Agreement Between
the Board of Regents of the
University of Wisconsin System
and the
University of Wisconsin
Medical Foundation

May 12, 1995
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The Board of Regents of the University of Wisconsin System, a body corporate operating under Chapter 36, Wisconsin Statutes ("Board of Regents") and the University of Wisconsin Medical Foundation, a nonstock, non-profit charitable and educational corporation organized under Chapter 181 of the Wisconsin Statutes ("Foundation") enter into this Agreement as of May 12, 1995.

RECITALS

WHEREAS the Board of Regents is a public body corporate and politic existing under the laws of the State of Wisconsin and charged with primary responsibility for the governance of all academic institutions comprising the University of Wisconsin System, including the University of Wisconsin-Madison and its Medical School, and

WHEREAS the missions of the Medical School are to teach medicine, to engage in medical research and to provide clinical service to the community. These missions are inextricably interrelated. The teaching of medicine and the conduct of medical research require the practice of medicine. Both teaching and research require a base of patients of sufficient size and composition with which to teach students and to provide data for research. The clinical practice of medicine by the Faculty supplies both of these requirements and the fees generated from patient visits provide critical financial support for the Medical School, and

WHEREAS the Medical School currently receives approximately one-half (1/2) of its annual operating budget from the clinical fees generated by its Faculty physicians and Faculty health care specialists, and

WHEREAS for the past two (2) decades, the contributions of clinical Faculty to the Medical School have been effected through the provisions of the Clinical Practice Plan (hereinafter "CPP"), an agreement among the clinical Faculty, UW-Madison and the Board of Regents. Under the provisions of the CPP, fourteen (14) separate and relatively autonomous Departmental Practice Plans (hereinafter "DPPs") have been organized, one (1) for each clinical department of the Medical School. Consistent with the historical character of clinical practice plans throughout the United States, each of the DPPs was responsible for managing its own clinical practice as well as for supporting the interests of the Medical School, and

WHEREAS the relative autonomy of the DPPs and their somewhat divergent clinical interests have not strongly encouraged the growth of a unified administration of the clinical services offered through Medical School Faculty physicians and health care specialists, and
WHEREAS the field of health care is in the midst of rapid and radical change that renders the historic character of the CPP, together with its associated DPPs, largely problematic for the current and future needs of the Medical School. In particular, coordinated administration of both primary and specialty health care has become a market necessity - one that requires any group of affiliated physicians and health care specialists to devise a system of practice that is able to do the following: (a) market a range of primary and specialty care services to the general patient population; (b) ensure that the range of care that is offered is cost effective and well managed, such that it is competitive with the burgeoning number of highly competitive managed care organizations that exist on local, regional and national levels; and (c) successfully recruit and maintain a sufficient number of patients for the system to enable continued support of primary and specialty care practitioners, and the Medical School, and

WHEREAS the necessity of meeting these three (3) objectives is particularly critical to physicians and health care specialists who are affiliated with an academic medical center such as the Medical School. They must meet these objectives given the higher programmatic costs of the additional Faculty missions of teaching, research, and public service, and

WHEREAS the Medical School Faculty physicians and Faculty health care specialists must currently compete for patients with a number of established managed care organizations that operate in Wisconsin - particularly in the southwestern region of the state - which have already contracted with a high percentage of the available pool of health care consumers. As these managed care organizations typically affiliate with specific hospitals, they have decreased the number and frequency of patient referrals to the University of Wisconsin Hospital and Clinics ("University Hospital"), and to Medical School Faculty physicians and Faculty health care specialists. This change in the historic pattern of patient referrals has accentuated the need for University physicians and health care specialists to effect an efficient and comprehensive health care management system, and

WHEREAS the Board of Regents recognizes that, in view of the changing national and local health care markets, the continued viability of the Medical School depends, to a large extent, upon the ability of its Faculty physicians and other Faculty health care specialists to provide clinical care in a manner that is cost effective, consistent with trends toward managed care, and supportive of the special needs of an academic medical center for teaching, research, and public service, and

WHEREAS its extensive reliance upon fees generated by Faculty clinical practice requires the Medical School to have its Faculty physicians and Faculty health care specialists managing their clinical services in a centralized, cost-effective manner. The Foundation is specially conceived to meet this need and to support the Medical School through direct financial contributions. Equally important, the Foundation is expected to assist the Medical School in the achievement of the three (3) objectives of effective teaching, research, and service in the field of health care, and

WHEREAS the existing CPP is an agreement between the Board of Regents and the clinical Faculty, based on the understanding that the Faculty own their practice incomes subject to the provisions contained in the CPP agreement, and
WHEREAS the Faculty, by two-thirds (2/3) vote as required by the existing CPP, has voted to replace the existing CPP agreement with a non-profit charitable foundation assuming approval of the Internal Revenue Service and acceptance of this Agreement, and

WHEREAS the existing CPP has operated as a series of for-profit departmental practice partnerships which have not been subject to state regulation or restriction such as purchasing and personnel, except as provided by the CPP itself, and

WHEREAS the existing for-profit departmental partnerships under the CPP will be replaced by a single group practice operating as a non-profit Foundation, and

WHEREAS the Faculty has caused the creation of a nonstock, non-profit charitable and educational corporation named the University of Wisconsin Medical Foundation into which the practice income of the Faculty will be contributed and which will, by this Agreement, be recognized by the Board of Regents as the vehicle for the Faculty's coordination of medical care, collection of practice income and support of medical education and research, and

WHEREAS this Agreement defines the relationship between the Foundation and the Board of Regents, and the Medical School requires the Foundation to provide substantial funding to support medical education and research, controls physician incomes, and brings the advantages of high quality, efficient and low-cost patient care that go with group practice, and

WHEREAS the Board of Regents recognizes that, while the Foundation is constituted as an entity different in form and function from the CPP, the Foundation does not begin operating in a vacuum; rather, the Foundation will assume existing assets and liabilities, as noted elsewhere, and will operate on the basis of established understandings with respect to issues such as the Faculty ownership of clinical fees apart from that portion of fees dedicated to state interests and the inapplicability of state restriction except as assumed by this Agreement or as otherwise required by law,

THHEREFORE, having resolved that the Foundation is a reasonable and necessary instrument through which these physicians and health care specialists should support their clinical care activities, the Board of Regents enters into this Agreement with the Foundation to specify the relationship between the Foundation and the Board of Regents, UW-Madison and the Medical School.
Definitions

"Faculty", when used in this Agreement, includes physician Faculty and physician academic staff with tenure, tenure track, CHS or other UW-Madison-recognized titles. By agreement of the Medical School and the Foundation, individual psychologists, optometrists and dentists having Medical School appointments may be included as participating Faculty and may be eligible to be elected and/or to vote in elections for Foundation directors.

"Faculty health care specialists" means psychologists, dentists, and other health care providers who render clinical care to patients or otherwise provide services as defined in §17, below, as a part of their Faculty or academic staff responsibilities with UW-Madison and the Medical School and are compensated by third parties for that patient care. By agreement of the Medical School and the Foundation individual psychologists, optometrists and dentists having Medical School appointments may be included as participating Faculty and may be eligible to be elected and/or to vote in elections for Foundation directors.

"Managed care" is a term of general definition that summarizes the trend in local, regional and national health care markets toward coordinated management of patient health care services, specifically a system that provides covered patients with a coordinated level of appropriate care, usually at a defined price.

Replacement of Existing Clinical Practice Plan

1. This Agreement replaces the CPP, and terminates the relationship between the Board of Regents and the CPP or the various DPPs. The existing CPP will continue to operate until December 31, 1995. The existing partnerships will continue to operate under the terms of the CPP until their dissolution, which is expected to come by year-end 1995 or the first quarter of 1996.

2. The Board of Regents understands the Foundation to be constituted in the manner outlined in its Articles of Incorporation, and to be bound to operate in the manner outlined in its Bylaws, both of which are attached to and made a part of this Agreement. Any change to the Articles requires sixty (60) days written notice to the Board of Regents and to the Chancellor or his or her designee. Any change to the Bylaws requires sixty (60) days advance notice to the Board of Regents and to the Chancellor or his or her designee. During the term of this Agreement and prior to any notice of its termination changes to the Articles and Bylaws are subject to approval by the Chancellor. Such changes shall be assumed to be approved sixty (60) days after notice is delivered. Any disapproval shall be in writing. During the term of this Agreement and prior to any notice of its termination, changes to the composition of the Board of Directors of the Foundation as provided in the Bylaws requires approval by the Board of Regents.

Service to University Interests

3. The Foundation will, in all respects, function in the interests of the Medical School.

4. The Board of Regents and the Foundation agree that, in all of their activities conducted by and through the Foundation, Medical School Faculty physicians and Faculty health care specialists are, when acting pursuant to this Agreement, acting within the scope of their employment with the State of Wisconsin.
5. The Foundation and its employees shall have access to, and use of, university facilities, equipment and personnel for education, research and service activities that support the missions of the Medical School and UW-Madison.

6. This Agreement shall not affect the roles of the Medical School Faculty physicians, Faculty health care specialists, the Dean of the Medical School, and the Medical School clinical department chairs in managing the academic programs of each clinical department (and, more generally, of the Medical School), setting academic standards for students and post-graduate trainees, or setting criteria for Faculty hiring and promotion.

7. The Medical School will retain ultimate responsibility for the quality, timeliness, and appropriateness of medical care through its Dean, Clinical Departments, Clinical Section Chiefs, and Faculty physicians and Faculty health care specialists. This responsibility may be discharged, to the extent necessary to form and operate a successful group practice that is integral to the missions of the Medical School, through the Foundation.

8. Allocation of state monies provided to the Medical School for education, research, and public service, including funds from the Foundation when provided to the Medical School as outlined later in this Agreement, remain under the direction of UW-Madison, the Dean of the Medical School, clinical department chairs, and clinical department executive committees.

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**Faculty Participation**

9. Each Faculty physician or Faculty health care specialist who is a member of an existing departmental practice plan partnership is required to become an employee of the Foundation. All future appointments of Faculty physicians or Faculty health care specialists will require, as a condition of appointment, that the physician or specialist become an employee of the Foundation.

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**Foundation Contributions to Medical Education and Research**

10. The Foundation agrees to assume, as the successor operation to the CPP and the DPPs, all current assets, liabilities and commitments of the CPP which are not modified or replaced by this Agreement, and of the various DPPs. The DPPs will transfer all of their current assets to the Foundation as the Foundation begins operations and all assets upon dissolution.

11. The Board of Regents recognizes that Affiliated University Physicians (AUP) will be reorganized into a separate, private non-profit corporation. The DPPs are no longer the members of AUP. The Board of Regents is aware of a long-term contract between AUP and the DPPs which the Foundation will assume and approves the Foundation's stated intention to continue a relationship with AUP.

12. The Foundation will continue the Faculty's financial support of the Medical School through the provisions of this Agreement which replace the CPP's contribution provisions.
13. Financial support required by this Agreement to be made available to or on behalf of the Medical School becomes an asset of the University of Wisconsin System as that support becomes due. The Chancellor, the Dean and the Foundation will determine the due dates for various contributions by written agreement. Payment of the MSDF will be quarterly, beginning with the first payment on September 30, 1996. The Board of Regents has the right to bring an action for specific performance to obtain the agreed financial support if it is not transmitted by the Foundation when due in accord with this Agreement. All funds generated by Foundation activities that are not expressly dedicated in this Agreement to the Medical School constitute assets of the Foundation, consistent with the historic understanding between the Board of Regents and the CPP regarding Faculty ownership of clinical fees.

14. The Board of Regents and the Foundation further agree that, with respect to funds generated by or through the activities of the Foundation and its employees, the laws and regulations of the State of Wisconsin applicable to state funds apply only to such funds as the Foundation is obligated to transmit to the Medical School in accord with this Agreement.

Required Contributions

15. The formulae for contributions for the benefit of the Medical School are contained in Attachment A. That portion relating to contributions will remain in effect until amended. Any amendments relating to contributions require approval of the Chancellor. The University of Wisconsin Foundation will be the depository for contributions for the benefit of the Medical School.

16. The percentage [between five (5) and twenty-five per cent (25%) of gross departmental professional revenues] allocated for research and development will be determined on a yearly basis by the Foundation Departmental Committees as provided in the Foundation Bylaws. In all cases, a minimum of two-and-one-half per cent (2.5%) of departmental professional revenues fees will be deposited to special accounts at the UW Foundation and used to support departmental research as determined by the Departmental Executive Committee.

The balance of the departmental research and development funds will be held by the Foundation and provided to Faculty for research, teaching, service or administrative activities as determined by the Foundation Departmental Committees as provided in the Foundation Bylaws. When a percentage of gross revenues has been assigned to departmental research and development funds, the Foundation Departmental Committees, by majority vote, may distribute those funds to Faculty or programs within the Department. These Foundation Departmental Committees may, on a yearly basis, delegate to the Chair responsibility for assignment of these funds. Monies not encumbered or spent in a given fiscal year may be carried over to subsequent fiscal years and will be held by the Foundation in separate accounts.
Foundation Income/Included Receipts

17. Each Medical School Faculty member of the clinical departments, as a condition of his/her University employment, will be required to contractually commit certain income to the Foundation. The professional income required to be included in Foundation receipts consists of all collected fees derived from the diagnosis and treatment of patients by the Faculty member. Professional income shall also include fees for court appearances, pretrial legal consultations, all other activities associated with medical-legal services and other services related to patient care or human health. In addition, professional services includes consultation with respect to the operation, supervision and quality control in laboratories. Professional income does not include honoraria, royalties, lecture fees, military pay, or payments for editing scientific publications. Income received for consultations of a purely scientific or educational nature which do not involve, directly or indirectly, the care of specific patients or consultations involving human health is excluded from professional income. Work for charitable organizations may also be exempted by agreement of the Foundation and the Dean. All such outside activities must conform to Medical School and UW-Madison rules and regulations governing the conduct of Faculty and academic staff employees. Because human health is a broad term, the Foundation Board of Directors or a designated subcommittee thereof may grant exceptions as warranted.

Faculty Income and Benefits

18. Participating Faculty incomes shall, as determined in the manner set forth in the Bylaws, be limited to amounts that reflect market forces. The Compensation Committee of the Foundation shall annually review available compensation information, and recommend compensation maxima by subspecialty to the Foundation Board of Directors, who shall then review, modify and/or adopt them as appropriate. The Foundation shall not pay any compensation in excess of an applicable maximum without the express written approval of the Dean of the Medical School.

19. The Foundation will provide fringe benefit plans, which may include deferred income, health, life and disability insurance, and retirement plans for its employees. These plans shall become the successor to each of the existing departmental plans unless the Foundation Board of Directors determines that there are legal or accounting reasons to continue the existing plans. Monies expended by the Foundation for fringe benefit plans may be treated by the Foundation as a component of the Foundation’s operational costs. Fringe benefits provided by the Foundation are in addition to and are not restricted by state standards. Foundation plans and related funds are to be administered by the Foundation and are the property of the Foundation.

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1 This definition is substantially the same as that contained in the CPP except that the provision relating to medical-legal services has been supplemented to confirm the original intent and long-standing practice under the CPP, and a provision has been added to include services related to laboratory functions.
20. The initial two (2) year compensation system for Medical School Faculty physicians and Faculty health care specialists participating in the Foundation shall be as set forth in Attachment A. Following the initial two (2) years, the Foundation Board of Directors may continue or modify the initial compensation system in accordance with this Agreement. A proposed change to the terms of the Compensation Plan as set forth in Attachment A shall be presented by the Board to an annual or special physician meeting as provided in § 3.9 of the Bylaws. Changes shall not be adopted unless approved by two-thirds (2/3) of those voting in person or by proxy at such meeting. Whether a change requires presentation to the Faculty shall be reviewed by the Council of Chairs and the Council of Faculty who shall advise the Board.

21. The Foundation may compensate, as allowed by University policy, part-time Faculty and academic staff, visiting Faculty and academic staff, fellows, lecturers, and other persons having university appointments by agreement with the Dean and with any academic or clinical department that may be involved.

Subsidiary Corporations

22. Using that portion of its aggregate professional income not committed to the State of Wisconsin, the Foundation may create or invest in such subsidiary corporations or other business entities as may be necessary or convenient to carry out the purposes of the Foundation as set forth in its Articles and Bylaws. The Foundation shall give the Board of Regents at least sixty (60) days prior notice of the creation of such interests.

Audit

23. The Foundation shall annually have a financial audit prepared by a qualified independent auditor. The Foundation shall also prepare an annual operating report. Copies of the audit and the annual report shall be furnished by the Foundation to the Dean of the Medical School.

Open Records/Public Meetings

24. The Foundation hereby agrees that it will be governed in its operations by the State Open Records Law, and its Public Meetings Law.

Amendments

25. Amendments to this Agreement require consultation with the Council of Chairs and the Council of Faculty, approval of the Chancellor, approval of the Foundation Board unless adopted pursuant to §26 below and approval of the Board of Regents.
26. Medical School Faculty physicians and Faculty health care specialists participating in the Foundation may collectively petition the Foundation Board of Directors, the Dean and the Board of Regents for changes to the Articles of Incorporation and Bylaws of the Foundation, or to this Agreement. A petition of twenty per cent (20%) or more of the participating Faculty will be sufficient to trigger a vote of the entire participating Faculty on such proposed changes. The proposed change, if approved by two-thirds (2/3) of those voting in a mail ballot, will be adopted as approved and forwarded to the Board of Regents for their review under §2, above. Meetings and elections called for this purpose will be conducted under rules and procedures developed by the Dean.

Approval of Board/Removal

27. The Chancellor must approve each member of the Foundation Board of Directors elected by the Faculty and each chair selected by the Council of Chairs under the provisions of the Bylaws, prior to each such board member taking office. Such approval shall be in writing directed to the President of the Foundation following notification to the Chancellor of the election or selection of the board members. The Chancellor shall not exercise approval authority as provided by this paragraph in a way that limits options such as those outlined in §§29 and 30 of this Agreement.

28. The Chancellor may at his/her discretion remove any director elected by the Faculty or by the Council of Chairs. A notice of removal shall be forwarded by the Chancellor to the President, who shall then call on the Nominations Committee or the Council of Chairs to fill the vacancy as provided in the Bylaws. The Chancellor shall not exercise removal authority as provided by this paragraph in a way that limits options such as those outlined in §§29 and 30 of this Agreement.

Termination

29. The Board of Regents recognizes that the Foundation is entering into this Agreement on the assumption that, other than open meetings, public records (which have been assumed by contract) and restrictions on the creation of dummy building corporations (which apply to the Foundation but not to any subsidiaries thereto), and the application of state laws and regulations to Foundation financial contributions to the Medical School (state laws and regulations becoming applicable when the designated contributions become due), the Foundation may operate as a private, non-profit, tax-exempt entity, free from the restrictions or requirements that apply to state agencies. The Board of Regents further recognizes that if these assumptions prove invalid or become obsolete, the Foundation or the Board of Regents may pursue the option of terminating this Agreement. In such an event, the parties shall, during any period of notice of termination, endeavor to revise the agreement to a mutually acceptable form.

30. In the event that the Board of Regents or the Foundation, or both, determine that the benefits of this Agreement have diminished to the point that it no longer allows optimal pursuit of those objectives outlined in the Foundation Articles of Incorporation and Bylaws, the Board of Regents and the Foundation shall each have the option of terminating this Agreement, but shall first attempt to revise the Agreement into a form that is mutually acceptable.
31. Notice of termination may be given by either party to the other and such notice shall provide at least six (6) months time to final termination unless shortened by mutual agreement.

32. The Board of Directors and the Foundation agree that if this Agreement (or an amended version thereto) is terminated, the Foundation will be dissolved within six (6) months of the date of termination through the action of the Foundation Board of Directors. The six (6) month period allowed for dissolution is intended for the winding up of the affairs of the Foundation.

Other Provisions

33. Any fundraising undertaken on behalf of the University of Wisconsin Medical School and its departments, the University of Wisconsin Hospital and Clinics or the University of Wisconsin, will be coordinated with the University of Wisconsin Foundation.

34. The Board of Regents and the Foundation mutually recognize that, in keeping with the intent of this Agreement and the Articles of Incorporation and Bylaws incorporated into it by reference, the Foundation will be developing relationships and affiliations with hospitals, clinics, health care provider organizations, third-party payors and managed health care systems, and may, in addition, create subsidiary corporations or other business entities to further effect its essential purposes. As the Foundation's efforts in this regard will be enhanced by a perception of stability and predictability associated with its business character, the Board of Regents and the Foundation mutually agree that any contractual relationships developed by the Foundation with other persons or business entities, so long as they are consistent with the essential purposes of the Foundation, will not be altered, abrogated, or otherwise affected by subsequent changes to the Articles of Incorporation, the Bylaws or this Agreement unless so agreed between the Foundation and affected third parties.

Dated this 12th day of May, 1995, at Madison, Wisconsin.

Board of Regents of the University of Wisconsin System

[Signature] (Title) Chancellor

University of Wisconsin Medical Foundation

[Signature] (Title) President