copy, take or use in any manner any of the Confidential Information; or

03860
Confidential

03909
Confidential

(ii) Take any action which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of any of the Confidential Information.

(b) "Confidential Information" means all of the materials, information and ideas of the Medical Group, including, without limitation: patient names, patient lists, patient records, patient information, operation methods and information, accounting and financial information, marketing and pricing information and materials, internal publications and memoranda, and other matters considered confidential by Medical Group.

(c) The provisions of this Section 5.1. shall survive the expiration or termination of this Agreement for any reason.

5.2. Remedies. Remedies shall be available to Medical Group in the event of a breach of the provisions of Section 5.1. according to the following provisions:

(a) The parties agree that a breach by Physician of any of the provisions of Section 5.1. of this Agreement would cause irreparable damage to Medical Group. Therefore, Medical Group shall be entitled to a temporary restraining order and/or preliminary and permanent injunctions restraining Physician from breaching or continuing any breach of any of the provisions of Section 5.1. The existence of any claim or cause of action on the part of Physician against Medical Group, whether arising from this Agreement or otherwise, shall not constitute a defense to the granting or enforcement of this injunctive relief.

(b) Physician expressly consents to entry of a temporary restraining order, preliminary injunction order, and permanent injunction order against Physician in the event that Physician violates the provisions of Section 5.1. above. Such order shall be in addition to any other remedies available to Medical Group at law or in equity.

(c) The provisions of this Paragraph 5.2. shall survive the expiration or termination for any reason of this Agreement.

5.3. Acknowledgment of Reasonableness. Physician has carefully read and considered the provisions of this Agreement and agrees that the restrictions set forth herein, particularly those in Sections 5.1. and 5.2., are fair and reasonably required for the protection of Medical Group.

ARTICLE 6

GENERAL PROVISIONS

6.1. Notices. Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Medical Group: Columbia Heart Clinic, P.A.
One Richland Medical Park, Suite 420
Columbia, SC 29203
Attention: President

To Physician: Barry J. Feldman, M.D.
One Richland Medical Park, Suite 420
Columbia, SC 29203

6.2. Severability. The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

6.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

6.4. Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This Agreement supersedes and replaces in their entirety any and all other employment agreements, oral or written, if any, between the parties hereto.

6.5. Assignment. Physician acknowledges that the services to be rendered by Physician are unique and personal, and Medical Group acknowledges that Physician is willing to sign this Agreement only if Physician's employment is with Medical Group. Accordingly, neither Medical Group nor Physician may assign any of that party's rights or delegate any of that party's duties or obligations under this Agreement. Any assignment or attempted assignment, transfer or pledge of this Agreement or of the interest of either party herein shall be null and void, and at the option of the other party, this Agreement may be terminated immediately upon the occurrence of such an event. The rights and obligations of the parties under this Agreement shall inure to the benefit of and shall be binding upon the successors, heirs and assigns of the parties hereto, whenever the context admits or requires.

6.6. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Medical Group and Physician shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between Medical Group and Physician.

6.7. Attorney's Fees. If either party attempts to enforce any of its rights under this Agreement as against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, court costs and other expenses incurred by the prevailing party in connection with such enforcement or attempted enforcement of those rights.

6.8. Medicare Reporting and Access Requirement. If applicable, until the expiration of four (4) years after the furnishing of the services pursuant to this Agreement, Physician shall make available, upon written request to the secretary of the U.S. Department of Health and Social Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Physician that are necessary to certify the nature and extent of the costs of such services, and, if the Physician carries out any of the duties of this Agreement through a subcontract, with a value of or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of the costs of such services. The provisions of this Section 6.8. shall survive the expiration or termination for any reason of this Agreement.

6.9. Captions. The captions or titles to the various sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Agreement or of any parts thereof.

6.10. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, Medical Group has caused this Agreement to be executed by its duly authorized officers, and Physician has executed this Agreement under seal, as of the day and year first above written.

MEDICAL GROUP:

COLUMBIA HEART CLINIC, P.A.

By: _____
President

PHYSICIAN

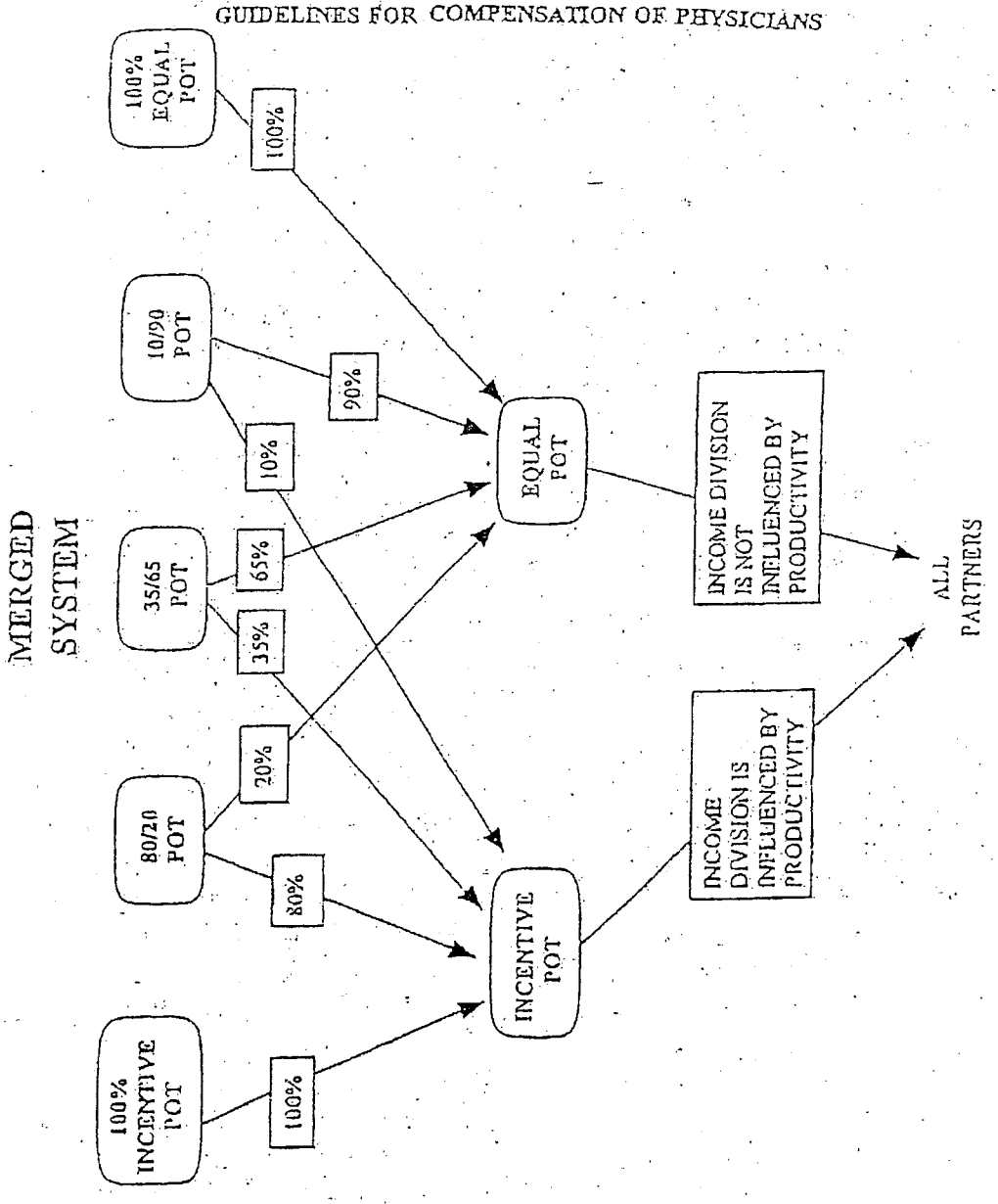
_____ (SEAL)
Barry J. Feldman, M.D.

03863
Confidential

03912
Confidential

EXHIBIT A

GUIDELINES FOR COMPENSATION OF PHYSICIANS



03864
Confidential

03913
Confidential

incent98

INCENTIVE POT - MERGED GROUP

CPT	Description
90060A	Office Visit - No Charge
101	Disability Form Completion
32000	Thoracentesis
33010	Pericardiocentesis
33010	Pericardiocentesis
33011	Pericardiocentesis-Subsequent
7693026	Pericardiocentesis-Supv. & Int.
33210	Temp. Pacemaker - Single
36489	Central Venous Catheter
36620	Arterial Catheterization
92950	CPR
92960	Cardioversion
92977	Thrombolytic, IV Infusion
93018	Interp. & Report of Treadmill
93233	Holter - Interp only
93503	Swan Ganz
94656	Ventilation Assist. & Mgmt.
99199	Completion of Forms
99202	New Office Visit - 2
99203	New Office Visit - 3
99204	New Office Visit - 4
99205	New Office Visit - 5
99212	Office Visit - 2
99213	Office Visit - 3
99214	Office Visit - 4
99215	Office Visit - 5
99217	O/P Obser. D/C w. Ovrnight
99218	O/P Observation - 1
99219	O/P Observation - 2
99220	O/P Observation - 3
99221	Admission-1
99222	Admission - 2
99223	Admission - 3
99231	Hospital Visit - 1
99232	Hospital Visit - 2
99233	Hospital Visit - 3
99238	Hospital Discharge
99239	Hospital Discharge > 30 min.
99243	Office Consult - 3
99244	Office Consult - 4
99245	Office Consult - 5
99252	Hospital Consult - 2
99253	Hospital Consult - 3
99254	Hospital Consult - 4
99255	Hospital Consult - 5
99261	Hospital Reconsult - 1
99262	Hospital Reconsult - 2

03865
Confidential

03914
Confidential

INCENTIVE POT - MERGED GROUP

99263	Hospital Reconsult - 3
99275	Confirmatory Consult
99284	Emerg. Room Visit - 4
99285	Emerg. Room Visit - 5
99291	Critical Care 1st 30 Min.
99292	Critical Care/Addtl. 30
99311	Nursing Home Visit - 1
99352	Home Visit - Est. Pt. Mod.
9330726	Echo Interp Only
9331226	Transesophageal Echo Interp.
9332026	Doppler Echo Interp.
9332526	Color Flow Interp.

03866
Confidential

03915
Confidential

20-80_98

80% INCENTIVE 20% EQUAL POT - MERGED GROUP

CPT	Description
93731-DR	Pacemaker Check/Dual - Dr.
93732-DR	Pacemaker Reprog/Dual - Dr.
93734-DR	Pacemaker Check/Single - Dr.
93735-DR	Pacemaker Reprog/Single - Dr.
93737-DR	ICD Check - Dr.
93738-DR	ICD Check/Reprog - Dr.
G0004	King-of-Hearts Medicare
G0005	King-of-Hearts Medicare
33015	Tube Pericardiostomy
36620	Arterial Catheterization
71010	Chest X-Ray, PA
71020	Chest X-Ray, PA & Lat.
93000	EKG - Complete
93005	EKG Tracing Only
93010	EKG Interp & Report
93015	C.V. Stress Test
93016	Treadmill-Phys. Supv.
93040	Rhythm Strip
93224	Holter Monitor
93230	Holter Monitor
93268	King-of-Hearts
93270	Prince of Hearts Hookup
93272	Prince of Hearts Interp.
93278	Signal Averaged EKG
94010	Spirometry
94070	Multiple Spirometry w/Exercise
94150	Vital Capacity
94681	CO2/O2 Analysis
94761	Pulse Oximetry

03867
Confidential

03916
Confidential

65-35_98

35% INCENTIVE 65% EQUAL - MERGED GROUP

CPT	Description
xxxxxx	All Non-Invasive PV Studies
93307	2-D , M-Mode Echo & Inter
93308	Echo Follow-Up Study
93320	Doppler Echocardiography
93321	Doppler Echo-Limited Study
93325	Color Flow Mapping
93350	Stress Echo

03868
Confidential

03917
Confidential

10-90_98

10% INCENTIVE 90% EQUAL - MERGED GROUP

CPT	Description
78465	Spect., Multiple Studies
7846526	Spect, Interp. & Report
78472	MUGA
78473	Stress MUGA
78890	Generation/Interp. of Auto.Data
93015A	Treadmill w/ Spect Study
78471	MUGA

03869
Confidential

03918
Confidential

equal-98

EQUAL POT - MERGED GROUP

CPT	Description
71020TC	Chest X-Ray Tech. Comp.
9330726A	Echo Interp - Lovelace
9332026A	Doppler Echo Interp - Lovelace
9332526A	Color Flow Interp - Lovelace
93737A	Ventritex/Cadence Tiered ICD
A4641	Provision/Diag. Radionuc.
A464176	Addnl. Provision/Diag. Radio.
A9500	Provision/Diag. Radionuc.
A950076	Addnl. Provision/Diag.
A9505	Thallous Cloride TL201
G0001	Venipuncture-Medicare
G0008	Admin flu vaccine Meare
G0009	Admin Pneumon. Vac.
J1245	Persantine
J1940	Lasix - 20 mg
Q0022	Physician Review & Interp.
xxxxxx	All lab work done on-site
xxxxxx	All Peripheral Vascular Angioplasties
102	Copy of Records to Atty.
104	Richland Hospital Fees
105	Voc. Rehab. Medical Information
115	Fairfield Hospital Fees
134	Moncrief Fees
145	Providence Fees
148	Fishman EKG's
150	Lexington Fees
161	Baptist Fees
162	J. Robinson-Chester Fees
170	Byerly Fees
31500	Intubation
33206	Implant Pacemaker - Atrial
33207	Implant Pacemaker-Vent.
33208	Implant Pacemaker-AV Sequen.
33210	Transvenous Pacer Elec.
33212	Replace Pacemaker - Atrial/Vent.
33213	Replace Pacemaker - AV Sequen.
33214	Upgrade PM-Single to Dual
33216	Lead Change - Single
33217	Lead Change - Dual
33218	Repair Pmkr Electr. - Single
33219	Repair Pacemaker Generator
33220	Repair Pmkr Electr. - Dual
33222	Revision or Relocation of PM Pckt.
33232	Removal of Permanent PM
33233	Remove Pacemaker Generator
33234	Remove PM Generator& Elec.-Sngl

03870
Confidential

03919
Confidential

EQUAL POT - MERGED GROUP

33235	Remove PM Generator& Elec.-Dual
36415	Venipuncture
37202	Transcatheter Infusion
71034	Flouro 4 view chest
75724	Angiography, Renal, Rad. S&I
75754	Supv. & Interp.
75756	Angiography. LIMA
75766	Supv./Interp. LC w/
78990	Provision/Diag. Radionuc.
80003	Automated Channel Test
80061	Lipid Panel
83718	HDL Cholesterol
86585	PPD Skin Test
90724	Flu vaccine
90732	Pneumon. Vac.
90746	Hepatitus Vaccine (3Inj.).
92975	Thrombolysis/Coronary w/Angio.
92978	Intravascular Ultrsound-Init.
92979	Intravascular Ultrasound-Addnl.
92980	Stent Placement
92981	Stent Placement-Each Addt'l Vessel
92982	PTCA/Single Vessel
92984	PTCA/Each Add. Vessel
92995	Coronary Atherectomy/Single
92996	Atherectomy-Each Addt'l Vessel
93017	C.V. Stress Test -Tech. Comp.
93024	Ergonovine Provocation Test
93227	Holter Monitor Interp.
93501	Right Heart Cath
93505	Endomyocardial Biopsy
93510	Left Heart Cath
93511	Left Heart Cath - CD
93526	Right & Left Heart Cath
93536	Insert of Intra-Aortic Balloon
93539	Injection for Arterial Grafts
93540	Injection for Venous Grafts
93541	Pulmonary Angiogram
93542	Rt. Vent or Rt. Atrial Angiogram
93543	Left Vent. or Lft Atrial Angiogram
93544	Aortography/Aortogram
93545	Selective Coronary Angiogram
93555	S&I - Ventriculography
93556	S&I Coronary Angiography
93561	Dilution Studies
93562	Dilution Studies w/ Output
93600	Bundle of HIS Recording
93602	Intra-Atrial Recording
93603	Right Ventricular Recording

03871
Confidential

03920
Confidential

EQUAL POT - MERGED GROUP

93607	Left Ventricular Recording
93609	Intra-Vent Mapping of Tachy.
93610	Intr-Atrial Pacing
93612	Intraventricular Pacing
93618	Induction of Arrhythmia
93619	EPS w/o Induction of Arrhythmia
93620	Comprehensive EP w/ Induct. of Arrhyth.
93621	EPS w/ Left Atrial Recording
93622	EPS w/ Left Ventricular Recording
93623	EPS After Drug Infusion
93624	Follow-Up EPS
93640	EPS/ICD/Lead
93641	EPS/ICD/Generator
93642	EPS/ICD - Evaluation
93650	Ablation - AV Node
93651	Ablation - Atrial
93652	Ablation/Vent. Tachy
93660	EPS/Tilt Table Test
93724	Electronic Analysis-PM System
93731	Pacemaker Check/Dual
93732	Pacemaker Reprog/Dual
93733	Pacemaker Analysis - Phone/Dual
93734	Pacemaker Check/Single
93735	Pacemaker Reprog/Single
93736	Pacemaker Analysis - Phone/Single
93737	ICD Analysis w/o Reprog.
93738	ICD Analysis with Reprog.
93799	Unlisted Cardiovasc. Procedure
99211	EM w/o Phys.
7109026	Fluoroscopy S&SI
7847226	MUGA Interp.
7899076	Addtl. Provision/Radionucl.
7899076	Addnl. prov. - Radionuclide
9298222	PTCA Multiple Lesions
9302426	Ergonovine Provocation Test
9323326	Holter Monitor Interp.
9330026	M-Mode Echo Interp.
9352726	Rt. Heart Cath & Transeptal LC

03872
Confidential

03921
Confidential

EXHIBIT B

BENEFIT PLANS

1. Profit Sharing Plan for Columbia Heart Clinic, P.A.

2. Medical insurance as provided by Medical Group from time to time.

03873
Confidential

03922
Confidential

EXHIBIT C

VACATION AND PROFESSIONAL MEETINGS

Physician may take a maximum of 8 weeks plus 1 week at Christmas/Passover off from Physician's duties each calendar year for vacation and continuing medical education, plus such legal holidays as Medical Group establishes from time to time. In addition, if Physician has 17 or more years of combined service with Medical Group, Columbia Cardiovascular Clinic, P.A. or Columbia Cardiology Associates, P.A., then Physician is entitled to an additional week of vacation. Such time off may be taken at such times or from time to time in a manner most convenient to the business of Medical Group as determined by the Board of Directors of Medical Group. Physician may carry forward into the next calendar year a maximum of five (5) days of unused vacation and professional meeting time, and Physician may borrow from the next calendar year up to a maximum of five (5) days of vacation and professional meeting time. Except as described in the preceding sentence, unused vacation and professional meeting time may not be carried forward to the next calendar year.

EXHIBIT D

POLICIES REGARDING BENEFITS
FOR DEATH, DISABILITY AND RETIREMENT

1. Upon Physician's disability as determined in accordance with Sections 1.4. and 4.3.(b) of this Agreement and such other policies as the Board of Directors of Medical Group may adopt, Physician shall continue to receive basic compensation under Section I.I. of this Agreement for a maximum period of three (3) months during any one calendar year and a maximum of six (6) months during any five (5) consecutive year period; provided, however, the Board of Directors of Medical Group, in its discretion, may waive the five (5) year restriction. Upon termination of this Agreement under Section 4.3.(b), Physician shall be entitled to the benefits under Section 4.5.(c).

2. Physician must have attained the age of fifty (50) to be entitled to retire.

03875
Confidential

03924
Confidential

EXHIBIT E

APPROVED OUTSIDE ACTIVITIES

1. Participation on medical-related boards and committees.
2. Proctoring activities related to interventional procedures peculiar to the practice of cardiology.
3. Educational speaking engagements.
4. Expert witness testimony.
5. Professional directorships at hospitals.

03876
Confidential

03925
Confidential