

**IMPORTANT-READ CAREFULLY:** This Membership Agreement is a legally binding membership agreement between you in your individual capacity on behalf of yourself (“you or “your”) and Balanced Physician Care, PA.

## **MEMBERSHIP AGREEMENT**

This **MEMBERSHIP AGREEMENT** (this "Agreement") specifies the terms and conditions between Balanced Physician Care, P.A., a Florida professional association (“BPC”) located at 115 Professional Drive Suite 104, Ponte Vedra Beach, Florida and \_\_\_\_\_, (hereinafter "Member"), under which Member may participate in the Balanced Physician Care Membership Program, effective as of \_\_\_\_\_(the "Effective Date”).

This Agreement enrolls an individual in the BPAC Membership Program which provides expedited access and quality amenities to the Members ("Program Amenities"). These Program Amenities are not covered by insurance plans and are not reimbursed by member’s insurance and/or other health plans (including Medicare).

Medicare. Medicare enrolled participants may participate in services exclusively listed in Section B. For Section A covered services the Member represents that he/she is not currently enrolled in Medicare. If the Member enrolls in Medicare at any time during the term of his/her membership, this Membership Program will be deemed to have terminated for Section A covered services on the date of the Client's Medicare Enrollment and Member agrees to notify BPC in writing within 10 business days of enrolling in Medicare. Individuals with Medicare understand that their membership excludes those services in Section A (as Medicare may cover these services,) and only includes the services listed under Section B.

### **I. Membership Program Amenities**

#### **a) Section A Amenities**

- All Members must utilize BPC’s office hours and staff to relay medical concerns
- Same Day Appointments. Each Member is guaranteed the ability to be seen by Dr. Truty (or a covering physician or staff) (collectively referred to herein as "BPC Provider") within 24-48 business hours. If it is an emergency, then a BPC Provider will determine the appropriate course of action upon receipt of notification.
- Expedited Availability. B P C will be available for urgent needs and emergencies 24/7:
- Annual Executive Level Physical Examination with in-office diagnostic tests (including but not limited to clinical laboratory studies) and a customized electronic communication that includes all of your medical assessments and conditions. During the exam, BPC Provider will order labs and any additional tests that the BPC Provider deems medically necessary for Member's specific medical needs. A basic set of

laboratory panels or values will be provided annually, inclusive of the Membership Fee. Any additional or patient specific testing will be charged to the patient or patient's insurance.

- Scheduled in-office lab draws and injections (e.g. B-12, testosterone, etc.) available.
- Instant electronic transmission of your medical records.
- A qualified, personal and attentive medical staff available daily
- Additional consultative visits for purposes of reinforcing health goals and plans to achieve goals.

#### **b) Section B Amenities**

- Advanced Technology Access.
  - During office hours, direct access appointments can be made in person, via phone, or through secure, teleconferencing via the appropriate patient portal.
  - Access to physicians at BPC through a secure e-mail address when this mode of communication becomes available. Until such time, if Member wants to communicate by e-mail, Member must execute an E-Mail Consent Form addressing e-mail usage.
- After office hours, direct access to a BPC Provider via phone or (secure portal text messaging (if such security becomes available and approved by the federal government) 24 hours a day, 7 days a week
- Integrative / Alternative Medicine Services Every Member is entitled to one 30 minute consultation visit a year which can be made in conjunction or separate from the yearly Executive Level Physical.
- Every Member is entitled to have one extended acupuncture visit a year or two brief visits a year, provided the BPC Provider determines that such treatment is appropriate.
- In Person Accompaniment to Specialist Visits. A BPC Provider will accompany a patient to a specialist visit within Duval, St. Johns and Nassau County when warranted and agreed upon by specialist office, as determined on a case-by-case basis, by a BPC physician in his or her sole discretion; provided however, such accompanied visit shall result in an additional discounted fee.
- Automatic Reminder. BPC will provide Members with e-mail or telephone reminders regarding appointments (with the proper consents), as well as written reminders to schedule the Executive Physical Exam.
- Generally, no wait time when you come into the office.
- Frequent email updates regarding newest medical releases and articles pertinent to primary care medicine and integrated medicine and you.
- Workshops, from time to time, to improve your Health and Wellness.
- Discounts on health retail merchandise such as supplements, exercise/therapy bond systems, etc.
- Certain discounted procedure visits
- Prescription Delivery Systems when available.
- Peace of mind knowing you are cared for by qualified staff of BPC.

## **II. Term/Renewal/Membership Fee.**

Each Member will pay a Membership fee (the "Membership Fee") to BPC and complete a Membership Fee Payment form in substantially the same form as Exhibit A attached hereto and incorporated by this reference. The total Membership covers a period of 12 months and becomes effective on the first of the month that payment was received. The Membership Fee can be paid either monthly or annually. The Membership Fee is an annual obligation and must be paid in full each year (whether in a lump payment or monthly). Any Program Amenities that are not used within the Term are not transferable to the next year and are not credited at the end of the Term. A Member must pay the Membership Fee each year to remain a Member of the BPC Membership Program. The Automatic Bank Draft Authorization Form authorizes the automatic funds transfer from the Member's bank account or charge card to BPC.

This Agreement shall automatically renew for additional Terms upon the payment of the Membership Fee (in a lump sum or the first monthly payment). Member's failure to pay the Membership Fee in accordance with the agreed upon lump sum payment or monthly installments will result in automatic termination of Membership, lost amenities associated with the BPC Membership Program and possibly discharge from BPC. In the event that the cost of providing services increases, BPC may need to increase the Membership Fee accordingly, effective the next Term. Members would be notified in writing of the increase. Such increase will apply to the next Term. BPC may also change the Program Amenities included in the Membership Program at its sole discretion after written notice to Members. Such change will apply to the next Term.

### **III. Termination of Membership.**

A Member will have the right to provide notice of termination of his/her Membership at any time, such termination being effective ninety days following the end of the month in which termination is provided to BPC. In any such event, the Member terminating Membership will be entitled to a refund of a prorated portion of Membership Fee paid by Member for the Term, if applicable. For example, if a Member pays the Membership in a lump sum payment and delivers notice of termination on the 15<sup>th</sup> day of the 2<sup>nd</sup> month of the Term the cancellation would be effective on the last day of the 5<sup>th</sup> month of the Term and the Member would be entitled to a refund of the equivalent of 7 months of a prorated annual Membership Fee. If the Member pays the Membership Fee monthly, gives notice on the 15<sup>th</sup> day of the 2<sup>nd</sup> month of the Term, Member would be obligated to pay three more months of a prorated Membership fee because the cancellation is effective on the last day of the 3<sup>rd</sup> month following the month notice of termination was delivered. Member has the right to terminate immediately if services are not provided by BPC.

BPC has the right not to accept this Agreement and to return a potential Member's prorated payment within fifteen (15) days of submission.

BPC also reserves the right to cancel any Membership for cause, including: (i) nonpayment of the Membership Fee or any applicable co-payments or deductibles; (ii) any issues regarding repeated non-compliance with medical care policies; (iii) any threats to staff, physicians or other patients (verbal or physical); (iv) abusing the access to BPC Provider or other staff cell phone (frequent calls for non-medical reasons, after hours calls for non-urgent matters); (v) damage to BPC 's property or (vi) inability to provide services to Member.

IV. **Excluded Medical Services.**

The Annual Membership Fee covers only the Program Amenities listed above. BPC Member and/or Member's insurance carrier(s) will be financially responsible for charges for medical services and testing, including any applicable co-payments and deductibles. A Member who is new to BPC will be required to complete separate patient intake forms to be able to receive the medical services and diagnostic testing.

Member also acknowledges that: all labs, X-rays, and other ancillary medical services *not* provided for under this Agreement are performed by outside independent medical facilities and billed separately by these facilities. Member acknowledges and agrees that BPC, its physicians, employees and agents are not liable for any laboratory errors or problems arising from interaction with any independent medical facility.

Further, Members will still be responsible for any additional fees incurred for any services not rendered under the above BPC Membership Program, including but not limited to: labs, diagnostic testing, specialist appointments, prescriptions, hospitalizations and surgeries.

V. **Independent Medical Judgment.**

BPC Providers shall retain full discretion to exercise their professional medical judgment on behalf of each Member. Nothing in this Agreement shall be deemed or construed to influence or affect the BPC Provider's independent medical judgment on behalf of a Member.

VI. **Email and Video Conferencing Communications and Text Messages.**

- A. Member authorizes BPC to communicate with Member by e-mail regarding Member's personal health information (as such term is defined by the Health Insurance Portability and Accounting Act of 1996 and its implementing regulations)("PHI") at Member's email address shown on the signature page of this Agreement. All e-mail must be sent through the HIPAA compliant portal on the BPC website when available. Until such time, if Member wants to communicate by e-mail, Member must execute an E-Mail Consent Form to be able to send e-mails through a non-HIPAA compliant site. Member shall be provided a user name and password to enter the portal. Member can then change his/her password.
- B. Member acknowledges and agrees that:
- i. Member will not share his/her password with any other person.
  - ii. Regular e-mail is not a secure medium for sending or receiving PHI and is not compliant with HIPAA. Therefore, all e-mail must be sent through the HIPAA compliant portal on the BPC website when available. Until such time, if Member wants to communicate by e-mail, Member will execute an Advanced Technology Consent Form.
  - iii. E-mail communications will automatically be included in the Member's electronic medical record.

Regular video communication (such as Skype or FaceTime) is not a secure medium for sending or receiving PHI and is not compliant with HIPAA. Therefore, all video conference visits, must be done through a HIPAA compliant portal that will be made available through BPC. Until such time, if Member wants to communicate

- by video-conferencing, Member will execute an Advanced Technology Consent Form
- iv. Member will not use e-mail or videoconferencing for communications regarding emergencies, time-sensitive issues, or for communication regarding other sensitive information.
  - v. Standard Text messages to Dr. Tutty or her staff are not allowed due to the high frequency of errors and inability to create entries on medical records as well as HIPAA restrictions. However, messaging will be allowed through a secure portal system made available through BPC. Until such time, if Member wants to communicate by video-conferencing, Member will execute an Advanced Technology Communication Consent Form

VII. **Availability of Membership**

BPC may from time to time, due to vacations, sick days and other similar situations, not be available to directly provide Membership Services. These times will be minimal and BPC shall make every effort to give sufficient advanced notice to Members so Services can be scheduled on another date. However, in an emergency, Member calls to BPC will be directed to a healthcare provider who is covering for BPC.

VIII. **Notices.**

Any communication required or permitted to be sent under this Membership Agreement will be in writing and sent via facsimile or via certified mail, return receipt requested, to the address of Member set forth below, or to BPC at the address set forth in the introductory paragraph. Any change in address will be communicated in accordance with the provisions of this section.

IX. **Governing Law Venue.**

This Agreement shall be governed and in accordance with the laws of the State of Florida. Venue for any action commenced under this Agreement shall be Duval County, Florida.

X. **Entire Agreement.**

The parties agree and understand that this Agreement embodies the entire agreement between the parties, the terms of which are expressly set forth herein. There are no other additional promises, understandings or representations, oral or otherwise. This Agreement supersedes all other agreements between the parties. This Agreement may be modified only by the written agreement of both parties.

XI. **Severability.**

In the event any clause contained herein is determined to be unenforceable, it may be stricken from this Agreement, in part or in whole; however, the remaining clauses shall remain in full force and effect.

XII. **Assignment.**

Member shall not assign this Agreement to any other person. BPC may assign all of its rights and duties under this Agreement to any entity or a physician that purchases all or substantially all of BPC's practice. This Agreement shall inure to the benefit of and shall be

binding upon the parties hereto and their respective successors and permitted assigns.

XIII. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement, with a counterpart being delivered to each party hereto.

XIV. **Waiver.**

The waiver by either party of a breach or violation of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

XV. **Arbitration.**

Any controversy or claim, regardless of whether the dispute concerns the medical care rendered, including any negligence claim relating to the diagnosis, treatment, or care of Member, or payment of the Membership Fees, or any other matter whatsoever, arising out of or related to this Agreement, any addenda hereto, or any breach thereof, shall be settled by mandatory binding arbitration in accordance with the rules and procedures of the Florida Arbitration Code, Chapter 682 (Florida Statutes). Such arbitration shall be conducted before a single arbitrator selected jointly by the parties, or in the event the parties are unable to agree, designated by the American Arbitration Association (AAA).

In the event that either party to this Agreement refuses to go forward with arbitration, the party compelling arbitration reserves the right to proceed with arbitration, the appointment of the arbitrator, and hearings to resolve the dispute, despite the refusal to participate or the absence of the opposing party. The arbitrator shall go forward with the arbitration hearing and render a binding decision without the participation of the party opposing arbitration or despite his or her absence at the arbitration hearing.

Prior to commencing any action for malpractice or negligence for any professional services provided by BPC or its employees, Member must comply with the presuit notice and investigation requirements of Chapter 766, Florida Statutes.

Member understands that Member has a constitutional right under Article 1, Section 21 of the Florida Constitution of Access to Courts as follows: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Member understands and acknowledges that signing this Agreement waives this constitutional right.

Member agrees that in the event of any dispute with BPC, for any reason whatsoever, including any negligence claim relating to the diagnosis, treatment, or care of Member, Member's non-economic damages (including, but not limited to, damages for pain and suffering) shall be limited to a maximum of \$250,000 per incident, and shall be calculated on a percentage basis with respect to capacity to enjoy life, pursuant to the formula contained in Section 766.207, Florida Statutes. For example, if Member's injuries resulted in a 50% reduction in his or her capacity to enjoy life, this would warrant an award of not more than \$125,000 in non-economic damages. This limit applies regardless of the number of claimants or defendants in the arbitration proceeding. This limitation of damages provision does not limit or restrict in any way Member's right to seek all economic damages actually incurred by Member, including any medical expenses and lost wages.

The award of the arbitrator may be enforced by any court having proper jurisdiction thereof. The award of the arbitrator shall be final and binding upon the parties. The

arbitrator shall not be entitled to award punitive, consequential, exemplary, or similar damages. The costs of such arbitration (excluding the attorney's fees and costs of each of the parties) shall be shared equally by the parties. To the extent permitted by law, the parties hereby jointly and severally waive any and all right to trial by jury in any action or proceeding arising out of or relating to this Agreement, or the obligations hereunder. The parties each represent to the other that this waiver is knowingly, willingly, and voluntarily given.

**XVI. Consent to Participate in Membership Program.**

Each Member must complete and sign this Agreement to effectuate Membership. Member hereby acknowledges his/her decision to participate in BPC 's Membership Program. Member has the right to review and/or decline to sign this Agreement or to consult with and/or seek care from a different doctor. Member has been advised that he/she may speak with the staff or the physician about this Agreement if he/she has any questions. Member's signature below indicates that he/she has read this Agreement completely and has either had all of Member's questions answered or acknowledges that Member understands it and does not need to speak to anyone before signing this form. Member understands that this is an important legally binding contractual agreement which may affect Member's rights or the rights of the individual on whose behalf Member is executing this contractual agreement. Member requests services from BPC in full agreement with and understanding of the above. Member is not relying on any oral representations by anyone employed by or affiliated with BPC in entering this Agreement and is signing of Member's own free will. The undersigned Member agrees to the terms of this Agreement, all of which are set forth herein. B P C has not made any promises, representations or guarantees except as set forth herein.

**Please read the terms of this Membership Agreement carefully. By selecting the "I agree to the Terms and Conditions" option you are accepting and agreeing to all the terms of this Membership Agreement with Balanced Physician Care. If you do not meet this criterion or you do not agree to any of the terms of this Membership Agreement, please select the "I do not agree to the Terms and Conditions" or use your browser's Back button to exit this page. You further agree that, once this Membership Agreement is accepted, Your acceptance of this Membership Agreement is binding on you and continuing in nature for the entire Term, including all renewals thereof, of the Membership Agreement.**