

09/003181

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA
RESOLUTION APPROVING AGREEMENT FOR MEDICAL EVALUATIONS

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the Merit Medical Evaluations is a firm that has experience and expertise in the provision of medical evaluations and the review of medical files; and,

WHEREAS, Sarpy County has the need for a firm to provide a medical evaluation and a medical file review for a personnel related issue.

NOW, THEREFORE, BE IT RESOLVED, By the Sarpy County Board of Commissioners, that the attached Agreement with Merit Medical Evaluations is hereby approved and that the signature of the Deputy County Administrator is hereby ratified.

DATED this 17th day of November, 2009.

MOVED by Rich Ganson, seconded
by Yon Richards, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

None

None

ABSTAIN:

None

Attest:

SEAL



Approved as to Form

[Signature]
County Clerk

[Signature]
Deputy County Attorney

Litigation Consulting Agreement [REDACTED]

This agreement is made effective as of 11/04/09 by and between Merit Medical Evaluations, a Nebraska Professional Corporation of 13923 Gold Circle, Suite 105, Omaha, NE 68144 and Sarpy County, 1308 Gold Coast Road, Suite 200, Papillion, NE 68046.

In this agreement, the party who is contracting to receive services shall be referred to as "Client," and the party who will be providing the services shall be referred to as "Vendor." The Vendor has consulting physicians with backgrounds in medicine and related services that are willing to provide services to Client based on their backgrounds. Client desires to have services provided by the physicians of the Vendor. Therefore, the parties agree as follows:

1. DESCRIPTION OF SERVICES
Beginning on 11/04/09 the Vendor will provide the following generally described services (collectively, the "Services"): independent medical evaluations and review of medical files. This may include but not be limited to research, analysis, testing, inspection, review of materials, patient interviews, report preparation, expert testimony in depositions and trial proceedings if necessary, reading and correction of deposition transcript, and review and signing of affidavits and similar documents.
2. FEE SCHEDULE AND PAYMENT TERMS
Please see Attachment
3. TERMINATION
Either party through written notice to the other party may terminate this Agreement at any time. However, the terms of the Agreement shall remain in effect until the obligations outlined in this Agreement are fulfilled.
4. RELATIONSHIP OF PARTIES
It is understood by the parties that the Vendor is an independent contractor with respect to Client, and not employed by the Client.
5. INDEMNIFICATION
Client agrees to indemnify and hold Vendor and its Consultants harmless from all claims, losses, expenses, and fees including attorney fees, costs, and judgments that may be asserted against Vendor and its Consultants that result from the acts of omissions of Client, Client's employees, and Client's agents. In addition, the Client accepts a duty to defend these claims.
6. ASSIGNMENT
Vendor's obligations under this Agreement may not be assigned or transferred to any other vendor without the prior written consent of Client.

Client Initials: SUB
Vendor Initials: SM

7. CONFIDENTIALITY

Client recognizes that Vendor has or will have confidential medical records. In consideration of this, Vendor agrees that Vendor will abide by HIPPA (Health Insurance Portability and Accountability Act) standards. Vendor will protect the information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

8. RETURN OF RECORDS

Upon termination of this Agreement, Vendor shall return or destroy all records, notes, data, memoranda, models, and equipment of any nature that are in the Vendor's possession or under the Vendor's control and that are Client's property or relate to Client's business.

9. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows below. Either party may change such addresses from time to time by providing written notice to the other in the manner set forth below.

If for Client:

Sarpy County
1308 Gold Coast Road, Suite 200
Papillion, NE 68046

If for Vendor:

Merit Medical Evaluations
13923 Gold Circle, Suite 105
Omaha, NE 68144

10. ENTIRE AGREEMENT

This Agreement, including attached fee schedule, contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supercedes any prior written or oral agreements between the parties.

11. AMENDMENT

This agreement may be modified or amended if the amendment is made in writing and is signed and dated by both parties.

Client Initials: *SWB*

Vendor Initials: *cal*

12. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

13. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

14. APPLICABLE LAW

Laws of the State of Nebraska shall govern this agreement.

15. VENUE

The venue for the below signed Agreement is Douglas County, Nebraska.

Party Receiving Services:

Sarpy County
1308 Gold Coast Road, Suite 200
Papillion, NE 68046

By: [Signature]
Title: Deputy Co. Admin. Date: 11/4/09

Party Providing Services:

Merit Medical Evaluations, P.C.
13923 Gold Circle, Suite 105
Omaha, NE 68144

By: [Signature]
Title: Account Manager Date: 11/4/09

FEE SCHEDULE AND PAYMENT TERMS

INDEPENDENT MEDICAL EVALUATIONS

Independent Medical Evaluations will be billed at a minimum rate of \$1,300.00 per case. The actual IME cost will be determined by Merit Medical Evaluations based on the complexity of the case and the hourly rate of the contracted expert. Merit utilizes a wide spectrum of medical experts with hourly rates ranging from \$200.00 per hour to \$600.00.

DEPOSITION AND COURTROOM TESTIMONY/APPEARANCES

Consulting at depositions, courtroom appearances, or other legal testimony will be billed as follows: (1) Depositions or other legal testimony taken in the geographic area will be billed at \$600.00 per hour at a minimum of two-hour increments, a non-refundable retainer of \$1,200.00 will need to be received at least two weeks in advance of the scheduled deposition; (2) Deposition, courtroom appearances, or other legal testimony taken outside of the geographic area will be billed at a per diem rate of \$3,000.00 per day plus expenses. For cancellation purposes, irrespective of geographic location, the billing shall be \$500.00 per hour (See "Terms" below). Billing is made for time being deposed, courtroom testimony, and waiting time. It is acknowledged that the physician working on the behalf of Merit Medical Evaluations will not be deposed or provide expert testimony if any invoices and/or retainer fees have not been paid prior to said depositions, court appearances, or other legal testimony.

EXPENSES

Vendor should be entitled to reimbursement from Client for all out-of-pocket expenses including but not limited to lodging, meals, car rental, air fare, photography, audio/visual aids, materials, electronic research fees, laboratory fees, couriers, and specialized commercial services. Automobile mileage will be billed at the current IRS allowance. Estimates of expenses will be provided upon request.

TERMS

- Prepayment is required on all work done by Merit Medical Evaluations.
- Checks should be made payable to Merit Medical Evaluations, P.C. (Tax ID #: 20-2864250)
- A minimum retainer in the amount of \$1,300 is required for independent medical evaluations and \$900 for record reviews.
- If payment is not received 72 hours (3 days) before the scheduled appointment then Merit Medical Evaluations reserves the right to cancel the independent medical evaluation.
- We must receive prepayment on record reviews before our physicians will begin working on the review of records.
- A no show fee of \$300 will be applied when the claimant fails to appear for their scheduled appointment or if an appointment is cancelled in 24 hours or less.
- Prepayment of a retainer will be required for the deposition, courtroom or other legal testimony/appearance, based upon the estimated amount of time required to perform the function and the geography-specific rates quoted above, at least seven working days prior to the scheduled event. Time spent on such testimony/appearance shall be billed against the retainer. Since such appearances may require travel, all off-site consulting (meaning out of the geographic area of the Vendor) or court/deposition appearances will be included in the per diem rate.
- Special tasks or areas of investigation might be recommended after initial evaluation of the assignment. Costs for and potential gains from such tasks will be discussed with the Client and will require approval before they are undertaken.
- Rates are subject to change. However, rates quoted at the time assignment is accepted will remain in effect for one year or until completion of assignment, whichever is earlier.
- All invoices are due when rendered. Any credit balance remaining on the account from the retainer after a case is completed will be refunded to the Client. Invoices 15 days past due will be charged interest at the rate of 1.5% per month (annual rate of 18%), and will be assessed a \$200.00 late fee.

Client Initials: SWB

Vendor Initials: CAI

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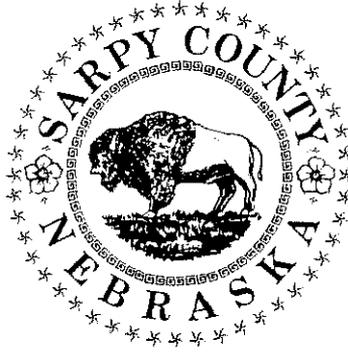
Sarpy County Board of Commissioners

1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046-2895
593-4155
www.sarpy.com

ADMINISTRATOR
Mark Wayne

DEPUTY ADMINISTRATOR
Scott Bovick

FISCAL ADMIN./PURCHASING AGT.
Brian Hanson



COMMISSIONERS

Rusty Hike
District 1

Joni Jones
District 2

Tom Richards
District 3

Pat Thomas
District 4

Rich Jansen
District 5

MEMO

November 17, 2009

TO: Sarpy County Board of Commissioners

FROM: Scott Bovick, Deputy County Administrator

RE: Resolution to Approve Agreement with Merit Medical to provide independent medical evaluation services for Sarpy County

Recently there have been several County employees requesting and utilizing leave under the Family and Medical Leave Act (FMLA). Employees have the right to FMLA leave based on a formal statement from their primary physician identifying a qualifying medical condition. Unfortunately, sometimes the physician statements we receive are unclear or require more explanation. Employers are prohibited from requiring more explanation from the employee's physician, but we are allowed to seek a second opinion from our own physician.

Therefore, I am requesting the County Board approve an agreement with Merit Medical to provide an independent medical evaluation (i.e. second opinion) at the cost of \$1,300.00 for an employee who is on FMLA leave. Merit Medical specializes in FMLA leave evaluations, and their report will allow us to better understand the basis for this individual's requested FMLA leave.

Please feel free to contact me with questions at (402) 593-1568.


Scott Bovick, Deputy County Administrator

Cc: Deb Houghtaling
Mark Wayne
Mike Smith
Brian Hanson
Linda Welles