

Agreement for Medical Doctor Review of Student Treatment Plans

This Agreement is made this 1st day of July, 2023, between CALIFORNIA PEDIATRIC HOSPITALISTS INC, hereinafter called "MD" and MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT, hereinafter called "CLIENT". This Agreement states the terms and conditions under which the MD will review school based services provided by CLIENT to students and determine if services are medically necessary in order for the student to receive a free and appropriate education.

1. MD's Responsibilities: The MD shall provide the following services to CLIENT:

- a. The MD shall maintain all appropriate medical licenses and registrations required by state and federal law to practice medicine in the state of California. MD shall pay any licensing fees and costs of any mandatory continuing education associated with maintaining such licensing.
- b. The MD shall, at MD's cost, maintain medical malpractice insurance in his/her name. Coverage shall be for an amount not less than \$1,000,000 per occurrence.
- c. MD will provide MD's education, training and contact information in order to maintain a working relationship with CLIENT. MD shall be available for consultation with CLIENT and/or CLIENT providers as to specific treatment plans submitted to MD for review.
- d. Consult with CLIENT as to the format for the treatment plan recommendations to be received by CLIENT to ensure such treatment plan recommendations contain all information necessary for review by MD.
- e. As to each treatment plan recommendation submitted, advise CLIENT if additional information is necessary for MD to conduct an appropriate review.
- f. MD will review any Occupational Therapy (OT), Physical Therapy (PT), Mental Health (MH), Speech Therapy (ST), and Nursing treatment plans submitted to MD by CLIENT. MD will provide the result of such review in writing to CLIENT, including a written authorization for any OT, PT, MH, ST and Nursing services which, in MD's medical opinion, are medically necessary.
- g. MD is responsible to abide by The Health Insurance Portability and Accountability Act (HIPAA) and The Family Educational Rights and Privacy Act (FERPA) and will not share the CLIENT's data with third-party entities. Treatment plans provided to MD by the CLIENT will be used for the sole purpose of determining medical necessity of school based services and MD will use industry standard practices to securely store all student treatment plans.
- h. Once MD has completed his/her review of student treatment plans submitted by CLIENT, MD will issue an invoice to CLIENT according to the Payment section of this agreement.

2. Client Responsibilities: CLIENT shall do and perform each of the following:

- a. CLIENT will identify the individual students that are in need of a medical doctor treatment plan in order to receive school based services.
- b. CLIENT will submit student treatment plans in the format agreed upon with the MD. Student treatment plans must include student full name, student date of birth, student's diagnosis, service provider's full name, service provider's credentials, and a description of the school based services that the student is receiving.
- c. CLIENT will make their service providers available to MD for clarifications and additional information that may need to be provided during the student treatment plan review process.

3. Payment: CLIENT shall pay to MD as compensation:

A fee of \$25.00 for each Student Treatment Plan that is submitted by CLIENT and reviewed by MD. MD will generate and submit an invoice to CLIENT which is payable within 30 days of receipt.

4. **Document Management:** MD shall retain in electronic form copies of all Student Treatment Plans submitted by CLIENT for a period of five (5) or such other period as required by law. MD, upon request, will provide to CLIENT electronic copies of such Treatment Plans. MD, upon request, shall return to CLIENT all Treatment Plans and other documents provided to MD for Treatment Plan review purposes. CLIENT shall retain all such documents and records for at least five (5) years from Student Treatment Plan effective date or such other duration as may be required by State and Federal laws, rules, and regulations.
5. **Confidentiality Agreement:** All statistical, financial, student and other data relating to the Student Treatment Plan review process shall be held in strict confidence by the parties hereto. The foregoing obligation does not apply to any data that has become publicly available or that is not required to be kept confidential.

The data provided to MD by the CLIENT will be used for the sole purpose of determining medical necessity of school based services provided by CLIENT. MD is responsible to abide by The Health Insurance Portability and Accountability Act (HIPAA) and The Family Educational Rights and Privacy Act (FERPA) and will not share the CLIENT's data with third-party entities.

6. **Insurance:** MD shall, at MD's expense, obtain and maintain during the term of this Agreement medical malpractice insurance in his/her name. Coverage shall be for an amount not less than \$1,000,000 per occurrence.

7. **Mutual Indemnification and Limitation of Liability:**

- a. CLIENT will indemnify, defend, and hold MD, and each such party's affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses arising out of or in connection with: (i) a claim by a third party alleging that use of the CLIENT DATA infringes the INTELLECTUAL PROPERTY RIGHTS of a third party; provided in any such case that MD (a) promptly gives CLIENT written notice of the claim; (b) gives CLIENT sole control of the defense and settlement of the claim; and (c) provides CLIENT all available information and assistance.
- b. MD will indemnify, defend and hold CLIENT and CLIENT affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses arising out of or in connection with: (i) any breach of confidentiality of CLIENT DATA due to the negligence of MD or its employees or agents, and (ii) a claim by a third party alleging that the HOSTED SERVICE directly infringes an INTELLECTUAL PROPERTY RIGHT of a third party; provided that CLIENT (a) promptly gives written notice of the claim to MD; (b) gives MD sole control of the defense and settlement of the claim; and (c) provides MD all available information and assistance. MD's aggregate liability under this subsection (b) of Section 9 is limited to the coverage actually afforded by MD's insurance policy referred to in Section 6 of this Agreement.
- c. MD will use due care in processing the work of the CLIENT based on CLIENT's submission of Student Treatment Plans. MD will be responsible for correcting any errors which are due to the machines, operators, or programmers of MD. Such errors shall be corrected at no additional charge to CLIENT. MD does not guarantee approval of Student Treatment Plans submitted. MD shall have no liability for CLIENT's inability to provide proper source documentation, including but not limited to Provider records, IEPs, Health Service Plans, and other supporting documentation, to any State or Federal governmental agency.
- d. Except as specifically set forth in Section 9, subsection (b) of this Agreement, in no event shall MD's liability for any and all claims against MD under this Agreement, in contract, tort, or

otherwise, exceed the total amount of the fees paid by CLIENT to MD during the contract term in issue, and MD shall not be liable under any circumstances for any special, consequential, incidental, punitive, or exemplary damages arising out of or in any way connected with this Agreement.

8. **Contract Duration and Termination:** The term of this Agreement shall commence upon execution of this contract and continue for a period of five (5) school years, through June 30, 2028 ("Termination Date"). This agreement may be terminated at anytime by either party by written notice.

Additionally, any breach of CLIENT's payment obligations or unauthorized use of Student Treatment Plans will be deemed a material breach of this Agreement. MD may terminate the Agreement if CLIENT commits a material breach of this Agreement or otherwise fails to comply with this Agreement, and such breach has not been cured within ten (10) days after notice of such breach.

9. **Notices:** Notices affecting contract terms between the parties shall be in writing and shall be deemed given when (i) personally delivered to the party to whom it is directed; or (ii) five (5) days after deposit in the United States mail, postage prepaid, return receipt requested, addressed to:

MD

California Pediatric Hospitalists, Inc.
Attn: David A. Sine, M.D.
P.O. Box 709
Visalia, CA. 93279

CLIENT

Mountain View Whisman School District
Attn: Business Office
1400 Montecito Avenue
Mountain View, CA 94043

10. **Copyrights:** CLIENT acknowledges and agrees that all manuals and forms ("MD Documents") provided to CLIENT by MD shall remain the property of MD and shall not be duplicated, copied in any manner and access to MD Documents shall be restricted to employees of CLIENT who need to use MD Documents in order to satisfy CLIENT'S obligations under this Agreement, without the prior written consent of MD. All computer programs and materials, including, but not limited to, electronic devices, and the information contained therein are, and shall remain, the property of MD.
11. **Other Documents:** The parties hereto agree to execute such other and further documents as may be necessary or required by state and federal law to authorize MD to perform review of Student Treatment Plans on behalf of CLIENT.
12. **Representations:** Each party represents and warrants that it has the legal power and authority to enter into this Agreement.
13. **Entire Agreement:** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to MD providing review of Student Treatment Plans to CLIENT and contains all of the covenants and agreements between the parties with respect to such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise with respect to MD services not contained in this Agreement shall be valid or binding.
14. **Modification:** This Agreement may be amended or modified at any time with respect to any provision by a written instrument executed by all parties.

15. **Law Governing Agreement:** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. **Mediation and Arbitration:** Any dispute arising under this Agreement shall first be addressed through mediation. If a dispute arises, either party may demand mediation by filing a written demand with the other party. If the parties cannot agree upon a neutral mediator, each party, within twenty (20) days after the parties fail to agree on one mediator, at its own cost shall appoint one mediator and those mediators shall select an impartial mediator to conduct the mediation. The parties shall equally share the cost of the mediator conducting the mediation.

If the parties are unable to resolve any dispute through mediation as set forth herein, or if any party fails to respond to a demand for mediation, all questions and disputes with respect to the rights and obligations of the parties arising under the terms of this Agreement shall be resolved by binding arbitration. Any party may demand arbitration by filing a written demand with the other party. If the parties cannot agree on one arbitrator, each of the parties, within twenty (20) days after the parties fail to agree on one arbitrator, at its own cost, shall appoint one arbitrator and those arbitrators shall select an impartial arbitrator to conduct the arbitration. Should a party refuse or neglect to join in the arbitrator or to furnish the arbitrator with any papers or information demanded, the arbitrator may proceed ex parte.

A hearing on the matter to be arbitrated shall take place before the arbitrator in the County where CLIENT is located, State of California. The arbitrator shall select the time and place promptly and shall give each party written notice of the time and place at least ninety (90) days before the date selected. The parties shall be entitled to conduct discovery by agreement or by order of the arbitrator. Each party may present any relevant evidence at the hearing. The formal rules of evidence applicable to judicial proceedings shall not govern. Evidence shall be admitted or excluded in the sole discretion of the arbitrator. The arbitrator shall hear and determine the matter and shall execute and acknowledge the award in writing and cause a copy of the writing to be delivered to each of the parties.

The parties shall share equally the expense of arbitration, and each party shall bear its own attorney fees and costs incurred in connection with the arbitration.

The arbitrator's decision shall be binding and conclusive on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction.

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT


Authorized Signature

Date

Printed Name

Printed Title

CALIFORNIA PEDIATRIC HOSPITALISTS INC



Dr David Sine, Physician

03/17/2023

Date