

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT VINH DUONG, M.D., ANNIE LYNN
PENACO DUONG, M.D., and DUONG
ANESTHESIA, PLLC,

Appellants,

vs.

FIELDEN HANSON ISAACS MIYADA
ROBINSON YEH, LTD.,

Respondent.

Supreme Court No.: 79460

Eighth Judicial District Court

Case No.: A-19-789110-B

Electronically Filed
Sep 13 2019 03:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XIII
County Clark Judge Honorable Mark R. Denton
District Ct. Case No. A-19-789110-B

2. Attorney filing this docketing statement:

Attorney Martin A. Little, Ryan T. O'Malley Telephone 702.257.1483

Firm Howard & Howard Attorneys PLLC

Address 3800 Howard Hughes Pkwy., Ste. 1000, Las Vegas, Nevada 89169

Client(s) Appellants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong Anesthesia, PLLC,

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael N. Feder & Gabriel A. Blumberg Telephone 702-550-4438

Firm Dickinson Wright

Address 8363 West Sunset Road, Suite 200, Las Vegas, NV 89113

Client(s) Respondent Fielden Hansen Isaacs Miyada Robinson Yeh, Ltd.

Attorney Richard G. Campbell, Jr. Telephone 775.686.2446

Firm The Law Office of Richard G. Campbell, Jr., Inc.

Address 200 South Virginia Street, 8th Floor

Client(s) Plaintiffs/Respondent George Stuart Yount, individually and in his capacity as owner of George Yount IRA

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case arises from an unenforceable covenant not to compete. Appellants Scott Duong, M.D. and Annie Lynn Penaco Duong, M.D. (the “Duongs”) had been employed by an anesthesiology practice called Premier Anesthesiology Consultants (“PAC”). In or around December of 2016, a multistate anesthesiology conglomerate called U.S. Anesthesia Partners (“USAP”) came to Las Vegas in a merger deal which involved PAC/ACI and another group called Summit Anesthesia Consultants. Respondent Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. (“Fielden Hanson”) is a subsidiary of USAP.

In connection with this acquisition, USAP/Fielden Hanson required the Duongs to execute Physician-Track Employment Agreements (“Agreements”) if they wished to continue their employment. The Agreements span 23 single-spaced pages, and it includes a non-competition provision. This provision lacks any geographical limitation, and instead casts its scope in terms of “Facilities” – a definition broad enough to include every major hospital in Las Vegas. In addition to barring the Duongs from these hospitals, the Agreements additionally purport to require them to terminate their privileges at every “Facility” under the agreement should they leave Fielden Hanson, apparently indefinitely.

In or around August of 2018, the Duongs provided 90 days’ notice of their intent to terminate their employment with Fielden Hanson, as provided in Section 6.2.9 of the Agreement. The Duongs had no intention of competing with Fielden Hanson following their departure by attempting to divert any business from them, and they have not done so. However, they also did not conceal their intention to continue working as anesthesiologists in Las Vegas following their departure from Fielden Hanson.

In or around November of 2018, the Duongs’ notice period ended, and they became independent contractors. Since their departure, they have made affirmative efforts not to compete with Fielden Hanson. The Duongs associated with an anesthesia practice called Red Rock Anesthesia Consultants (“Red Rock”), and their practice since their departure from USAP has consisted primarily of accepting assignments from Red Rock.

Aside from their relationship with Red Rock, the Duongs have never solicited work from any physician, physician group, or other healthcare provider. Specifically, the Duongs have never solicited any work from any physician, physician group, or healthcare provider with whom they had ever formed a relationship because of their time at USAP. Nor have they ever encouraged any physician, physician group, or healthcare provider to terminate a relationship with USAP or to divert any portion of their anesthesiology coverage from USAP. To the Duongs’ knowledge, no physician, physician group, or healthcare provider has ever terminated a relationship with USAP or diverted any portion of their anesthesiology coverage from USAP because of their departure or their affiliation with Red Rock or any other provider.

Nevertheless, Fielden Hanson’s parent company, USAP, sent the Duongs a cease and desist

letter in December of 2018. This litigation followed in February of 2019, and Fielden Hanson sought a preliminary injunction shortly thereafter.

On April 9, 2019, the district court issued an order granting Fielden Hanson's motion in part. The district court held that the contract was unenforceable as written, but invoked NRS 613.195(5) to modify its terms. However, NRS 613.195(5) was enacted after the contract at issue was executed, and it was nevertheless invoked retroactively to modify the terms of the terms of the parties' agreement. The Duongs moved to alter or amend the judgment on May 7, 2019. The court denied the motion on July 17, 2019. This appeal followed on August 16, 2019.

On August 9, 2018, Plaintiff/Respondent filed in the Related Case a Motion to Determine Appellate Jurisdiction. In an August 24, 2018 Order on Jurisdiction, the Nevada Supreme Court stated that the March 12, 2018 Judgment "made no substantive changes to the terms of the amended order[.]" While this may have been true with respect to Plaintiff's appeal (which challenged the district court's entire judgment in toto), the terms were substantively different with respect to Appellants' damages to the extent that it (unilaterally and without hearing) excised their awards for lost development fees, management fees, attorneys' fees, and costs. Nevertheless, the district court refused to act on the Appellants' motions, believing that it lacked jurisdiction based upon the Related Case.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Is a non-competition agreement overbroad when it lacks any geographic limitation that purportedly bars a former physician employee from working at any "facility" with which his former employer has a relationship, and it requires the physician to indefinitely terminate his privileges at those same facilities upon the termination of his employment?
2. Can NRS 613.195(5) operate retrospectively to modify the terms of a non-competition agreement that was executed before the statute's enactment?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. v. Tang, Case No. 78358 presents the same issues as this case, and it arises from the same employment agreement which employs the same operative language. Like court below here, the district court in *Tang* found the non-competition agreement to be unenforceable as drafted. However, the *Tang* court also correctly held that NRS 613.195(5) cannot be applied retroactively, which differs its procedural posture slightly from this case.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This case (and the related *Tang* case) present the issue of whether NRS 613.195(5) may be applied retroactively to non-competition agreements executed before the statute's enactment. This issue is of substantial importance to employers and employees alike, and it is likely to recur in subsequent litigation.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Nevada Supreme Court should retain this matter pursuant to NRAP 17(a)(12). This case (and the related *Tang* case) present the issue of whether NRS 613.195(5) may be applied retroactively to non-competition agreements executed before the statute's enactment. This issue is of substantial importance to employers and employees alike, and it is likely to recur in subsequent litigation.

Moreover, this case presents fundamental questions regarding retroactive application of statutes and the "procedural vs. substantive statute" distinction which drives that inquiry. The Court must determine whether a statute is substantive when it invokes the judicial process to modify the substantive terms of a private contract. There is, to counsel's knowledge, no Nevada law directly addressing this point.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 9, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served April 9, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing May 7, 2019

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion July 17, 2019

(c) Date written notice of entry of order resolving tolling motion served July 17, 2019

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed August 16, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(3) grants jurisdiction over “an order granting or refusing to grant an injunction.” This appeal is from the district court’s order granting a preliminary injunction in part. Therefore, the Court has jurisdiction.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Scott Vinh Duong, M.D.

Annie Lynn Penaco Duong, M.D.

Duong Anesthesia, PLLC

Fielden Hansen Isaacs Miyada Robinson Yeh, Ltd.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff/respondent asserted the following claims against Appellants:

- Breach of Contract against Scott Duong and Annie Duong
- Breach of the Implied Covenant of Good Faith and Fair Dealing against Scott and Annie Duong
- Intentional Interference with Business Relationships against all Appellants
- Intentional Interference with a Prospective Economic Advantage against all Appellants
- Unjust Enrichment against all Appellants

Those claims remain pending in the district court.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below: All claims remain pending.

(b) Specify the parties remaining below: All parties remain in the action.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(3).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Scott Duong, M.D., et al.

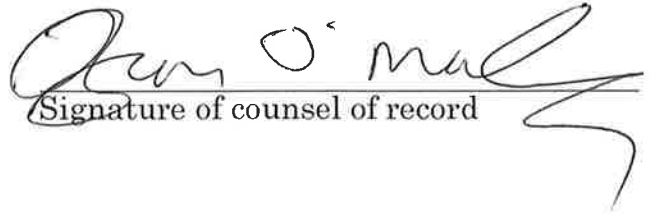
Name of appellant

Ryan T. O'Malley

Name of counsel of record

September 13, 2019

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 13th day of September, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

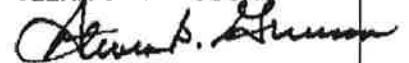
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Kuzemka Law Group
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Las Vegas, NV 89144

Dated this 13th day of September, 2019


Signature

EXHIBIT A



1 **COMP**
2 **DICKINSON WRIGHT PLLC**
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12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA** A-19-789110-B

16 FIELDEN HANSON ISAACS MIYADA
17 ROBISON YEH, LTD.,

18 Plaintiff,

19 vs.

20 SCOTT VINH DUONG, M.D., ANNIE
21 LYNN PENACO DUONG, M.D., DUONG
22 ANESTHESIA, PLLC and DOE Defendants
23 I-X,

24 Defendants.

Case No.:
Dept.: Department 16

COMPLAINT

**Exempt from Arbitration:
Extraordinary Relief Requested;
Damages in Excess of \$50,000**

(Business Court Requested)

25 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson"), by and
26 through its attorneys, the law firm of Dickinson Wright PLLC, files this Complaint against
27 Defendants Scott Vinh Duong, M.D. ("Scott Duong"), Annie Lynn Penaco Duong M.D. ("Annie
28 Duong" and together with Scott Duong, "Drs. Duong"), and Duong Anesthesia PLLC ("DAP" and
together with Drs. Duong, the "Defendants") as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Fielden Hanson is a Nevada professional corporation duly licensed to do business
in the State of Nevada.

2. Fielden Hanson is informed and believes and thereupon alleges that Scott Duong is

1 a resident of Clark County, Nevada and at all times relevant herein conducted business in Clark
2 County, Nevada.

3 3. Fielden Hanson is informed and believes and thereupon alleges that Annie Duong
4 is a resident of Clark County, Nevada and at all times relevant herein conducted business in Clark
5 County, Nevada.

6 4. Fielden Hanson is informed and believes and thereupon alleges that DAP is a
7 Nevada professional limited liability company doing business in Clark County, Nevada.

8 5. Fielden Hanson alleges the true names and capacities, whether individual,
9 corporate, associates or otherwise of defendants named herein as Does Individuals and Roe
10 Entities I through X, inclusive, are unknown to Fielden Hanson, who therefore sues said defendants
11 by such fictitious names. Fielden Hanson will ask leave to amend this Complaint to show the true
12 names and capacities of Does Individuals and Roe Entities I through X inclusive when the same
13 have been ascertained. Fielden Hanson believes and therefore alleges that each defendant named
14 as a Doe Individual and Roe Entity is responsible in some manner for the events herein referred to
15 and caused damages proximately thereby to Fielden Hanson as alleged herein.

16 6. This Court has personal jurisdiction over Defendants because they have conducted
17 business at all times relevant herein in Clark County, Nevada, and their obligations to Fielden
18 Hanson arise from actions undertaken in Clark County, Nevada.

19 7. Venue is proper in this district pursuant to the forum selection clause in the
20 employment agreements entered into by Drs. Duong with Fielden Hanson. Venue is also proper
21 pursuant to NRS 13.010 and 13.040.

22 II. FACTUAL BACKGROUND

23 8. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
24 preceding paragraphs as if fully set forth herein.

25 ***Drs. Duong Enter Into Employment Agreements Containing Non-Compete and Non-Solicitation Provisions***

26 9. On or about December 2, 2016, Scott Duong entered into a Partner-Track Physician
27 Employment Agreement with Fielden Hanson (the "Scott Duong Agreement").
28

1 10. On or about December 2, 2016, Annie Duong entered into a Partner-Track
2 Physician Employment Agreement with Fielden Hanson (the "Annie Duong Agreement" and
3 together with the Scott Duong Agreement, the "Employment Agreements").

4 11. Pursuant to the Employment Agreements, Drs. Duong agreed that they would work
5 for Fielden Hanson on an exclusive basis and all of their "professional Anesthesiology and Pain
6 Management Services shall be provided solely and exclusively as an employee of [Fielden
7 Hanson] unless Physician receives prior written consent of the Clinical Governance Board and
8 [Fielden Hanson]."

9 12. Drs. Duong voluntarily and knowingly agreed to be bound by a non-competition
10 clause in their Employment Agreements (the "Non-Competition Clause"). More specifically, Drs.
11 Duong agreed:

12 2.8.1 Non-Competition. In consideration of the promises contained herein,
13 including without limitation those related to Confidential Information, except as
14 may be otherwise provided in this Agreement, that during the Term of this
15 Agreement and for a period of two (2) years following termination of this
16 Agreement, Physician covenants and agrees that Physician shall not, without the
17 prior consent of the Practice (which consent may be withheld in the Practice's
18 discretion), directly or indirectly, either individually or as a partner, joint venturer,
19 employee, agent, representative, officer, director, member or member of any person
20 or entity, (i) provide Anesthesiology and Pain Management Services at any of the
21 Facilities at which Physician has provided any Anesthesiology and Pain
22 Management Services (1) in the case of each day during the Term, within the
23 twenty-four month period prior to such day and (2) in the case of the period
24 following the termination of this Agreement, within the twenty-four month period
25 prior to the date of such termination; (ii) call on, solicit or attempt to solicit any
26 Facility serviced by the Practice within the twenty-four month period prior to the
27 date hereof for the purpose of persuading or attempting to persuade any such
28 Facility to cease doing business with, or materially reduce the volume of, or
adversely alter the terms with respect to, the business such Facility does with the
Practice or any affiliate thereof or in any way interfere with the relationship
between any such Facility and the Practice or any affiliate thereof; or (iii) provide
management, administrative or consulting services at any of the Facilities at which
Physician has provided any management, administrative or consulting services or
any Anesthesiology and Pain Management Services (1) in the case of each day
during the Term, within the twenty-four month period prior to such day and (2) in
the case of the period following the termination of this Agreement, within the
twenty-four month period prior to the date of such termination.

1 13. The geographic scope of the Non-Competition Clause is limited to the "Facilities"
2 where Drs. Duong worked for Fielden Hanson and does not preclude Drs. Duong from performing
3 services at any other locations.

4 14. The Employment Agreements define "Facilities" as (1) medical facilities with
5 which Fielden Hanson has "a contract to supply licensed physicians . . . who provide
6 Anesthesiology and Pain Management Services . . ." (2) "facilities at which any such providers
7 have provided Anesthesiology and Pain Management Services at any time during the [term of the
8 Employment Agreements] . . ." and (3) "facilities with which [Fielden Hanson] has had active
9 negotiations to supply" such services.

10 15. Following termination of the Employment Agreements, Drs. Duong are prohibited
11 from providing anesthesia and pain management services at Facilities where Drs. Duong provided
12 those services during the term of the Employment Agreements. Drs. Duong are not prohibited
13 from providing any services at any other hospital, ambulatory surgery center, or other location.

14 16. Drs. Duong also voluntarily and knowingly agreed to be bound by the following
15 Non-Solicitation Clause in their Employment Agreements:

16 2.8.2 Non-Solicitation. In consideration of the promises contained herein, including
17 without limitation those related to Confidential Information, except as may be
18 otherwise provided in this Agreement, during the Term of this Agreement and for
19 a period of two (2) years following termination of this Agreement, Physician
20 covenants and agrees that Physician shall not (i) solicit or otherwise attempt to
21 contact any past or current Patient, or immediate family member of such Patient,
22 for purposes of inducing the Patient to become a patient of Physician or the patient
23 of any medical practice in which Physician practices or otherwise has a financial
24 interest; (ii) solicit or otherwise attempt to contact any physician (including
25 surgeons) for which licensed physicians, CRNAs, AAs and other authorized health
26 care providers employed by the Practice currently provide, or have provided during
27 the twelve month period prior to the termination of Physician's employment,
28 consultative services or anesthesia services, for purposes of inducing such
physician to consult with Physician or consult with any medical practice in which
Physician practices or otherwise has a financial interest; (iii) solicit any of the
Facilities for the purpose of obtaining any contractual relationship with the Facility
for Physician or any medical practice in which Physician practices or otherwise has
a financial interest; or (iv) solicit for employment, or employ or engage any
individual who is or was employed by the Practice during the twenty-four month
period prior to the termination of Physician's employment, including, but not
limited to, employees of any entity, the majority of the equity interests of which is
owned by the Practice.

1 17. In the Employment Agreements, Drs. Duong acknowledged that their covenants
2 regarding Non-Competition and Non-Solicitation “are necessary to ensure the continuation of the
3 business of [Fielden Hanson] and the reputation of [Fielden Hanson] as a provider of readily
4 available and reliable, high quality physicians, as well as to protect [Fielden Hanson] from unfair
5 business competition, including but not limited to, the improper use of Confidential Information.”

6 18. Drs. Duong also confirmed in the Employment Agreements that any breach of the
7 Non-Competition Clause would cause Fielden Hanson irreparable harm and, therefore, Fielden
8 Hanson would be entitled to injunctive relief to prevent further breaches of the Non-Competition
9 Clause.

10 19. Drs. Duong also explicitly agreed that the Non-Competition Clause and Non-
11 Solicitation Clause of the Employment Agreements were essential elements of those agreements
12 and that “but for the agreement of [Drs. Duong] to comply with such covenants, [Fielden Hanson]
13 would not have agreed to enter into” the Employment Agreements.

14 20. Drs. Duong further agreed that in the event that any court holds any restriction
15 contained in the Non-Competition Clause of the Employment Agreements to be unenforceable or
16 unreasonable, that “a lesser restriction shall be severable therefrom and may be enforced in its
17 place”

18 ***Drs. Duong Perform Anesthesia Services at Many Facilities During the Course of Their***
19 ***Employment with Fielden Hanson***

20 21. The Non-Competition Clause of the Scott Duong Employment Agreement is
21 limited in geographic scope to the following medical facilities where Scott Duong performed
22 anesthesia services during his employment by Fielden Hanson (the “Scott Duong Non-
23 Competition Facilities”): Clear Choice Dental, Desert Springs Hospital, Durango Outpatient,
24 Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon
25 Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View
26 Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven
27 Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical
28 Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena

1 Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery
2 Center, Valley Hospital Medical Center, and Valley View Surgery Center.

3 22. The Non-Competition Clause of the Annie Duong Employment Agreement is
4 limited in geographic scope to the following medical facilities where Annie Duong performed
5 anesthesia services during her employment by Fielden Hanson (the "Annie Duong Non-
6 Competition Facilities"): Affinity Surgery Center, Clear Choice Dental, Desert Springs Hospital,
7 Durango Outpatient, Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery
8 Center, Horizon Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare,
9 Mountain View Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient
10 Surgery Center, Seven Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center,
11 Spring Valley Medical Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose
12 Dominican Hospital- Siena Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise
13 Hospital, Sunset Surgery Center, Valley Hospital Medical Center, and Valley View Surgery
14 Center.

15 ***Drs. Duong Knowingly Breach the Employment Agreements by Performing Anesthesia Services***
16 ***at Certain Facilities Without Fielden Hanson's Consent***

17 23. On November 7, 2018, while Drs. Duong remained employed by Fielden Hanson
18 and subject to the Employment Agreements, they became managing members of DAP.

19 24. More than two weeks after they became managing members of DAP, Drs. Duong
20 terminated their employment with Fielden Hanson.

21 25. Soon thereafter, Drs. Duong provided anesthesia services at St. Rose Dominican
22 Hospital- San Martin Campus and Summerlin Hospital Medical Center, each a Scott Duong Non-
23 Competition Facility and Annie Duong Non-Competition Facility.

24 26. After learning that Drs. Duong were violating the Non-Competition Clause by
25 working at St. Rose Dominican Hospital- San Martin Campus and Summerlin Hospital Medical
26 Center, Fielden Hanson's counsel sent cease and desist letters to Drs. Duong notifying them of
27 their breaches of the Employment Agreements and requesting a response by December 28, 2018
28 (the "Cease and Desist Letters").

31. On January 17, 2019, Scott Duong performed anesthesia services at Southern Hills Hospital, a Scott Doung Non-Competition Facility.

(Breach of Contract Against Scott Duong)

37. Scott Duong will continue to breach the Scott Duong Agreement unless and until enjoined by this Court.

1 38. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Scott
2 Duong from further breaching the Scott Duong Agreement pursuant to Section 2.8.3 of the
3 Employment Agreements.

4 39. Scott Duong's violations of the Scott Duong Agreement also have caused Fielden
5 Hanson to suffer damages in an amount in excess of \$15,000.

6 40. Fielden Hanson has been required to retain the services of an attorney to pursue its
7 claims against Scott Duong and is entitled to reasonable attorneys' fees and costs incurred in
8 prosecuting this action pursuant to Section 11.3 of the Scott Duong Agreement.

9 **SECOND CAUSE OF ACTION**
10 **(Breach of Contract Against Annie Duong)**

11 41. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
12 preceding paragraphs as if fully set forth herein.

13 42. The Annie Duong Agreement is a valid, enforceable written contract.

14 43. Fielden Hanson has performed all of its required obligations under the terms of the
15 Annie Duong Agreement.

16 44. Annie Duong breached the Annie Duong Agreement by performing anesthesia
17 services at St. Rose Dominican Hospital- San Martin Campus, Summerlin Hospital Medical
18 Center, and Southern Hills Hospital.

19 45. Annie Duong's breaches of the Annie Duong Agreement are causing irreparable
20 harm to Fielden Hanson's goodwill and business reputation.

21 46. Annie Duong will continue to breach the Annie Duong Agreement unless and until
22 enjoined by this Court.

23 47. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Annie
24 Duong from further breaching the Annie Duong Agreement pursuant to Section 2.8.3 of the
25 Employment Agreements.

26 48. Annie Duong's violations of the Annie Duong Agreement also have caused Fielden
27 Hanson to suffer damages in an amount in excess of \$15,000.

1 49. Fielden Hanson has been required to retain the services of an attorney to pursue its
2 claims against Annie Duong and is entitled to reasonable attorneys' fees and costs incurred in
3 prosecuting this action pursuant to Section 11.3 of the Annie Duong Agreement.

4 **THIRD CAUSE OF ACTION**
5 **(Breach of Implied Covenant of Good Faith and Fair Dealing Against Scott Duong)**

6 50. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
7 preceding paragraphs as if fully set forth herein.

8 51. The Scott Duong Agreement is a valid and existing contract.

9 52. Implied in the Scott Duong Agreement is the obligation of good faith and fair
10 dealing.

11 53. Scott Duong has acted in a manner unfaithful to the purpose of the Scott Duong
12 Agreement by performing anesthesia services at Scott Duong Non-Competition Facilities.

13 54. Scott Duong's breaches of the implied covenant of good faith and fair dealing are
14 causing irreparable harm to Fielden Hanson's goodwill and business reputation.

15 55. Scott Duong will continue to breach the implied covenant of good faith and fair
16 dealing unless and until enjoined by this Court.

17 56. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Scott
18 Duong from further breaching the implied covenant of good faith and fair dealing pursuant to
19 Section 2.8.3 of the Scott Duong Agreement.

20 57. Scott Duong's violations of the Scott Duong Agreement also has caused Fielden
21 Hanson to suffer damages in an amount in excess of \$15,000.

22 58. Fielden Hanson has been required to retain the services of an attorney to pursue its
23 claims against Scott Duong and is entitled to reasonable attorneys' fees and costs incurred in
24 prosecuting this action pursuant to Section 11.3 of the Scott Duong Agreement.

25 **FOURTH CAUSE OF ACTION**
26 **(Breach of Implied Covenant of Good Faith and Fair Dealing Against Annie Duong)**

27 59. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
28 preceding paragraphs as if fully set forth herein.

- 1 60. The Annie Duong Agreement is a valid and existing contract.
- 2 61. Implied in the Annie Duong Agreement is the obligation of good faith and fair
3 dealing.
- 4 62. Annie Duong has acted in a manner unfaithful to the purpose of the Annie Duong
5 Agreement by performing anesthesia services at Annie Duong Non-Competition Facilities.
- 6 63. Annie Duong's breaches of the implied covenant of good faith and fair dealing are
7 causing irreparable harm to Fielden Hanson's goodwill and business reputation.
- 8 64. Annie Duong will continue to breach the implied covenant of good faith and fair
9 dealing unless and until enjoined by this Court.
- 10 65. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining Annie
11 Duong from further breaching the implied covenant of good faith and fair dealing pursuant to
12 Section 2.8.3 of the Annie Duong Agreement.
- 13 66. Annie Duong's violations of the Annie Duong Agreement also has caused Fielden
14 Hanson to suffer damages in an amount in excess of \$15,000.
- 15 67. Fielden Hanson has been required to retain the services of an attorney to pursue its
16 claims against Annie Duong and is entitled to reasonable attorneys' fees and costs incurred in
17 prosecuting this action pursuant to Section 11.3 of the Annie Duong Agreement.

18 **FIFTH CAUSE OF ACTION**

19 **(Intentional Interference with Business Relationships Against Drs. Duong)**

- 20 68. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
21 preceding paragraphs as if fully set forth herein.
- 22 69. Drs. Duong knew and were aware of Fielden Hanson's contractual or implied
23 contractual business relationships with the Facilities via their previously employment with Fielden
24 Hanson.
- 25 70. Drs. Duong interfered with Fielden Hanson's business relationships by inducing or
26 attempting to induce the Facilities to cease doing business with Fielden Hanson and instead enter
27 into a business relationship with them.
- 28

1 82. DAP will continue to directly and/or indirectly interfere with Fielden Hanson's
2 business relationships unless and until enjoined by this Court.

3 83. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining DAP
4 from further interfering with Fielden Hanson's business relationships.

5 84. DAP's conduct also has caused Fielden Hanson to suffer damages in an amount in
6 excess of \$15,000.

7 85. Fielden Hanson has been required to retain the services of an attorney to pursue its
8 claims against DAP and is entitled to reasonable attorneys' fees and costs incurred in prosecuting
9 this action.

10 **SEVENTH CAUSE OF ACTION**
11 **(Intentional Interference with Prospective Economic Advantage Against All Defendants)**

12 86. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
13 preceding paragraphs as if fully set forth herein.

14 87. Defendants knew and were aware of Fielden Hanson's prospective contractual
15 business relationships with the Facilities.

16 88. Defendants intended to harm Fielden Hanson by interfering with Fielden Hanson's
17 prospective contractual business relationships with the Facilities.

18 89. Defendants had no privilege or justification for interfering with Fielden Hanson's
19 ability to execute these prospective contractual business relationships with the Facilities.

20 90. Defendants' improper and intentional interference with Fielden Hanson's
21 prospective contractual business relationships is causing irreparable harm to Fielden Hanson's
22 goodwill and business reputation.

23 91. Defendants will continue to directly and/or indirectly interfere with Fielden
24 Hanson's prospective contractual business relationships unless and until enjoined by this Court.

25 92. Fielden Hanson seeks preliminary and permanent injunctive relief enjoining
26 Defendants from further interfering with Fielden Hanson's prospective contractual business
27 relationships pursuant to Section 2.8.3 of the Employment Agreements.
28

1 93. Scott and Annie's conduct also has caused Fielden Hanson to suffer damages in an
2 amount in excess of \$15,000.

3 94. Fielden Hanson has been required to retain the services of an attorney to pursue its
4 claims against Defendants and is entitled to reasonable attorneys' fees and costs incurred in
5 prosecuting this action pursuant to Section 11.3 of the Employment Agreements.

6 **EIGHTH CAUSE OF ACTION**
7 **(Unjust Enrichment Against All Defendants)**

8 95. Fielden Hanson repeats, re-alleges and incorporates the allegations set forth in the
9 preceding paragraphs as if fully set forth herein.

10 96. Defendants were unjustly enriched by wrongfully utilizing Fielden Hanson's
11 goodwill and business relationships for their own financial benefit to the detriment of Fielden
12 Hanson.

13 97. Defendants' actions were not justified and caused Fielden Hanson to sustain actual
14 and/or consequential damages in an amount in excess of \$15,000.

15 98. Fielden Hanson has been required to retain the services of an attorney to pursue its
16 claims against Defendants and is entitled to reasonable attorneys' fees and costs incurred in
17 prosecuting this action pursuant to Section 11.3 of the Employment Agreements.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Fielden Hanson prays for relief against Defendants as follows:

20 (a) For damages against all Defendants, jointly and severally, for their wrongful
21 conduct as set forth herein, in an amount in excess of \$15,000;

22 (b) For punitive and exemplary damage damages against all Defendants, jointly and
23 severally, for their wrongful, intentional, bad faith conduct as set forth herein, in an amount in
24 excess of \$15,000;

25 (c) For preliminary and permanent injunctive relief enjoining Defendants from
26 performing anesthesia services at the Scott Duong Non-Competition Facilities and Annie Duong
27 Non-Competition Facilities or soliciting any business from the Scott Duong Non-Competition
28 Facilities and Annie Duong Non-Competition Facilities.

1 (d) For attorneys' fees and costs; and

2 (e) For such other and further relief as the Court may deem just and proper.

3 DATED this 5th day of February 2019.

4 DICKINSON WRIGHT PLLC

5
6 
MICHAEL N. FEDER

7 Nevada Bar No. 7332

8 GABRIEL A. BLUMBERG

9 Nevada Bar No. 12332

10 8363 West Sunset Road, Suite 200

11 Las Vegas, Nevada 89113-2210

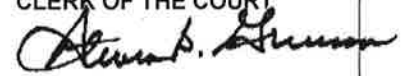
12 Attorneys for Plaintiff

13 Las Vegas, Nevada 89113-2210

14 Tel: (702) 550-4400

15 *Attorneys for Plaintiff*

EXHIBIT B



1 **NEOJ**
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11 Tel: (702) 550-4400
12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 FIELDEN HANSON ISAACS MIYADA
12 ROBISON YEH, LTD.,

13 Plaintiff,

14 vs.

15 SCOTT VINH DUONG, M.D., ANNIE
16 LYNN PENACO DUONG, M.D., DUONG
17 ANESTHESIA, PLLC and DOE Defendants
18 I-X,

19 Defendants.

Case No.: A-19-789110-B
Dept.: 13

**NOTICE OF ENTRY OF ORDER
GRANTING, IN PART, PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

19 PLEASE TAKE NOTICE that on the 9th day of April 2018, the Order Granting, In Part,
20 Plaintiff's Motion for Preliminary Injunction was entered by the Court. A copy of said Order is
21 attached hereto and by reference incorporated herein.

22 DATED this 9th day of April 2019.

23 DICKINSON WRIGHT PLLC

24 /s/ Michael N. Feder

25 MICHAEL N. FEDER (NV Bar No. 7332)
26 GABRIEL A. BLUMBERG (NV Bar No. 12332)
27 8363 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113-2210
Tel: (702) 550-4400
Attorneys for Plaintiff

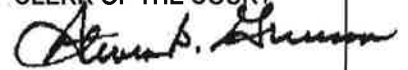
CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 9th day of April 2019, he caused a copy of **NOTICE OF ENTRY OF ORDER GRANTING, IN PART, PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

Martin A. Little, Esq.
Ryan O'Malley, Esq.
HOWARD & HOWARD
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Email: mal@h2law.com
Email: rto@h2law.com
Attorney Defendants

/s/ Max Erwin

An Employee of Dickinson Wright PLLC



1 **ORDR**
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3 **MICHAEL N. FEDER**
4 Nevada Bar No. 7332
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12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**
12 **ROBISON YEH, LTD.,**

13 **Plaintiff,**

14 **vs.**

15 **SCOTT VINH DUONG, M.D., ANNIE**
16 **LYNN PENACO DUONG, M.D., DUONG**
17 **ANESTHESIA, PLLC and DOE Defendants**
18 **I-X,**

19 **Defendants.**

Case No.: A-19-789110-B
Dept.: 13

**ORDER GRANTING, IN PART,
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

20 This matter having come for hearing on March 11, 2019, Gabriel A. Blumberg, Esq. of
21 Dickinson Wright, PLLC appearing on behalf of Plaintiffs Fielden Hanson Isaacs Miyada Robison
22 Yeh. Ltd., ("Fielden Hanson"); Ryan O'Malley, Esq. of Howard and Howard PLLC appearing on
23 behalf of Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong
24 Anesthesia, PLLC ("Defendants"); the Court having reviewed the pleadings and papers on file
25 herein and considered the argument of counsel, and good cause appearing therefore, the Court
26 makes the following preliminary factual findings and legal conclusions, and enters injunctive relief
27 as set forth below.
28

FINDINGS OF FACT

1. In December 2016, Fielden Hanson entered into separate Partner-Track Physician Employment Agreements with Scott Duong (the "Scott Duong Agreement") and Annie Duong (the "Annie Duong Agreement") (collectively the "Employment Agreements").

2. Pursuant to the Employment Agreements, Drs. Duong agreed that they would work for Fielden Hanson on an exclusive basis and all of their "professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of [Fielden Hanson] unless Physician receives prior written consent of the Clinical Governance Board and [Fielden Hanson]."

3. The Employment Agreements contained a confidentiality clause (the "Confidentiality Clause"), which states as follows:

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Physician or Physician's affiliates, advisors, or representatives), (ii) has become available to Physician on a non-confidential basis from a source other than the Practice and its affiliates, advisors, or representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy of the Practice of which Physician has knowledge, or (iii) has already been or is hereafter independently acquired or developed by Physician without violating any confidentiality agreement with or other obligation of secrecy to the Practice. Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

1 4. The Employment Agreements also included a covenant not to compete (the "Non-
2 Competition Clause"), which provided as follows:

3 2.8.1 Non-Competition. In consideration of the promises contained herein,
4 including without limitation those related to Confidential Information, except as
5 may be otherwise provided in this Agreement, that during the Term of this
6 Agreement and for a period of two (2) years following termination of this
7 Agreement, Physician covenants and agrees that Physician shall not, without the
8 prior consent of the Practice (which consent may be withheld in the Practice's
9 discretion), directly or indirectly, either individually or as a partner, joint venturer,
10 employee, agent, representative, officer, director, member or member of any person
11 or entity, (i) provide Anesthesiology and Pain Management Services at any of the
12 Facilities at which Physician has provided any Anesthesiology and Pain
13 Management Services (1) in the case of each day during the Term, within the
14 twenty-four month period prior to such day and (2) in the case of the period
15 following the termination of this Agreement, within the twenty-four month period
16 prior to the date of such termination; (ii) call on, solicit or attempt to solicit any
17 Facility serviced by the Practice within the twenty-four month period prior to the
18 date hereof for the purpose of persuading or attempting to persuade any such
19 Facility to cease doing business with, or materially reduce the volume of, or
20 adversely alter the terms with respect to, the business such Facility does with the
21 Practice or any affiliate thereof or in any way interfere with the relationship
22 between any such Facility and the Practice or any affiliate thereof; or (iii) provide
23 management, administrative or consulting services at any of the Facilities at which
24 Physician has provided any management, administrative or consulting services or
25 any Anesthesiology and Pain Management Services (1) in the case of each day
26 during the Term, within the twenty-four month period prior to such day and (2) in
27 the case of the period following the termination of this Agreement, within the
28 twenty-four month period prior to the date of such termination.

19 5. Section 2.8 of the Employment Agreements stated that the Non-Competition
20 Clause is "necessary to ensure the continuation of the business of [Fielden Hanson] and the
21 reputation of [Fielden Hanson] as a provider of readily available and reliable, high quality
22 physicians, as well as to protect [Fielden Hanson] from unfair business competition, including but
23 not limited to, the improper use of Confidential Information."

24 6. Section 2.8.3 of the Employment Agreements stated that any breach of Non-
25 Competition Clause would cause Fielden Hanson irreparable harm and that Fielden Hanson would
26 be entitled to injunctive relief to prevent further breaches of the Non-Competition Clause of the
27 Employment Agreements.
28

1 7. Section 2.10 of the Employment Agreements stated that the Non-Competition
2 Clause was an essential element of the Employment Agreements and that Fielden Hanson would
3 not have entered into the Employment Agreements absent the Non-Competition Clause.

4 8. Sections 2.8.3 and 2.10 of the Employment Agreements stated that in the event any
5 court deems any restriction contained in the Non-Competition Clause of the Employment
6 Agreements to be unenforceable or unreasonable, the court shall enforce the Non-Competition
7 Clause to the extent it is reasonable and the court shall reform any unenforceable provision in order
8 to render it enforceable.

9 9. Scott Duong performed anesthesia services at the following facilities (the "Scott
10 Duong Non-Competition Facilities") while employed by Fielden Hanson pursuant to the Scott
11 Duong Agreement: Clear Choice Dental, Desert Springs Hospital, Durango Outpatient, Flamingo
12 Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon Surgery
13 Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View Hospital,
14 North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven Hills
15 Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical Center,
16 St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena Campus,
17 Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery Center, Valley
18 Hospital Medical Center, and Valley View Surgery Center.

19 10. Annie Duong performed anesthesia services at the follow facilities (the "Annie
20 Duong Non-Competition Facilities" and together with the Scott Duong Non-Competition
21 Facilities, the "Non-Competition Facilities") while subject to the Annie Duong Agreement:
22 Affinity Surgery Center, Clear Choice Dental, Desert Springs Hospital, Durango Outpatient,
23 Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon
24 Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View
25 Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven
26 Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical
27 Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena
28

1 Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery
2 Center, Valley Hospital Medical Center, and Valley View Surgery Center.

3 11. On November 7, 2018, Drs. Duong became managing members of Duong
4 Anesthesia, PLLC.

5 12. Drs. Duong terminated their employment with Fielden Hanson in late 2018 and,
6 following the termination of their employment with Fielden Hanson, Drs. Duong provided
7 anesthesia services at certain Non-Competition Facilities.

8 13. On February 8, 2019, Fielden Hanson filed a complaint alleging claims for breach
9 of contract, breach of the implied covenant of good faith and fair dealing, intentional interference
10 with business relationships, intentional interference with prospective business advantage, and
11 unjust enrichment.

12 14. On February 19, 2019, Fielden Hanson filed a motion for preliminary injunction on
13 order shortening time seeking to enforce the Non-Competition Clause and enjoin Defendants from
14 taking any actions in violation of the Non-Competition Clause.

15 CONCLUSIONS OF LAW

16 1. Nevada law permits an injunction “[w]hen it shall appear by the complaint that the
17 plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining
18 the commission or continuance of the act complained of, either for a limited period or perpetually,”
19 and also “[w]hen it shall appear by the complaint or affidavit that the commission or continuance
20 of some act, during the litigation, would produce great or irreparable injury to the plaintiff.” *See*
21 *Nev. Rev. Stat. 33.010.*

22 2. Courts require a party seeking preliminary injunctive relief to demonstrate that it:
23 (1) “enjoys a reasonable probability of success on the merits;” and (2) “that the defendant’s conduct,
24 if allowed to continue, will result in irreparable harm for which compensatory damages is an
25 inadequate remedy.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 726 P.2d 335,
26 337 (1986); *see also S.O.C., Inc. v. Mirage Casino Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).
27 Further, under Nevada law, a court may evaluate the balance of hardships and the public interest in
28

1 making its determination as to whether an injunction should issue. *See Clark County Sch. Dist. v.*
2 *Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

3 3. Nevada enforces reasonable noncompete covenants because it “has an interest in
4 protecting the freedom of persons to contract, and in enforcing contractual rights and obligations.”
5 *Hansen v. Edwards*, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967). “The medical profession is not
6 exempt from a restrictive covenant provided the covenant meets the tests of reasonableness.” *Id.*

7 4. “The amount of time the covenant lasts, the territory it covers, and the hardship
8 imposed upon the person restricted are factors for the court to consider in determining whether such
9 a covenant is reasonable.” *Jones v. Deeter*, 112 Nev. 291, 296, 913 P.2d 1272, 1275 (1996).

10 5. “If an employer brings an action to enforce a noncompetition covenant and the court
11 finds the covenant is supported by valuable consideration but contains limitations as to time,
12 geographical area or scope of activity to be restrained that are not reasonable, impose a greater
13 restraint than is necessary for the protection of the employer for whose benefit the restraint is
14 imposed and impose undue hardship on the employee, the court shall revise the covenant to the
15 extent necessary and enforce the covenant as revised.” NRS 613.195(5).

16 6. The Court concludes that Fielden Hanson has satisfied its burden of demonstrating
17 a likelihood of success on the merits of its claim of breach of contract. The Court further concludes
18 that Plaintiff has demonstrated that it is likely to succeed in proving that the Non-Competition
19 Clause is supported by valuable consideration. However, the Court further concludes that Plaintiff
20 has not demonstrated, in the context of this motion, that it is likely to succeed on its argument that
21 the Non-Competition Clause is reasonable in all respects.

22 7. The Court concludes that NRS 613.195(5) applies to the Employment Agreements,
23 and more particularly the Non-Competition Clause, and requires this Court to blue-line the Non-
24 Competition Clause to render it reasonable and enforceable for the purpose of entering preliminary
25 injunctive relief.

26 8. The Court finds that Plaintiffs have a likelihood of success on the merits with respect
27 to the following non-competition restrictions, as revised by the Court:
28

- 1 a. Defendants are enjoined from soliciting work from any physician, physician
2 group, or healthcare provider, including the Non-Competition Facilities,
3 whom they formed a relationship with while they worked for Fielden
4 Hanson.
- 5 b. Defendants are enjoined from encouraging any physician, physician group,
6 or healthcare provider, including the Non-Competition Facilities, to
7 terminate a relationship with Fielden Hanson or divert any portion of their
8 anesthesiology or pain management coverage away from Fielden Hanson.
- 9 c. Defendants are enjoined from encouraging Red Rock Anesthesia
10 Consultants, LLC to induce any physician, physician group, or Non-
11 Competition Facilities to divert business away from Fielden Hanson.
- 12 d. Defendants are required to decline to any coverage request received from
13 any physician or physician group that has an ongoing relationship with
14 Fielden Hanson.
- 15 e. Defendants are required to decline to any coverage request from any facility
16 that has an ongoing relationship with Fielden Hanson.
- 17 f. Subject to the restrictions in subsections a-e, Defendants may accept
18 assignments from Red Rock Anesthesia Consultants, LLC so long as those
19 assignments originated from an independent request for anesthesiology
20 services made to Red Rock Anesthesia Consultants, LLC.

21 9. The Court further concludes that Fielden Hanson will suffer immediate and
22 irreparable harm if the Court does not enforce the bluelined version of the Non-Competition Clause
23 via a preliminary injunction.

24 10. The balance of hardships and public interest factors also weigh in favor of entering
25 injunctive relief to enforce the bluelined version of the Non-Competition Clause.

26 11. The Court further concludes that the Confidentiality Clause is entitled to full
27 enforcement.
28

1 12. Accordingly, the Court concludes that Fielden Hanson has satisfied the requirements
2 necessary to obtain injunctive relief.

3 **ORDER**

4 A. Defendants are enjoined from soliciting work from any physician, physician group,
5 or healthcare provider, including the Non-Competition Facilities, whom they formed a relationship
6 with while they worked for Fielden Hanson.

7 B. Defendants are enjoined from encouraging any physician, physician group, or
8 healthcare provider, including the Non-Competition Facilities, to terminate a relationship with
9 Fielden Hanson or divert any portion of their anesthesiology or pain management coverage away
10 from Fielden Hanson.

11 C. Defendants are enjoined from encouraging Red Rock Anesthesia Consultants, LLC
12 to induce any physician, physician group, or Non-Competition Facilities to divert business away
13 from Fielden Hanson.

14 D. Defendants are required to decline to any coverage request received from any
15 physician or physician group that has an ongoing relationship with Fielden Hanson.

16 E. Defendants are required to decline any coverage request from any facility that has
17 an ongoing relationship with Fielden Hanson.

18 F. Subject to the restrictions in sections A-E, Defendants may accept assignments
19 from Red Rock Anesthesia Consultants, LLC so long as those assignments originated from an
20 independent request for anesthesiology services made to Red Rock Anesthesia Consultants, LLC.

21 G. Defendants must comply with the terms of the Confidentiality Clause.

22 H. Fielden Hanson must post security with this Court in the amount of one thousand
23 dollars (\$1,000) pursuant to NRCP 65(c).


24 IT IS SO ORDERED this 8th day of April, 2019.

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27 HONORABLE MARK R. DENTON
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Respectfully submitted by:

DICKINSON WRIGHT PLLC


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Gabriel A. Blumberg
Nevada Bar No. 12332
8363 West Sunset Road, Suite 200
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Attorneys for Plaintiff

Approved as to form and content by:

HOWARD & HOWARD ATTORNEYS PLLC


Martin A. Little
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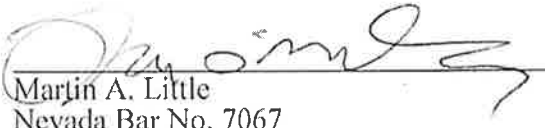
Respectfully submitted by:

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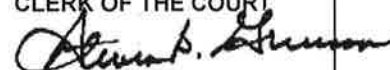
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EXHIBIT C



1 **MAME**

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3 Ryan T. O'Malley (#12461)

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Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **FIELDEN HANSON ISAACS MIYADA**

10 **ROBINSON YEH, LTD.,**

11 **Plaintiff,**

12 **vs.**

13 **SCOTT VINH DUONG, M.D., ANNIE LYNN**

14 **PENACO DUONG, M.D., DUONG**

15 **ANESTHESIA, PLLC and DOE**

16 **DEFENDANTS I-X,**

17 **Defendants.**

CASE NO. A-19-789110-B

DEPT. NO. XI

MOTION TO ALTER/AMEND JUDGMENT

HEARING REQUESTED

18 Pursuant to NRCP 59(e), Defendants Scott Vinh Duong, M.D. ("Scott"); Annie Lynn
19 Penaco Duong, M.D. ("Annie"); and Duong Anesthesia, PLLC ("Duong Anesthesia")
20 (collectively "the Duongs" or "Defendants") move the Court to alter/amend its April 9, 2019
21 Order¹ (**Exhibit A**) to: (1) clarify the meaning of "coverage request from any facility that has
22 an ongoing relationship with Fielden Hanson"; and (2) limit the injunction to instances in
23 which the Duongs knew or reasonably should have known that a surgeon has a relationship
24 with Fielden Hanson.

25
26 ¹ As an immediately appealable order, the Court's ruling is a "Judgment" for purposes of the
27 Rules of Civil Procedure. See NRCP 54(a) ("Judgment" as used in these rules includes a
decree and any order from which an appeal lies.").

1 This Motion is based upon the pleadings and papers on file, the attached points and
2 authorities, the attached exhibits, and whatever argument the Court may entertain at hearing on
3 this matter.

4 DATED this 7th day of May, 2019.

5
6 HOWARD & HOWARD ATTORNEYS PLLC

7 By: /s/Ryan O'Malley
8 Martin A. Little (#7067)
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12 *Attorneys for Defendants*
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POINTS AND AUTHORITIES

I. FACTS/BACKGROUND

The Parties' Dispute and Relevant Language

The parties in this case dispute meaning and enforceability of a non-competition agreement which provides, in pertinent part:

Physician covenants and agrees that *Physician shall not*, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) *provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services* (1) in the case of each day during the Term, within the twenty-four month period prior to such day

See **Exhibit B** (Scott's Agreement) & **Exhibit C** (Annie's Agreement) at § 2.8.1 (emphases added). The agreements broadly define "Facilities" (underlined in the block quote above) as follows:

All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) monthsp, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities[.]"

(Ex. B & C at pg. 1.) Plaintiff interprets these provisions as barring the Duongs from performing surgeries at any healthcare facility (*i.e.* hospitals, surgery centers, or any other such venues) at which Fielden Hanson provides anesthesiologists, even if the surgeon performing the surgery has no relationship with Fielden Hanson.²

² See Mot. for Preliminary Injunction at 8:9-9:3.

1 *The Duongs' Conduct Since Their Departure*

2 Since their departure from Fielden Hanson, the Duongs have made affirmative efforts
3 not to compete with their former employer.³ They associated with an anesthesia practice called
4 Red Rock Anesthesia Consultants ("Red Rock"), and their practice since their departure from
5 USAP has consisted almost exclusively of accepting assignments from Red Rock. The Duongs
6 have never solicited work from any physician, physician group, or other healthcare provider.
7 Specifically, the Duongs have never solicited any work from any physician, physician group, or
8 healthcare provider with whom they had ever formed a relationship because of their time at
9 USAP.

10 Although the Duongs have only worked with surgeons who do not have a relationship
11 with Fielden Hanson, it is true that those surgeons sometimes schedule their procedures at
12 hospitals where Fielden Hanson anesthesiologists also sometimes provide services. These
13 hospitals include, without limitation: (1) Desert Springs Hospital; (2) Henderson Hospital; (3)
14 MountainView Hospital; (4) Southern Hills Hospital; (5) St. Rose Dominican Hospital–San
15 Martin Campus; (6) St. Rose Dominican Hospital–Siena Campus; (7) Summerlin Hospital; (8)
16 Sunrise Hospital; and (9) Valley Hospital Medical Center.

17 *Plaintiff's Motion and the Court's Order*

18 Plaintiff moved for a preliminary injunction, which the Court heard on March 11, 2019.
19 In a March 19, 2019 Minute Order the Court stated, in pertinent part:

20 The Court GRANTS Plaintiff s Motion IN PART as follows: The non-
21 compete/non-solicitation aspect shall be blue penciled to reflect the restraints set
22 forth in Defendants Opposition to the Motion at: page 9, line 22 through USAP
23 at page 10, line 1; page 10, lines 5 through 9, *to include declination of coverage*
24 *requests from any facilities having an on-going relationship with*
25 *USAP/Fielden Hanson*; and page 10, lines 10 through 13 (ending with the word
26 provider). With regard to the last reference, Defendants shall be enjoined from
encouraging Red Rock Anesthesia Consultants from inducing facilities and
physicians to divert their business away from Plaintiff, *but such injunction*
shall not preclude Defendants from fulfillment of assignments by Red Rock to
physicians and health care providers which have requested its services.
Security shall be set in the sum of \$1,000.00. Counsel for Plaintiff is directed to

27 ³ See generally Opp. to Mot. for Preliminary Injunction at 9:16–10:17.

1 submit a proposed order consistent with the foregoing and including preliminary
2 findings of fact/conclusions of law.

3 (See **Exhibit D.**) The Parties' proposed Order (which the Court ultimately adopted) tracked
4 that language as follows:

5 e. Defendants are required to decline to any coverage request from any facility
6 that has an ongoing relationship with Fielden Hanson.

7 f. Subject to the restrictions in subsections a–e. Defendants may accept
8 assignments from Red Rock Anesthesia Consultants, LLC so long as those
9 assignments originated from an independent request for anesthesiology services
10 made to Red Rock Anesthesia Consultants, LLC.

11 (See Ex. A at 7:15–20.)

12 ***The Parties' Dispute***

13 The parties now dispute the meaning of the phrase “any coverage request from any
14 facility that has an ongoing relationship with Fielden Hanson.” Plaintiff takes the position that
15 the Court’s Order means that the Duongs may not provide anesthesiology services at any
16 *hospitals* where Fielden Hanson also provides services, even if the surgeon who chose to
17 schedule the procedure at that hospital has no relationship with Fielden Hanson. The Duongs
18 believe that the Court’s Order prevents the Duongs from working with or soliciting *surgeons*
19 that have a relationship with Fielden Hanson, but that it does not bar them from entire hospitals
20 simply because Plaintiff also sometimes works for surgeons who book procedures at those
21 facilities.

22 **II**
23 **LEGAL STANDARD**

24 NRCP 59(e) states as follows:

25 **Motion to alter or amend a judgment.** A motion to alter or amend a judgment
26 must be filed no later than 28 days after service of written notice of entry of the
27 judgment.

NRCP 59(e) provides an opportunity within a limited time to seek correction at the trial court
level of an order or judgment, thereby avoiding the time and expense of appeal. Rule 59(e)
provides the remedy that, where the issues have been litigated and resolved, a motion may be

1 made to alter or amend a judgment or order. *Chiara v. Belaustegui*, 86 Nev. 856, 859, 477 P.2d
2 857 (1970). These motions are broadly construed, allowing the Court to interpret the motion,
3 however styled, on the basis of the relief requested. *See Miller v. Transamerican Press, Inc.*,
4 709 F.2d 524, 527 (9th Cir. 1983).

5
6 **III**
ARGUMENT

7 The parties have differing interpretations of the scope of the Court's order, and the
8 Court should alter it to remove any ambiguity. Moreover, the Court should modify its ruling to
9 make clear that the Duongs are enjoined only from accepting assignments for surgeons that
10 they know or reasonably should know have a relationship with Fielden Hanson.

11 **I. The Court Should Amend its Order to be Clearly Surgeon-Focused**

12 The phrase "any coverage request from any facility that has an ongoing relationship
13 with Fielden Hanson" is unintentionally ambiguous, and the Court should amend the Judgment
14 to specify that it does not bar the Duongs from entire hospitals. Plaintiff construes this
15 provision to mean that the Duongs may not provide anesthesiology services at any *hospitals*
16 where Fielden Hanson also provides services, even if the surgeon who chose to schedule the
17 procedure at that hospital has no relationship with Fielden Hanson. This would, as a practical
18 matter, bar the Duongs from every major hospital in Las Vegas. *See* Mot. for Preliminary
19 Injunction at 8:9–9:3 (listing facilities). Any surgeon—even if they had never even heard of
20 Fielden Hanson—who wishes to work with the Duongs would have to book their surgeries at a
21 venue other than these major hospitals, to the potential detriment of their patients (none of
22 whom have any interest in this dispute).

23 The Duongs believe that the Court's Order was intended to prevent them from working
24 with *surgeons* having a relationship with Fielden Hanson, but that it does not bar them from
25 entire hospitals. In other words, the Duongs may continue their practice of accepting
26 assignments from Red Rock while affirmatively declining procedures scheduled by surgeons
27

1 who have a relationship with Fielden Hanson. This is consistent with Paragraph 8(f) of the
2 Court's Order:

3 Subject to the restrictions in subsections a–e. Defendants may accept
4 assignments from Red Rock Anesthesia Consultants, LLC so long as those
5 assignments originated from an independent request for anesthesiology services
made to Red Rock Anesthesia Consultants, LLC.

6 In the interest of making the scope of the Court's ruling clear, Paragraph 8(e) of the Order
7 should be amended to state as follows:

8 Defendants are required to decline any coverage request originating from any
9 physician, physician group, or healthcare provider that has an ongoing
10 relationship with Fielden Hanson. Nothing in this subparagraph shall be
11 construed to preclude the Duongs from providing anesthesiology or pain
management services at any particular hospital, surgery center, or other
healthcare facility unless the facility has an exclusivity agreement with Fielden
Hanson precluding the provision of such services.

12 **II. The Order Should Apply Only to Surgeons that the Duongs Know or**
13 **Reasonably Should Know Work Regularly with Fielden Hanson**

14 Even before Fielden Hanson commenced litigation, the Duongs have diligently avoided
15 working with any surgeons that have an ongoing relationship with their former employer, and
16 they will continue to do so. However, the Court's Order should be modified to prohibit the
17 Duongs from working with surgeons who they know (or reasonably should know) regularly
18 schedule procedures with Fielden Hanson, rather than *any surgeons* who have *any relationship*
19 with Fielden Hanson. As currently framed, the Court's Order may preclude the Duongs from
20 accepting a surgical case for a physician who booked a single procedure with Fielden Hansen at
21 some point after the Duongs departed, even if the Duongs had no way of knowing that this
22 occurred, and even if the surgeon never intended to schedule a procedure with Fielden Hansen
23 again.

24 To be clear, the Duongs are not suggesting that willful blindness should be excused.
25 Certainly surgeons who had an ongoing relationship with Fielden Hansen during the Duongs'
26 employment are within the scope of the injunction unless the surgeon has terminated that
27 relationship; the Duongs know (or should know) about the existence of those relationships.

1 The Duongs will continue to make reasonable efforts to ascertain whether a surgeon has an
2 ongoing with USAP before covering a case. But to the extent that Fielden Hanson forms
3 relationships with surgeons after the Duongs' departure, contempt liability should be limited
4 only to cases in which they know or reasonably should have known about the existence of such
5 an ongoing relationship.

6
7 **IV.**
CONCLUSION

8 The Court's Order should be altered/amended as stated.

9 DATED this 7th day of May, 2019.

10
11 HOWARD & HOWARD ATTORNEYS PLLC

12 By: /s/Ryan O'Malley
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14 Ryan T. O'Malley (#12461)
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17 *Attorneys for Defendants*
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(702) 257-1483

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, 10th Floor, Las Vegas, Nevada, 89169.

On this day I served the preceding **MOTION TO ALTER/AMEND JUDGMENT** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

Michael N. Feder (#7332)
Gabriel A. Blumberg (#12332)
DICKINSON WRIGHT, PLLC
8363 West Sunset Road, Suite 200
Las Vegas, NV 89113
Attorneys for Plaintiff

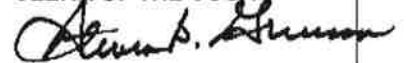
I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **7th day of May**, at Las Vegas, Nevada.

/s/ Ryan O'Malley

An Employee of Howard & Howard Attorneys PLLC

4845-1227-4838, v. 1

EXHIBIT A



1 **NEOJ**
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12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 FIELDEN HANSON ISAACS MIYADA
12 ROBISON YEH, LTD.,

13 Plaintiff,

14 vs.

15 SCOTT VINH DUONG, M.D., ANNIE
16 LYNN PENACO DUONG, M.D., DUONG
17 ANESTHESIA, PLLC and DOE Defendants
18 I-X,

19 Defendants.

Case No.: A-19-789110-B
Dept.: 13

**NOTICE OF ENTRY OF ORDER
GRANTING, IN PART, PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

19 PLEASE TAKE NOTICE that on the 9th day of April 2018, the Order Granting, In Part,
20 Plaintiff's Motion for Preliminary Injunction was entered by the Court. A copy of said Order is
21 attached hereto and by reference incorporated herein.

22 DATED this 9th day of April 2019.

23 DICKINSON WRIGHT PLLC

24 /s/ Michael N. Feder

25 MICHAEL N. FEDER (NV Bar No. 7332)
26 GABRIEL A. BLUMBERG (NV Bar No. 12332)
27 8363 West Sunset Road, Suite 200
28 Las Vegas, Nevada 89113-2210
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 9th day of April 2019, he caused a copy of **NOTICE OF ENTRY OF ORDER GRANTING, IN PART, PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**, to be transmitted by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

Martin A. Little, Esq.
Ryan O'Malley, Esq.
HOWARD & HOWARD
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Email: mal@h2law.com
Email: rto@h2law.com
Attorney Defendants

/s/ Max Erwin

An Employee of Dickinson Wright PLLC

Steven D. Grierson

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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**
12 **ROBISON YEH, LTD.,**

Case No.: A-19-789110-B
Dept.: 13

13 **Plaintiff,**

14 **vs.**

**ORDER GRANTING, IN PART,
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

15 **SCOTT VINH DUONG, M.D., ANNIE**
16 **LYNN PENACO DUONG, M.D., DUONG**
17 **ANESTHESIA, PLLC and DOE Defendants**
18 **I-X,**

19 **Defendants.**

20 This matter having come for hearing on March 11, 2019, Gabriel A. Blumberg, Esq. of
21 Dickinson Wright, PLLC appearing on behalf of Plaintiffs Fielden Hanson Isaacs Miyada Robison
22 Yeh. Ltd., ("Fielden Hanson"); Ryan O'Malley, Esq. of Howard and Howard PLLC appearing on
23 behalf of Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong
24 Anesthesia, PLLC ("Defendants"); the Court having reviewed the pleadings and papers on file
25 herein and considered the argument of counsel, and good cause appearing therefore, the Court
26 makes the following preliminary factual findings and legal conclusions, and enters injunctive relief
27 as set forth below.
28

FINDINGS OF FACT

1. In December 2016, Fielden Hanson entered into separate Partner-Track Physician Employment Agreements with Scott Duong (the "Scott Duong Agreement") and Annie Duong (the "Annie Duong Agreement") (collectively the "Employment Agreements").

2. Pursuant to the Employment Agreements, Drs. Duong agreed that they would work for Fielden Hanson on an exclusive basis and all of their "professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of [Fielden Hanson] unless Physician receives prior written consent of the Clinical Governance Board and [Fielden Hanson]."

3. The Employment Agreements contained a confidentiality clause (the "Confidentiality Clause"), which states as follows:

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Physician or Physician's affiliates, advisors, or representatives), (ii) has become available to Physician on a non-confidential basis from a source other than the Practice and its affiliates, advisors, or representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy of the Practice of which Physician has knowledge, or (iii) has already been or is hereafter independently acquired or developed by Physician without violating any confidentiality agreement with or other obligation of secrecy to the Practice. Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

1 4. The Employment Agreements also included a covenant not to compete (the "Non-
2 Competition Clause"), which provided as follows:

3 2.8.1 Non-Competition. In consideration of the promises contained herein,
4 including without limitation those related to Confidential Information, except as
5 may be otherwise provided in this Agreement, that during the Term of this
6 Agreement and for a period of two (2) years following termination of this
7 Agreement, Physician covenants and agrees that Physician shall not, without the
8 prior consent of the Practice (which consent may be withheld in the Practice's
9 discretion), directly or indirectly, either individually or as a partner, joint venturer,
10 employee, agent, representative, officer, director, member or member of any person
11 or entity, (i) provide Anesthesiology and Pain Management Services at any of the
12 Facilities at which Physician has provided any Anesthesiology and Pain
13 Management Services (1) in the case of each day during the Term, within the
14 twenty-four month period prior to such day and (2) in the case of the period
15 following the termination of this Agreement, within the twenty-four month period
16 prior to the date of such termination; (ii) call on, solicit or attempt to solicit any
17 Facility serviced by the Practice within the twenty-four month period prior to the
18 date hereof for the purpose of persuading or attempting to persuade any such
19 Facility to cease doing business with, or materially reduce the volume of, or
20 adversely alter the terms with respect to, the business such Facility does with the
21 Practice or any affiliate thereof or in any way interfere with the relationship
22 between any such Facility and the Practice or any affiliate thereof; or (iii) provide
23 management, administrative or consulting services at any of the Facilities at which
24 Physician has provided any management, administrative or consulting services or
25 any Anesthesiology and Pain Management Services (1) in the case of each day
26 during the Term, within the twenty-four month period prior to such day and (2) in
27 the case of the period following the termination of this Agreement, within the
28 twenty-four month period prior to the date of such termination.

19 5. Section 2.8 of the Employment Agreements stated that the Non-Competition
20 Clause is "necessary to ensure the continuation of the business of [Fielden Hanson] and the
21 reputation of [Fielden Hanson] as a provider of readily available and reliable, high quality
22 physicians, as well as to protect [Fielden Hanson] from unfair business competition, including but
23 not limited to, the improper use of Confidential Information."

24 6. Section 2.8.3 of the Employment Agreements stated that any breach of Non-
25 Competition Clause would cause Fielden Hanson irreparable harm and that Fielden Hanson would
26 be entitled to injunctive relief to prevent further breaches of the Non-Competition Clause of the
27 Employment Agreements.
28

1 7. Section 2.10 of the Employment Agreements stated that the Non-Competition
2 Clause was an essential element of the Employment Agreements and that Fielden Hanson would
3 not have entered into the Employment Agreements absent the Non-Competition Clause.

4 8. Sections 2.8.3 and 2.10 of the Employment Agreements stated that in the event any
5 court deems any restriction contained in the Non-Competition Clause of the Employment
6 Agreements to be unenforceable or unreasonable, the court shall enforce the Non-Competition
7 Clause to the extent it is reasonable and the court shall reform any unenforceable provision in order
8 to render it enforceable.

9 9. Scott Duong performed anesthesia services at the following facilities (the "Scott
10 Duong Non-Competition Facilities") while employed by Fielden Hanson pursuant to the Scott
11 Duong Agreement: Clear Choice Dental, Desert Springs Hospital, Durango Outpatient, Flamingo
12 Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon Surgery
13 Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View Hospital,
14 North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven Hills
15 Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical Center,
16 St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena Campus,
17 Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery Center, Valley
18 Hospital Medical Center, and Valley View Surgery Center.

19 10. Annie Duong performed anesthesia services at the follow facilities (the "Annie
20 Duong Non-Competition Facilities" and together with the Scott Duong Non-Competition
21 Facilities, the "Non-Competition Facilities") while subject to the Annie Duong Agreement:
22 Affinity Surgery Center, Clear Choice Dental, Desert Springs Hospital, Durango Outpatient,
23 Flamingo Surgery Center, Henderson Hospital, Henderson Hospital Surgery Center, Horizon
24 Surgery Center, Las Vegas Regional Surgery Center, LP, Las Vegas Surgicare, Mountain View
25 Hospital, North Vista Hospital, Parkway Surgery Center, Sahara Outpatient Surgery Center, Seven
26 Hills Surgery Center, Southern Hills Hospital, Specialty Surgery Center, Spring Valley Medical
27 Center, St. Rose Dominican Hospital- San Martin Campus, St. Rose Dominican Hospital- Siena
28

1 Campus, Stone Creek Surgery Center, Summerlin Hospital, Sunrise Hospital, Sunset Surgery
2 Center, Valley Hospital Medical Center, and Valley View Surgery Center.

3 11. On November 7, 2018, Drs. Duong became managing members of Duong
4 Anesthesia, PLLC.

5 12. Drs. Duong terminated their employment with Fielden Hanson in late 2018 and,
6 following the termination of their employment with Fielden Hanson, Drs. Duong provided
7 anesthesia services at certain Non-Competition Facilities.

8 13. On February 8, 2019, Fielden Hanson filed a complaint alleging claims for breach
9 of contract, breach of the implied covenant of good faith and fair dealing, intentional interference
10 with business relationships, intentional interference with prospective business advantage, and
11 unjust enrichment.

12 14. On February 19, 2019, Fielden Hanson filed a motion for preliminary injunction on
13 order shortening time seeking to enforce the Non-Competition Clause and enjoin Defendants from
14 taking any actions in violation of the Non-Competition Clause.

15 CONCLUSIONS OF LAW

16 1. Nevada law permits an injunction “[w]hen it shall appear by the complaint that the
17 plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining
18 the commission or continuance of the act complained of, either for a limited period or perpetually,”
19 and also “[w]hen it shall appear by the complaint or affidavit that the commission or continuance
20 of some act, during the litigation, would produce great or irreparable injury to the plaintiff.” *See*
21 *Nev. Rev. Stat. 33.010.*

22 2. Courts require a party seeking preliminary injunctive relief to demonstrate that it:
23 (1) “enjoys a reasonable probability of success on the merits;” and (2) “that the defendant’s conduct,
24 if allowed to continue, will result in irreparable harm for which compensatory damages is an
25 inadequate remedy.” *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 726 P.2d 335,
26 337 (1986); *see also S.O.C., Inc. v. Mirage Casino Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).
27 Further, under Nevada law, a court may evaluate the balance of hardships and the public interest in
28

1 making its determination as to whether an injunction should issue. *See Clark County Sch. Dist. v.*
2 *Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

3 3. Nevada enforces reasonable noncompete covenants because it “has an interest in
4 protecting the freedom of persons to contract, and in enforcing contractual rights and obligations.”
5 *Hansen v. Edwards*, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967). “The medical profession is not
6 exempt from a restrictive covenant provided the covenant meets the tests of reasonableness.” *Id.*

7 4. “The amount of time the covenant lasts, the territory it covers, and the hardship
8 imposed upon the person restricted are factors for the court to consider in determining whether such
9 a covenant is reasonable.” *Jones v. Deeter*, 112 Nev. 291, 296, 913 P.2d 1272, 1275 (1996).

10 5. “If an employer brings an action to enforce a noncompetition covenant and the court
11 finds the covenant is supported by valuable consideration but contains limitations as to time,
12 geographical area or scope of activity to be restrained that are not reasonable, impose a greater
13 restraint than is necessary for the protection of the employer for whose benefit the restraint is
14 imposed and impose undue hardship on the employee, the court shall revise the covenant to the
15 extent necessary and enforce the covenant as revised.” NRS 613.195(5).

16 6. The Court concludes that Fielden Hanson has satisfied its burden of demonstrating
17 a likelihood of success on the merits of its claim of breach of contract. The Court further concludes
18 that Plaintiff has demonstrated that it is likely to succeed in proving that the Non-Competition
19 Clause is supported by valuable consideration. However, the Court further concludes that Plaintiff
20 has not demonstrated, in the context of this motion, that it is likely to succeed on its argument that
21 the Non-Competition Clause is reasonable in all respects.

22 7. The Court concludes that NRS 613.195(5) applies to the Employment Agreements,
23 and more particularly the Non-Competition Clause, and requires this Court to blueline the Non-
24 Competition Clause to render it reasonable and enforceable for the purpose of entering preliminary
25 injunctive relief.

26 8. The Court finds that Plaintiffs have a likelihood of success on the merits with respect
27 to the following non-competition restrictions, as revised by the Court:
28

- 1 a. Defendants are enjoined from soliciting work from any physician, physician
2 group, or healthcare provider, including the Non-Competition Facilities,
3 whom they formed a relationship with while they worked for Fielden
4 Hanson.
- 5 b. Defendants are enjoined from encouraging any physician, physician group,
6 or healthcare provider, including the Non-Competition Facilities, to
7 terminate a relationship with Fielden Hanson or divert any portion of their
8 anesthesiology or pain management coverage away from Fielden Hanson.
- 9 c. Defendants are enjoined from encouraging Red Rock Anesthesia
10 Consultants, LLC to induce any physician, physician group, or Non-
11 Competition Facilities to divert business away from Fielden Hanson.
- 12 d. Defendants are required to decline to any coverage request received from
13 any physician or physician group that has an ongoing relationship with
14 Fielden Hanson.
- 15 e. Defendants are required to decline to any coverage request from any facility
16 that has an ongoing relationship with Fielden Hanson.
- 17 f. Subject to the restrictions in subsections a-e, Defendants may accept
18 assignments from Red Rock Anesthesia Consultants, LLC so long as those
19 assignments originated from an independent request for anesthesiology
20 services made to Red Rock Anesthesia Consultants, LLC.

21 9. The Court further concludes that Fielden Hanson will suffer immediate and
22 irreparable harm if the Court does not enforce the bluelined version of the Non-Competition Clause
23 via a preliminary injunction.

24 10. The balance of hardships and public interest factors also weigh in favor of entering
25 injunctive relief to enforce the bluelined version of the Non-Competition Clause.

26 11. The Court further concludes that the Confidentiality Clause is entitled to full
27 enforcement.
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ORDER

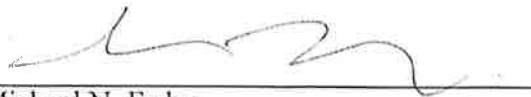
IT IS SO ORDERED this 8 day of April, 2019.

HONORABLE MARK R. DENTON

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Respectfully submitted by:

DICKINSON WRIGHT PLLC


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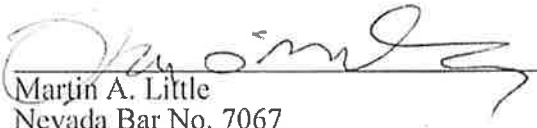

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Attorneys for Defendants

EXHIBIT B

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT
BY AND BETWEEN
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A
ANESTHESIOLOGY CONSULTANTS, INC.),
AND
SCOTT VINH DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2nd day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Scott Vinh Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or

charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)

solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or

USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Physician or Physician's affiliates, advisors, or representatives), (ii) has become available to Physician on a non-confidential basis from a source other than the Practice and its affiliates, advisors, or representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy of the Practice of which Physician has knowledge, or (iii) has already been or is hereafter independently acquired or developed by Physician without violating any confidentiality agreement with or other obligation of secrecy to the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 if a disclosure is made pursuant to a court order, a valid administrative agency subpoena, or a lawful request for information by an administrative agency. Physician shall give the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem

reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2

herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

6.2.5 Termination Upon Disability of Physician. Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

6.2.6 Immediate Termination by the Practice. Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42

U.S.C. § 1320a 7b (the "Anti-Kickback Statute"), 31 U.S.C. § 3729 (the "False Claims Act"), 42 U.S.C. § 1395nn (the "Stark Law"), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician's ineligibility to be insured against medical malpractice; (vii) Physician's loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician's failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice's request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician's violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either

party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

6.2.9 Termination Without Cause. Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

6.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall

deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance

Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.

11.6 Waiver of Breach. The waiver by either party or the Clinical Governance Board of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver by such party of any subsequent breach of the same or other provision hereof.

11.7 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by overnight courier, or when received by prepaid certified mail, return receipt requested, addressed as follows:

| | |
|---------------|---|
| The Practice: | Anesthesiology Consultants, Inc. P.O. Box 401805 Las Vegas, NV 89140-1805 Attention: President |
| Physician: | Scott Vinh Duong, M.D. 11350 Blemont Lake Dr., Unit 101 Las Vegas, NV 89135 |

or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

11.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect such invalidity, illegality or unenforceability thereof shall not affect the remainder of this Agreement which shall be in full force and effect, enforceable in accordance with its terms.

11.9 Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

11.10 Divisions and Headings. The division of this Agreement into sections and the use of captions and headings in connection therewith is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Entire Agreement. This Agreement, together with the Plan Regarding Compensation for Services, supersedes all previous contracts, and constitutes the entire agreement existing between or among the parties respecting the subject matter hereof, and neither party shall be entitled to other benefits than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect the parties specifically acknowledge that, in entering into and executing this Agreement each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions

to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.

11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY
BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,
ROBISON, YEH, LTD. (D/B/A
ANESTHESIOLOGY CONSULTANTS, INC.)

By: _____

Jason M. Workman

Name: _____

Title: _____

PHYSICIAN:

Scott Vinh Duong

Name: Scott Vinh Duong, M.D.

Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.

Exhibit A

USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) ("**PRCS**") adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation ("**ACT**") on the other hand (each a "**Provider Services Agreement**").

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the "**Plan**"), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or "draw" basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30th) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician's projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the "**ACI P&L**"), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A
to Exhibit A

Exhibit B

Clinician Code of Conduct

Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.

4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.

EXHIBIT C

PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT
BY AND BETWEEN
FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (D/B/A
ANESTHESIOLOGY CONSULTANTS, INC.),
AND
ANNIE LYNN PENACO DUONG, M.D.

This PARTNER-TRACK PHYSICIAN EMPLOYMENT AGREEMENT (this "Agreement") is entered into this 2nd day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Annie Lynn Penaco Duong, M.D. ("Physician").

WITNESSETH:

WHEREAS, Physician is a licensed physician authorized to practice medicine in the State of Nevada;

WHEREAS, the Practice is a Nevada professional corporation authorized to practice medicine in the State of Nevada;

WHEREAS, Practice contracts with licensed physicians, CRNAs, AAs and other authorized health care providers who provide professional anesthesia services (including any specialty thereof), pain management, anesthesia related consulting, management and administrative services (collectively, "Anesthesiology and Pain Management Services") to patients at several facilities, including inpatient and outpatient facilities. All facilities with which the Practice has a contract to supply licensed physicians, CRNAs, AAs and other authorized health care providers who provide Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, facilities at which any such providers have provided Anesthesiology and Pain Management Services at any time during the Term or during the preceding twelve (12) months, and facilities with which the Practice has had active negotiations to supply any such providers who provide Anesthesiology and Pain Management Services during the Term or during the preceding twelve (12) months shall be collectively referred to as the "Facilities";

WHEREAS, the Practice desires to engage Physician to provide professional Anesthesiology and Pain Management Services at the Facilities and at such other locations as may be appropriate, and Physician desires to be engaged by the Practice to provide professional services at the Facilities and at such other locations as may be appropriate, upon the terms and conditions hereinafter set forth;

WHEREAS, the Practice is subject to that certain Plan Regarding Compensation for Services (ACI), effective as of December 2, 2016 (the "Plan Regarding Compensation for Services"), pursuant to which a Nevada Clinical Governance Board (the "Clinical Governance Board"), a group of licensed physicians employed by the Practice, will manage and oversee certain clinical operations of the Practice including, but not limited to, making certain

determinations and decisions regarding the renewal, modification and termination of this Agreement;

WHEREAS, the Clinical Governance Board is an express third party beneficiary of this Agreement and shall have the right to enforce its rights hereunder in accordance with the applicable laws of the State of Nevada as if it was a party hereto; and

WHEREAS, the Practice and Physician desire that Physician's professional responsibilities under this Agreement shall include the practice of medicine at the Facilities in a manner that is consistent with the manner in which Physician has practiced medicine prior to the date of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby forever acknowledged and confessed and incorporating the recitals set forth above, the parties agree as follows:

1. Engagement.

The Practice hereby employs Physician and Physician hereby accepts such employment on an exclusive basis (unless otherwise approved by the Clinical Governance Board and the Practice), to provide the professional services specified in Section 2.1 hereof at the Facilities during the Term (as defined in Section 6.1 hereof). Although Physician is an employee of the Practice under the terms of this Agreement, Physician shall retain independent discretion and shall exercise professional judgment consistent with generally accepted medical practices, the ethical standards of the Nevada State Medical Association and the American Medical Association, and the professional standards established by the Clinical Governance Board for physician employees of the Practice in the provision of services involving the evaluation and treatment of the patients ("Patients") at the Facilities.

2. Covenants of Physician.

2.1 Availability of Professional Services. Physician shall provide Anesthesiology and Pain Management Services to Patients at the Facilities as required and as scheduled by the Practice and shall devote his or her professional time, attention, and energy to the active practice of medicine for the Practice. All of Physician's professional Anesthesiology and Pain Management Services shall be provided solely and exclusively as an employee of the Practice unless Physician receives prior written consent of the Clinical Governance Board and the Practice. Physician acknowledges and agrees that he/she may be required to meet the minimum requirements of a Partner-Track Physician as determined by the Clinical Governance Board and the Practice from time to time. Physician's duties shall include (i) examination, evaluation, and treatment of Patients, (ii) participation in on-call rotation for afterhours coverage as developed by the Practice, if applicable, (iii) participation in indigent and charity care programs designated by the Practice, if applicable; (iv) compliance with the administrative policies and procedures and the referral policies, in each case developed by or on behalf of the Practice; and (v) performance of such other duties as may reasonably be requested by the Practice from time to time.

Physician must provide medical services on a nondiscriminatory basis and may not refuse to provide medical services to any Patient designated by the Practice, even if such Patient is a participant in, or a part of, indigent or charity care programs, or any managed care plans for which the Practice is contracting to provide Physician's services, or is a Medicaid patient.

2.2 Medical Records/Reports. Physician shall, in accordance with policies developed by or on behalf of the Practice, timely prepare all medical records in respect of Patients treated by Physician. All medical records created or generated by Physician, or anyone acting at the direction or under the supervision of Physician, concerning Patients treated by Physician or any other physician engaged by the Practice during the Term shall be and remain the property of the Practice or Facilities, as appropriate, and shall be maintained at the Facilities; provided, however, that Physician shall have such right of access to such medical records as shall be provided by law. In addition, Physician shall timely prepare and deliver such other records and reports (electronic or otherwise) relating to the operations of Practice as Practice may reasonably request. Physician's use of an electronic medical or health recordkeeping system, including the issuance of unique credentials to access the system and the inputting of data and information in such a system shall not create in Physician any property right to the medical records created and stored in the system. Physician shall abide by all state and federal laws regarding the confidentiality of patient health information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, and all rules and regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164), the Electronic Transaction Standards (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160, 162 and 164), and the Health Information Technology for Economic and Clinical Health Act of 2009 enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, "HIPAA").

2.3 Compliance. Physician understands and acknowledges that the Practice may submit or cause to be submitted claims to patients or third party payors for services based upon encounter information, coding certification of necessity and record documentation prepared and/or approved by Physician. Physician further acknowledges that Physician's compensation provided pursuant to this Agreement is based in large part on the billings and receipts for those services. Physician warrants and covenants that all encounter and coding information and all record documentation prepared or approved by Physician shall be true and correct and accurately represent each patient's condition, the services provided, and other facts and circumstances surrounding Physician's services provided pursuant to this Agreement. Physician understands that false or inaccurate statements in connection with billings, records or other patient encounter documentation are unacceptable to the Practice, and that Physician's failure to comply with the covenants and warranties in this Section 2.3 would constitute a material breach of the Agreement. Physician also understands that Physician's failure to comply with federal and state laws and regulations relating to Physician's practice and actions as an employee of the Practice could result in fines, penalties or other financial liabilities being imposed on the Practice. Physician agrees that, upon written demand from the Practice, Physician shall indemnify and hold harmless the Practice, its directors, officers shareholders and agents ("Indemnified Employer Parties") from all obligation, liability, claims, demands or losses, including attorney fees and costs ("Losses") asserted against the Practice, including settlements thereof, based on (1) Physician's inaccurate, non-compliant, false or unlawful coding, charging or billing, (2) lack of necessity for services provided by Physician, (3) lack of legible supporting documentation or

charts supporting Physician's coding and billing for services, or (4) any other claim based on Physician's conduct. Physician further agrees to indemnify and save harmless the Indemnified Employer Parties for all Losses arising from or related to any violation by Physician of any federal, state or local criminal, civil or common law or applicable rules and regulations. In the event any insurer takes the position that the existence of its indemnification provision in any way reduces or eliminates the insurer's obligation to provide otherwise available insurance coverages, the indemnification program shall be unenforceable to the extent necessary to obtain coverage. Should the Practice eventually receive coverage (payments) from its various insurance policies related to any such Losses where Physician is required to provide indemnification pursuant to this Section 2.3, the Practice hereby agrees to refund any amounts paid by Physician to the extent the insurance payment and payment by Physician are in excess of the loss creating the need for the indemnification and insurance payment.

2.4 Licensure, Compliance with Laws, Standards. As a continuing condition precedent to the obligations of the Practice under this Agreement, Physician covenants that at all times during the Term, Physician shall (i) hold and maintain a valid and unrestricted license to practice medicine in the State of Nevada (including an "Office Based Anesthesia" permit if required by the Clinical Governance Board), including satisfaction of any and all continuing medical education requirements; (ii) successfully apply for and maintain in good standing provisional or active medical staff privileges at the Facility or Facilities to which Physician is assigned by the Practice; (iii) maintain certification by any board or regulatory agency required by any Facility at which Physician practices; and (iv) comply with and otherwise provide professional services in accordance with applicable law, the ethical standards of the American Medical Association and Nevada State Medical Association, the standards and recommendations of the Joint Commission and of any accrediting bodies that may have jurisdiction or authority over Physician's medical practice or the Facilities, the Practice's corporate Bylaws, the Medical Staff Bylaws, the rules and regulations and the policies and procedures of the Practice and Facilities, as each may be in effect from time to time, and the standard of care in the medical community in which the Practice and the Facilities are located. Physician will notify the Practice immediately, but in any event within forty-eight (48) hours of Physician's knowledge thereof, if any of the foregoing shall become, in any manner, untrue.

2.5 Use of Facilities. Physician shall not use the Facilities for any purpose other than for the provision of professional services to Patients and the performance of administrative services required to be performed by Physician pursuant to this Agreement.

2.6 Supervision of Certain Personnel. Physician shall assist in providing the supervision of physician assistants, nurses, nurse anesthetists, anesthesiology assistants and other non-physician health care personnel providing as designated by the Practice. All such non-physician personnel shall be under Physician's control and direction in the performance of health care services for Patients treated by Physician. In addition and to the extent requested by the Practice, Physician shall assist the Practice in developing appropriate scheduling for such non-physician health care personnel.

2.7 Quality Assurance/Utilization Review. Physician shall participate in, and cooperate with the Practice in connection with, the quality assurance and risk management program developed by the Practice for its physician employees. Physician shall also be subject to

and actively participate in any utilization review program developed by or on behalf of the Practice relating to activities of physicians.

2.8 Business Protection. Physician recognizes that the Practice's decision to enter into this Agreement is induced primarily because of the covenants and assurances made by Physician in this Agreement, that Physician's covenants regarding non-competition and non-solicitation in this Section 2.8 are necessary to ensure the continuation of the business of the Practice and the reputation of the Practice as a provider of readily available and reliable, high quality physicians, as well as to protect the Practice from unfair business competition, including but not limited to, the improper use of Confidential Information.

2.8.1 Non-Competition. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not, without the prior consent of the Practice (which consent may be withheld in the Practice's discretion), directly or indirectly, either individually or as a partner, joint venturer, employee, agent, representative, officer, director, member or member of any person or entity, (i) provide Anesthesiology and Pain Management Services at any of the Facilities at which Physician has provided any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination; (ii) call on, solicit or attempt to solicit any Facility serviced by the Practice within the twenty-four month period prior to the date hereof for the purpose of persuading or attempting to persuade any such Facility to cease doing business with, or materially reduce the volume of, or adversely alter the terms with respect to, the business such Facility does with the Practice or any affiliate thereof or in any way interfere with the relationship between any such Facility and the Practice or any affiliate thereof; or (iii) provide management, administrative or consulting services at any of the Facilities at which Physician has provided any management, administrative or consulting services or any Anesthesiology and Pain Management Services (1) in the case of each day during the Term, within the twenty-four month period prior to such day and (2) in the case of the period following the termination of this Agreement, within the twenty-four month period prior to the date of such termination.

2.8.2 Non-Solicitation. In consideration of the promises contained herein, including without limitation those related to Confidential Information, except as may be otherwise provided in this Agreement, during the Term of this Agreement and for a period of two (2) years following termination of this Agreement, Physician covenants and agrees that Physician shall not (i) solicit or otherwise attempt to contact any past or current Patient, or immediate family member of such Patient, for purposes of inducing the Patient to become a patient of Physician or the patient of any medical practice in which Physician practices or otherwise has a financial interest; (ii) solicit or otherwise attempt to contact any physician (including surgeons) for which licensed physicians, CRNAs, AAs and other authorized health care providers employed by the Practice currently provide, or have provided during the twelve month period prior to the termination of Physician's employment, consultative services or anesthesia services, for purposes of inducing such physician to consult with Physician or consult with any medical practice in which Physician practices or otherwise has a financial interest; (iii)

solicit any of the Facilities for the purpose of obtaining any contractual relationship with the Facility for Physician or any medical practice in which Physician practices or otherwise has a financial interest; or (iv) solicit for employment, or employ or engage any individual who is or was employed by the Practice during the twenty-four month period prior to the termination of Physician's employment, including, but not limited to, employees of any entity, the majority of the equity interests of which is owned by the Practice.

2.8.3 Additional Agreements. Physician agrees that if any restriction contained in this Section 2.8 is held by any court to be unenforceable or unreasonable, a lesser restriction shall be severable therefrom and may be enforced in its place and the remaining restrictions contained herein shall be enforced independently of each other. In the event of any breach by Physician of the provisions of this Section 2.8, the Practice would be irreparably harmed by such a breach, and Physician agrees that the Practice shall be entitled to injunctive relief to prevent further breaches of the provisions of this Section 2.8, without need for the posting of a bond.

2.8.4 Access to Medical Records. The Practice shall use all reasonable efforts to provide Physician (i) access to the medical records of the Patients whom Physician has seen or treated upon authorization of the Patient in the same form as maintained or available to the Practice; and (ii) any copies of the medical records for a reasonable fee.

2.8.5 Format of Medical Records and Patient Lists. Any access to a list of Patients or to Patients' medical records after termination of this Agreement shall not include such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to this Agreement.

2.8.6 Continuing Care and Treatment. Physician shall not be prohibited from providing continuing care and treatment to a specific Patient or Patients during the course of an acute illness at any time, including following termination of this Agreement or Physician's employment. Following such termination, Physician understands and agrees that Physician will not be permitted to utilize Facility premises, staff, supplies and/or any other Facility-owned resource, unless failure to do so would compromise an acute patient's health and well-being, in which case the Practice, in its sole discretion, will provide written authorization to Physician on a case-by-case basis so that Physician may treat such Patient at the appropriate Facility, and even then, only to the extent and of such duration, that the acute nature of the Patient's condition requires.

2.9 Confidentiality. As of the date of the execution of this Agreement and during the course of Physician's employment, in order to allow Physician to carry out Physician's duties hereunder, the Practice has provided and will continue to provide to Physician Confidential Information (defined below). Physician agrees to keep confidential and not to use or to disclose to others during the Term of this Agreement and for a period of five (5) years thereafter, except as expressly consented to in writing by the Practice or required by law, any financial, accounting and statistical information, marketing plans, business plans, feasibility studies, fee schedules or books, billing information, patient files, confidential technology, proprietary information, patient lists, policies and procedures, or trade secrets of the Practice or U.S. Anesthesia Partners, Inc. ("USAP"), or other papers, reports, records, memoranda, documents, files, discs, or copies thereof pertaining to patients of physicians employed by the Practice, or the Practice's or

USAP's (or any affiliate's thereof) business, sales, financial condition or products, or any matter or thing ascertained by Physician through Physician's affiliation with the Practice, the use or disclosure of which matter or thing might reasonably be construed to be contrary to the best interests of the Practice or USAP (collectively, the "Confidential Information"). This restriction shall not apply to such information if Physician can establish that such information (i) has become generally available to and known by the public (other than as a result of an unpermitted disclosure directly or indirectly by Physician or Physician's affiliates, advisors, or representatives), (ii) has become available to Physician on a non-confidential basis from a source other than the Practice and its affiliates, advisors, or representatives, provided that such source is not and was not bound by a confidentiality agreement with or other obligation of secrecy of the Practice of which Physician has knowledge, or (iii) has already been or is hereafter independently acquired or developed by Physician without violating any confidentiality agreement with or other obligation of secrecy to the Practice.

Should Physician leave the employment of the Practice, Physician will neither take nor retain, without prior written authorization from the Practice, any Confidential Information. Physician further agrees to destroy any paper or electronic copies of Confidential Information, including information contained on any personal device.

Exceptions.

2.9.1 It shall not be a breach of Physician's covenants under Section 2.9 if a disclosure is made pursuant to a court order, a valid administrative agency subpoena, or a lawful request for information by an administrative agency. Physician shall give the Practice prompt notice of any such court order, subpoena, or request for information.

2.9.2 Physician shall not be prohibited from releasing any Confidential Information to Physician's legal counsel or financial advisors, provided that Physician places such advisors under legal obligation not to disclose the Confidential Information.

2.10 Enforcement. Sections 2.8 and 2.9 shall be construed as an agreement independent of any other provision in this Agreement; no claim or cause of action asserted by Physician against the Practice, whether predicated upon this or other Sections of this Agreement or otherwise shall constitute a defense of the enforcement of Sections 2.8 and 2.9 of this Agreement.

It is understood by and between the parties hereto that the covenants set forth in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but for the agreement of Physician to comply with such covenants, the Practice would not have agreed to enter into this Agreement. The Practice and Physician agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by the Practice.

If any provision or subdivision of this Agreement, including, but not limited to, the time or limitations specified in or any other aspect of the restraints imposed under Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be unreasonable or otherwise unenforceable, any such portion shall nevertheless be enforceable to the extent such court shall deem

reasonable, and, in such event, it is the parties' intention, desire and request that the court reform such portion in order to make it enforceable. In the event of such judicial reformation, the parties agree to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the same extent as if they had agreed to such reformed Sections in the first instance.

Without limiting other possible remedies to the Practice for the breach of the covenants in Sections 2.8 and 2.9, Physician agrees that injunctive or other equitable relief shall be available to enforce the covenants set forth in Sections 2.8 and 2.9, such relief to be without the necessity of posting a bond, cash, or otherwise.

2.11 Discretionary Reviews. The Clinical Governance Board, in its sole discretion, may conduct a review of Physician's ability to safely practice anesthesiology or pain management medicine in general and in Physician's specific practice including evaluation of mental and physical condition, judgment, knowledge, and any other conditions that may impact the safety of a Patient ("Review"). In the event the Review includes an evaluation of Physician's mental or physical condition, such evaluation shall be performed by an independent physician chosen by the Practice and approved by the Clinical Governance Board in its sole discretion. The costs of any evaluations of Physician by an independent physician shall be borne by the Practice except to the extent the Review is required as a result of complaints regarding Physician's behaviors in performance of his/her obligations hereunder in which case the costs of such evaluation(s) shall be borne solely by Physician. Physician and the Practice agree that the Clinical Governance Board shall conduct an annual Review upon Physician reaching the age of sixty-eight (68).

2.11.1 Upon receipt by Physician of a Review requiring that Physician take remedial actions in order to satisfy the Clinical Governance Board, Physician shall promptly take such actions at Physician's sole cost and expense and failure to take such actions to the satisfaction of the Clinical Governance Board shall be a material breach of this Agreement. If Physician fails to participate in the Review to the satisfaction of the Clinical Governance Board or during any period where Physician is required to take remedial actions as a result of a Review, the Clinical Governance Board may place Physician on unpaid administrative leave until such time as Physician participates in the Review or completes remedial actions to the satisfaction of the Clinical Governance Board.

2.11.2 Upon receipt by Physician of an unsatisfactory Review in the Clinical Governance Board's sole discretion, the Practice may, subject to the terms of this Agreement, immediately terminate Physician or take such other actions as the Clinical Governance Board determines to be necessary in order to protect Patient health or safety or to provide quality medicine to patients receiving services of physicians employed by the Practice.

3. Covenants of the Practice.

3.1 Compensation and Fringe Benefits. The Practice shall provide Physician with the compensation and other fringe benefits described in Article 5 hereof subject to the eligibility and other requirements of said plans and programs. Physician agrees that the Practice will not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any of its

medical, health, dental, insurance, disability or other benefit plans or programs, so long as such actions are similarly applicable to covered employees generally.

3.2 Operational Requirements. The Practice shall provide, or cause to be provided, all space, equipment, and supplies, all non-physician health care personnel and all clerical, administrative, and other personnel reasonably necessary and appropriate, consistent with past practice, for Physician's practice of medicine pursuant to this Agreement.

4. Professional Fees.

Physician acknowledges that, during the Term, Patients will be billed in the name of the Practice or Physician, as determined by the Practice, for all professional services rendered by Physician. Except as otherwise approved by the Clinical Governance Board and the Practice, the Practice shall be entitled to all fees generated by Physician from or incident to professional services rendered by Physician while employed by the Practice hereunder. Subject to applicable laws and in certain cases, the approval of the Clinical Governance Board and the Practice, Physician expressly and irrevocably transfers, assigns, and otherwise conveys to the Practice all right, title, and interest of Physician in and to any of such fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine and all related professional activities during the Term, and does hereby appoint the Practice as Physician's agent and attorney-in-fact for collection of the same or otherwise enforcing Physician's interests therein. To the extent Physician should receive any amounts from Patients thereof, any third party payers, or any other parties in respect thereof, Physician shall forthwith endorse and deliver the same to the Practice.

5. Financial Arrangement.

5.1 Compensation. As compensation for the services to be provided by Physician hereunder, the Practice agrees to pay Physician pursuant to the USAP Nevada Compensation Plan then in effect for Partner-Track Physicians (as defined in Section 8). The USAP Nevada Compensation Plan in effect as of the Effective Date is attached as Exhibit A hereto.

5.2 Other Benefits. Subject to Section 3.1 above, the Practice also agrees to provide Physician the same various fringe and other benefits as other Partner-Track Physicians.

5.3 Vacation and Leave. Physician shall be entitled to annual vacation, meeting and sick leave as offered by the Practice pursuant to its policies and procedures. The Clinical Governance Board shall have the ultimate authority to resolve scheduling, vacation, educational leave or leave of absence conflicts, and to establish the application and processing requirements for any time away from work. All scheduling procedures and practices shall be established by the Clinical Governance Board. All vacation and leave of any kind shall be uncompensated.

6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for two (2) years commencing on the Effective Date, unless sooner terminated as provided herein (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive additional one (1) year periods unless this Agreement is sooner terminated as provided in Section 6.2

herein. The Initial Term of this Agreement and, in the event this Agreement is extended beyond the Initial Term, all renewals and extensions of this Agreement, are collectively defined as the "Term."

6.2 Termination. This Agreement may be sooner terminated on the first of the following to occur:

6.2.1 Termination by Agreement. In the event the Practice and Physician shall mutually agree in writing, this Agreement may be terminated on the terms and date stipulated therein.

6.2.2 Termination by Promotion to Physician-Partner Status. If Physician remains employed with the Practice on a full time basis without interruption for two (2) consecutive years from Physician's first date of service with the Practice, Physician shall be eligible for consideration for an offer to become a Physician-Partner (as defined in Section 8). Any such offer to become a Physician-Partner is at the sole discretion of the Practice and requires the approval of two-thirds (2/3) of the members of the Clinical Governance Board. An offer to become a Physician-Partner shall be conditioned by the Practice upon (i) the execution by Physician of a Physician-Partner employment agreement and/or other documents that may be reasonably requested by the Practice, (ii) the purchase by Physician of shares of common stock of USAP in accordance with the ACI Equity Incentive Plan (see Schedule 6.2.2 for additional details with respect to such purchase), and (iii) Board Certification. In the event that Physician becomes a Physician-Partner, this Agreement shall automatically terminate.

6.2.3 Termination for Specific Breaches. In the event Physician shall (i) materially fail by omission or commission to comply with the provisions specified in Section 2.1 hereof, or (ii) materially fail to comply with the provisions specified in Section 2.2 hereof, and Physician is unable to cure such material failure within fifteen (15) days after his or her receipt of a written notice from the Practice informing him or her of such material failure, this Agreement may then be terminated in the discretion of the Practice by written notice to Physician.

6.2.4 Termination by Death of Physician. This Agreement shall automatically terminate upon the death of Physician. In the event of termination due to death of Physician, the Practice shall pay to the executor, trustee or administrator of Physician's estate, or if there is no such executor or administrator, then to Physician's heirs as determined by any court having jurisdiction over Physician's estate, the compensation payable to Physician through date of death. Any such compensation shall be paid to Physician's executor or administrator within ninety (90) days after receipt by the Practice of a certified copy of letters testamentary or a letter of administration reflecting the appointment and qualification of such person or persons to be executor or administrator of Physician's estate. In the event there is no executor, trustee or administrator of Physician's estate, then the Practice shall pay all amounts due to Physician's heirs within ninety (90) days after receipt by the Practice of a copy of a court order determining Physician's heirs and the share of Physician's estate to which each is entitled, certified as true and correct by the clerk of the court issuing such order. Upon payment of all compensation due to Physician's executor, trustee, administrator, or heirs, as the case may be, pursuant to this

Section 6.2.4, the Practice shall have no further obligation or liability to Physician or such persons for compensation or other benefits hereunder.

6.2.5 Termination Upon Disability of Physician. Provided that, as determined in the sole discretion of Clinical Governance Board (i) reasonable accommodation is not required, (ii) no reasonable accommodation may be made to enable Physician to safely and effectively perform the normal and complete duties required of Physician in Article 2 of this Agreement, or (iii) legally protected leave is inapplicable or has been exhausted, this Agreement may be immediately terminated by the Practice upon written notice to Physician or Physician's legal representative, as appropriate, upon the occurrence of the disability of Physician. The term "disability of Physician" shall have the same meaning as that type of disability that entitles Physician to payments for permanent disability pursuant to the disability policy covering Physician; provided, that, in the event (A) no disability policy exists covering Physician or (B) the terms of such Policy do not qualify Physician for payments for permanent disability, the term "disability of Physician," as used herein, shall mean that point in time when Physician is unable to resume the normal and complete duties required of Physician in Article 2 of this Agreement at the standards applicable to Physician, as performed prior to such time, within one hundred and eighty (180) days after the disabling event. If the disabling event is not a separate and distinct happening, the 180-day period shall begin at the time Physician is unable to perform the duties required in Article 2 of this Agreement for thirty (30) consecutive work days. Additionally, Physician shall be considered disabled if Physician does not perform his or her duties for one-hundred and eighty (180) days during a 360-day period. If the Clinical Governance Board determines that Physician is not performing his or her duties because of a disability or medical condition, then Physician shall submit to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith to determine the nature and extent of such disability and Physician agrees to be bound by such determination.

Notwithstanding anything to the contrary in this Section 6.2.5, if, after the termination of this Agreement, (i) Physician demonstrates, by submission to a physical and/or mental examination of two (2) independent physicians selected by the Clinical Governance Board reasonably in good faith, that Physician is able to resume the normal and complete duties required of Physician in Article 2 of this Agreement, and (ii) this Agreement would still be in effect but for Physician's termination pursuant to this Section 6.2.5; then Physician shall be reinstated as an employee of the Practice upon the same terms and conditions that were in effect as of the date of termination; provided, however, that Physician's compensation shall be agreed upon by Physician and the Practice.

6.2.6 Immediate Termination by the Practice. Subject to any due process procedures established by the Clinical Governance Board from time to time, this Agreement may be immediately terminated by the Practice, upon the occurrence of any one of the following events: (i) Physician's failure to meet any one of the qualifications set forth in Section 2.3 of this Agreement; (ii) a determination is made by the Clinical Governance Board that there is an immediate and significant threat to the health or safety of any Patient as a result of the services provided by Physician under this Agreement; (iii) the disclosure by Physician of the terms of this Agreement in violation of Section 2.9 above; (iv) any felony indictment naming Physician; (v) any investigation for any alleged violation by Physician of any Medicare or Medicaid statutes, 42

U.S.C. § 1320a 7b (the "Anti-Kickback Statute"), 31 U.S.C. § 3729 (the "False Claims Act"), 42 U.S.C. § 1395nn (the "Stark Law"), or the regulations promulgated pursuant to such statutes or any similar federal, state or local statutes or regulations promulgated pursuant to such statutes; (vi) Physician's ineligibility to be insured against medical malpractice; (vii) Physician's loss or reduction of medical staff privileges for cause at any of the Facilities to which Physician is assigned; (viii) Physician does not satisfactorily pass the Review as described in Section 2.11 of this Agreement; (ix) any dishonest or unethical behavior by Physician that results in damage to or discredit upon the Practice; (x) any conduct or action by Physician that negatively affects the ability of Physician employees of the Practice to deliver Anesthesiology and Pain Management Services to any Facility or on behalf of the Practice; (xi) Physician's failure to comply with clinical practice guidelines as may be established by the Practice or any facilities from time to time, (xii) Physician engages in any activity that is not first approved by the Clinical Governance Board and the Practice which directly competes against the business interests of the Practice and Physician fails to disclose such conflict of interest to the Practice, (xiii) Physician has been convicted of a crime involving violence, drug or alcohol, sexual misconduct or discriminatory practices in the work place, (xiv) Physician while at work or required to be available to work, either has a blood alcohol level greater than .04 or is under the influence of drugs (which shall mean having a measurable quantity of any non-prescribed controlled substances, illegal substances, marijuana in blood or urine while being tested for the same), (xv) Physician while at work or required to be available to work is under the influence of prescribed drugs to the point that his or her skills and judgment are compromised, (xvi) Physician fails to submit to an alcohol and drug test within one hour of the Practice's request at a testing site selected by the Practice (which test shall only be requested if the Practice has reasonable suspicion that Physician is in violation of subsection (xiv) and (xv) hereof); (xvii) Physician continues, after written notice, in patterns of performing non-indicated procedures or in patterns of performing procedures without proper consent in non-emergent situations, or (xviii) Physician's violation of the Clinician Code of Conduct of the Practice (as amended by the Practice from time to time) following exhaustion of any appeal or cure process provided for therein. The current Clinician Code of Conduct of the Practice is attached hereto as Exhibit B.

6.2.7 Default. In the event either party shall give written notice to the other that such other party has substantially defaulted in the performance of any material duty or material obligation imposed upon it by this Agreement, and such default shall not have been cured within fifteen (15) days following the giving of such written notice, the party giving such written notice shall have the right to immediately terminate this Agreement.

6.2.8 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change in federal or state law, the Medicare or Medicaid statutes, regulations, or general instructions (or in the application thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement, any of which affects the continuing viability or legality of this Agreement or the ability of either party to obtain reimbursement for services provided by one party to the other party or to patients of the other party, then either party may by notice propose an amendment to conform this Agreement to existing laws. If notice of such a change or an amendment is given and if the Practice and Physician are unable within ninety (90) days thereafter to agree upon the amendment, then either

party may terminate this Agreement by ninety (90) days' notice to the other, unless a sooner termination is required by law or circumstances.

6.2.9 Termination Without Cause. Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice. The Practice may terminate the employment of Physician pursuant to this Agreement, without cause following the affirmative vote of sixty-seven percent (67%) of the Clinical Governance Board, immediately upon written notice to Physician of intent to terminate. Upon receipt of notice from the Practice of its intention to terminate this Agreement without cause, Physician's right to treat Patients or otherwise provide Anesthesiology and Pain Management Services as an employee of the Practice shall automatically terminate, unless the Clinical Governance Board notifies Physician otherwise. In the event this Agreement is terminated by the Practice pursuant to this Section 6.2.9, the Practice shall pay to Physician (i) all amounts due and payable to Physician for services rendered prior to the date of term and (ii) as severance, an amount equal to one quarter (1/4) of Physician's previous twelve (12) months' income under the USAP Nevada Compensation Plan applicable to Physician during such period measured from the date of termination of this Agreement, less customary and applicable withholdings (the "Severance Payments"). Any Severance Payments under this Section 6.2.9 shall be conditioned upon (A) Physician having provided within thirty (30) days of the termination of employment (or such other time period (up to 55 days after termination) as required by applicable law), an irrevocable waiver and general release of claims in favor of the Practice and its affiliates, their respective predecessors and successors, and all of the respective current or former directors, officers, members of the Clinical Governance Board, employees, shareholders, partners, members, agents or representatives of any of the foregoing (collectively, the "Released Parties"), in a form reasonably satisfactory to the Practice, that has become effective in accordance with its terms (the "Release"), and (B) Physician's continued compliance with the terms of the restrictive covenants in Sections 2.8 and 2.9 of this Agreement applicable to Physician. Subject to Physician's timely delivery of the Release, the Severance Payments payable under this Section 6.2.9 will commence on the first payroll date following the date the Release becomes irrevocable with such first installment to include and satisfy all installments that would have otherwise been made up to such date assuming for such purpose that the installments had commenced on the first payroll date following Physician's termination of employment and shall be completed within ninety (90) days of the date of termination of employment; provided, however, that if the Severance Payments are determined to be deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended, and if the period during which Physician has discretion to execute or revoke the Release straddles two (2) tax years, then the Practice will commence the first installment of the Severance Payments in the second of such tax years.

6.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, neither party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of expiration or termination and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term. Immediately upon the effective date of termination, Physician shall (i) surrender all keys, identification badges, telephones, pagers, and computers, as well as any and all other property of the Practice in Physician's possession, and (ii) withdraw from the medical staff of every Facility in which Physician holds medical staff privileges. If required by the Practice, Physician shall

deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section 6.3. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

6.4 Termination of Privileges. Notwithstanding any current or future Facility or medical staff bylaws, rule, or regulation to the contrary, Physician waives due process, notice, hearing, and review in the event his or her membership or privileges at any Facility are terminated under the circumstances described in Section 6.3(ii); provided, however, that if the termination of such membership or privileges is based on the quality of services rendered or is reportable to the appropriate Nevada Medical Board or the National Practitioner Data Bank, such termination shall be conducted in conformance with any applicable fair hearing rights set forth in the then current medical staff bylaws at the Facility. If required by the Practice, Physician shall deliver to each Facility that is served by the Practice Physician's written consent to be personally bound by this Section. Physician further agrees that failure to comply with this provision shall constitute a material breach of this Agreement upon which Physician's rights to any further benefits under this Agreement shall terminate immediately and automatically.

7. Status of Physician as Employee.

It is expressly acknowledged by the parties hereto that Physician, in the performance of services hereunder, is an employee of the Practice. Accordingly, the Practice shall deduct from the compensation paid to Physician pursuant to Article 5 hereof appropriate amounts for income tax, unemployment insurance, Medicare, social security, or any other withholding required by any law or other requirement of any governmental body.

8. Status of Physician.

It is expressly acknowledged by the parties hereto that Physician is not a "Physician-Partner" (as defined in the Plan Regarding Compensation for Services) but is a "Partner-Track Physician" (as defined in the Plan Regarding Compensation for Services). Physician shall be compensated as a Partner-Track Physician pursuant to the USAP Nevada Compensation Plan.

9. Suspension.

Physician recognizes and agrees that the Clinical Governance Board has the authority to immediately suspend Physician (with or without pay) from his or her duties at any time if a member of the Clinical Governance Board believes that patient safety is endangered. Such immediate suspension can only last 24 hours unless extended by the Clinical Governance Board. Further, the Clinical Governance Board has the authority to suspend Physician from some or all of his or her duties if the Clinical Governance Board reasonably believes that patient safety is at risk or while the Clinical Governance Board investigates any of Physician's actions that could lead to termination or is deemed to be violation of this Agreement as long as the nature of Physician's actions justifies the protection of patients, the Physician, the Practice and other employees of the Practice or a Facility. The Clinical Governance Board may also enact such suspension (with or without pay) after its investigation of Physician's action as a protective or disciplinary measure. Whenever suspension of Physician is involved, the Clinical Governance

Board has the discretion to determine the timing of such suspension and to determine if such suspension will be with or without pay.

10. Professional Liability Insurance.

Physician authorizes the Practice to add Physician as an insured under such professional liability or other insurance coverage as the Practice may elect to carry from time to time. The Practice shall include Physician under such liability or other insurance during the Term of this Agreement. If required by the Practice, Physician will be responsible to provide and pay for "tail insurance coverage" insuring Physician after the termination of this Agreement.

11. Miscellaneous.

11.1 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of either party, the other party shall execute such additional instruments and take such additional acts as the requesting party may reasonably deem necessary to effectuate this Agreement.

11.2 Consents, Approvals, and Discretion. Except as herein expressly provided to the contrary, whenever in this Agreement any consent or approval is required to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

11.3 Legal Fees and Costs. In the event that either party commences an action to enforce or seek a declaration of the parties' rights under any provision of this Agreement, the prevailing party shall be entitled to recover its legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.4 Choice of Law and Venue. Whereas the Practice's principal place of business in regard to this Agreement is in Clark County, Nevada, this Agreement shall be governed by and construed in accordance with the laws of such state, and such county and state shall be the venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

11.5 Benefit Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Physician may not assign this Agreement or any or all of his or her rights or obligations hereunder without the prior written consent of the Practice. The Practice may assign this Agreement or any or all of its rights or obligations hereunder to a Nevada professional corporation, or to an entity that is an association, partnership, or other legal entity owned or controlled by or under common control with the Practice. Except as set forth in the immediately preceding sentence, the Practice may not assign this Agreement or any or all of its rights or obligations hereunder to any legal entity without the prior written consent of Physician.

11.6 Waiver of Breach. The waiver by either party or the Clinical Governance Board of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver by such party of any subsequent breach of the same or other provision hereof.

11.7 Notice. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by overnight courier, or when received by prepaid certified mail, return receipt requested, addressed as follows:

The Practice:

Anesthesiology Consultants, Inc.
P.O. Box 401805
Las Vegas, NV 89140-1805
Attention: President

Physician:

Annie Lynn Penaco Duong, M.D.
11350 Blemont Lake Dr., Unit 101
Las Vegas, NV 89135

or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

11.8 Severability. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect such invalidity, illegality or unenforceability thereof shall not affect the remainder of this Agreement which shall be in full force and effect, enforceable in accordance with its terms.

11.9 Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

11.10 Divisions and Headings. The division of this Agreement into sections and the use of captions and headings in connection therewith is solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Entire Agreement. This Agreement, together with the Plan Regarding Compensation for Services, supersedes all previous contracts, and constitutes the entire agreement existing between or among the parties respecting the subject matter hereof, and neither party shall be entitled to other benefits than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect the parties specifically acknowledge that, in entering into and executing this Agreement each is relying solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions

to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

11.12 Amendment. This Agreement may only be amended by a writing signed by each of the parties hereto.

11.13 Effective Date. For the avoidance of doubt, this Agreement shall only be effective upon the date of the occurrence of the Closing Date (as defined in the Agreement and Plan of Merger (the "Merger Agreement") dated as November 4, 2016 among U.S. Anesthesia Partners Holdings, Inc., the Practice and the other parties thereto) (the "Effective Date"). In the event that the Merger Agreement is terminated, this Agreement shall automatically terminate and be of no further force and effect.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY
BEEN LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals, effective as of the date and year first above written.

PRACTICE:

FIELDEN, HANSON, ISAACS, MIYADA,
ROBISON, YEH, LTD. (D/B/A
ANESTHESIOLOGY CONSULTANTS, INC.)

By: *Jason M. Workman*
Name: _____
Title: _____

PHYSICIAN:

Annie Penaco Duong
Name: Annie Lynn Penaco Duong, M.D.

Schedule 6.2.2

Subject to the ACI Equity Incentive Plan, newly promoted Physician-Partners (as defined in the Plan Regarding Compensation for Services) will be required to purchase shares of common stock, \$0.001 par value, of Parent ("Common Stock") having a value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent) which such persons can do all at once upon becoming a Physician-Partner or by purchasing over several years (so long as such persons purchase at least a minimum of \$25,000 of such shares of Common Stock each year for five years).

Notwithstanding the foregoing, any physician who (a) was a Partner-Track Physician as of December 2, 2016 and (b) is required by the terms of a Retention Bonus Agreement executed by such physician effective as of December 2, 2016 to purchase less than \$125,000 worth of shares of Common Stock at the time of such Partner-Track Physician's promotion to Physician-Partner may (but shall not be required to) purchase additional shares of Common Stock up to an amount such that the sum of the shares purchased with the bonus paid under such Retention Bonus Agreement and such additional purchased shares has an aggregate value of \$125,000 at the then fair market value (as determined in good faith by the board of directors of Parent)

The purchased shares will be subject to the Vesting and Stockholders Arrangement Agreement (ACI) then in effect.

Exhibit A

USAP NEVADA COMPENSATION PLAN

Defined terms used herein shall have the meanings given to them in the Plan Regarding Compensation for Services (USAP Nevada) ("**PRCS**") adopted by the Clinical Governance Board effective as of December 2, 2016 and employment agreements entered into by each Physician-Partner, and each Partner-Track Physician, on the one hand, and FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation ("**ACP**") on the other hand (each a "**Provider Services Agreement**").

The PRCS established the basis upon which Physician-Partners and Partner-Track Physicians will be paid Physician-Partner Compensation for Anesthesia Services rendered as Physician-Partners and Partner-Track Physicians. The USAP Nevada Compensation Plan (the "**Plan**"), effective as of the Effective Time (as defined in the Merger Agreement), sets forth the methodology of allocation of the Physician-Partner Compensation and the Physician-Partner Compensation Expenses to Nevada Division and individual Physician-Partners and Partner-Track Physicians assigned to each Nevada Division. The Plan, together with the new Provider Services Agreements effective concurrently with the Plan, replaces in their entirety all prior compensation programs and arrangements of ACI with respect to the Physician-Partners and Partner-Track Physicians. The Plan will be the basis for determining the compensation paid to Physician-Partners and Partner-Track Physicians pursuant to their individual Provider Service Agreements, and may be amended from time to time as set forth herein and in the PRCS, subject in all cases to the approval requirements set forth in the Charter, if any.

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or "draw" basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30th) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician's projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

1. Pursuant to the PRCS, the Practice shall prepare Financial Statements for ACI (the "**ACI P&L**"), which shall reflect the Divisional Net Revenue and Expenses of ACI for the quarter.
2. The calculation of Physician-Partner Compensation shall be set forth on the ACI P&L. Physician-Partner Compensation shall be allocated to the Physician-

Partners and Partner-Track Physicians based upon the compensation plan for the Nevada Divisions.

Physician-Partners and Partner-Track Physicians are not permitted to carry a negative balance at any time. If, at any time, an individual carries a negative balance, the Practice reserves the right to withhold amounts payable to such individual until the negative balance is cured.

In addition, within thirty (30) days following the delivery of the audited financial statements of Holdings, USAP shall reconcile the actual amounts due to Physician-Partners and Partner-Track Physicians for the prior fiscal year and such physician's compensation may be adjusted upwards or downwards to reflect such reconciliation.

If at any time after the date hereof, there are any issues with the operation of the Plan or the interaction of the Plan with the PRCS, then the Clinical Governance Board and the Practice shall work together in good faith to make sure adjustments to the Plan as are necessary or desirable to achieve the original intent and economics of the effectiveness of the Plan.

Additionally, Physician-Partner Compensation will be reduced by any amounts owed and outstanding to Holdings or any of Holdings' affiliates (but more than ninety (90) days in arrears) by any Physician-Partner in final settlement of such amounts pursuant to such Physician-Partner's indemnification or other obligations to the extent Holdings or any of Holdings' affiliates are finally determined to be entitled to such amounts (whether through mutual agreement of the parties thereto, or as a result of dispute resolution provisions) in accordance with the terms of the Merger Agreement for any claims owed by individual Physician-Partners pursuant thereto.

Appendix A
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A
to Exhibit A

Exhibit B

Clinician Code of Conduct

Introduction

U.S. Anesthesia Partners, Inc. ("USAP") is an organization built on the highest standards of quality care and professional demeanor for all of its associated clinical providers. Each of USAP's affiliated practices partners with its contracted facilities to offer its patients and their families the best clinical experience available in its marketplace. Such practices' clinical providers are chosen with the expectation that each will represent the organization in an exemplary way. This Code of Conduct (this "Code") has been established to ensure USAP's core principles are maintained throughout the organization.

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. (d/b/a Anesthesiology Consultants, Inc.) (the "Practice") establishes this Code for all of the clinical providers (the "clinical providers") employed by the Practice. This Code sets forth the expectations for all clinical providers, as well as the procedural steps and governing bodies responsible for the enforcement of these expectations.

Every clinical provider is expected to understand and fully comply with this Code. It is each clinical provider's responsibility to seek clarification of or guidance on any provision of this Code that he/she does not understand or for which he/she needs further clarification. This Code is applicable to all clinical providers. In addition, promotion of and adherence to this Code will be one criterion used in evaluating performance of clinical providers. Each clinical provider will be deemed to have accepted this Code upon execution of an employment agreement with the Practice that incorporates this Code or if a clinical provider is not executing such an employment agreement then such clinical provider will be required to execute an acknowledgment within 30 days of receipt of a copy of this Code by such clinical provider.

Standards of Conduct

The Practice has determined that the following behaviors are unacceptable and will subject any of the clinical providers to the disciplinary process outlined below:

1. Any behavior that is deemed abusive to fellow employees, patients, guests, or staff of any hospital, ambulatory surgery center, or any other site at which the Practice furnishes services (the "facilities"). Such behavior includes, but is not limited to, verbal or physical intimidation, inappropriate language or tone, harassment, discrimination, or comments that are demeaning personally or professionally.
2. Not responding to pages or phone calls while on duty at a facility or on call.
3. Failure to maintain privileges or credentialing at any facility where a clinical provider is on staff.

4. Removal or a request for removal from any facility based on violation of the medical staff by-laws.
5. Any violation of the Compliance Plan. Each clinical provider will be given proper notice to correct any deficiency deemed an unintentional oversight. All clinical providers will receive continuing education on the Compliance Plan.
6. Any action deemed to be against the best interests of the Practice or USAP. Such actions include, but are not limited to, disclosing confidential information to the extent restricted pursuant to any employment agreement between the clinical provider and the Practice, making derogatory comments about the Practice or USAP, or interfering with any contract or business relationship of the Practice or USAP.
7. Clinical performance deemed unsatisfactory by the Practice.
8. Physical or mental impairment while performing clinical duties, including but not limited to, substance abuse or any other condition preventing a clinical provider from adequately performing the necessary clinical tasks.
9. Failure of a clinical provider to report behavior that violates this Code or other policies of the Practice or a facility.

The matters enumerated above are in addition to the matters that may result in an immediate termination under the employment agreement with the Practice. Any matter that is deemed to be an immediate termination under the employment agreement, other than a violation of this Code, is not required go through the disciplinary action process outlined below.

Reporting Violations and Discipline

Strict adherence to this Code is vital. The Practice will implement procedures to review any violations of the above Standards of Conduct, which the Practice may change from time to time.

Amendment

This Code may be amended by the written consent of the Practice and the vote of sixty-seven percent (67%) of the members of the Clinical Governance Board.

EXHIBIT D

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-19-789110-B

Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s) vs. §
 Scott Duong, M.D., Defendant(s) §
 §
 §
 §
 §

Case Type: **Other Business Court Matters**
 Date Filed: **02/08/2019**
 Location: **Department 13**
 Cross-Reference Case Number: **A789110**

PARTY INFORMATION

Defendant Duong Anesthesia, PLLC

Lead Attorneys
Martin A. Little
Retained
 7026997500(W)

Defendant Duong, Scott Vinh, M.D.

Martin A. Little
Retained
 7026997500(W)

Defendant Penaco Duong, Annie Lynn, M.D.

Martin A. Little
Retained
 7026997500(W)

Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.

Gabriel A Blumberg
Retained
 702-382-4002(W)

EVENTS & ORDERS OF THE COURT

03/19/2019 **Minute Order** (7:00 AM) (Judicial Officer Denton, Mark R.)
Re: Plaintiff's Motion for Preliminary Injunction

Minutes

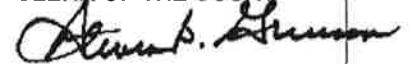
03/19/2019 7:00 AM

- HAVING further considered the Matter of Plaintiff s Motion for Preliminary Injunction heard on March 11, 2019, and then taken under advisement, the Court determines that the confidentiality aspects are entirely enforceable and that, while the non-compete agreement aspect is overbroad in the first instance, it is amenable to blue penciling under NRS 613.195 (5), and that the other requisites for preliminary injunctive relief as briefed and argued by Plaintiff have been demonstrated. Accordingly, the Court GRANTS Plaintiff s Motion IN PART as follows: The confidentiality aspect is entitled to full enforcement. The non-compete/non-solicitation aspect shall be blue penciled to reflect the restraints set forth in Defendants Opposition to the Motion at: page 9, line 22 through USAP at page 10, line 1; page 10, lines 5 through 9, to include declination of coverage requests from any facilities having an on-going relationship with USAP/Fielden Hanson; and page 10, lines 10 through 13 (ending with the word provider). With regard to the last reference, Defendants shall be enjoined from encouraging Red Rock Anesthesia Consultants from inducing facilities and physicians to divert their business away from Plaintiff, but such injunction shall not preclude Defendants from fulfillment of assignments by Red Rock to physicians and health care providers which have requested its services. Security shall be set in the sum of \$1,000.00. Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing and including preliminary findings of fact/conclusions of law. NRCP 65(d)(1) and 52(a)(2), as both were amended effective March 1, 2019. Prior to submission of such proposed order to the Court, the same should be submitted to opposing counsel for signification of

approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/19/19

[Return to Register of Actions](#)

EXHIBIT D



1 **NEOJ**
2 **DICKINSON WRIGHT PLLC**
3 **MICHAEL N. FEDER**
4 Nevada Bar No. 7332
5 Email: mfeder@dickinson-wright.com
6 **GABRIEL A. BLUMBERG**
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinson-wright.com
9 8363 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113-2210
11 Tel: (702) 550-4400
12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**
12 **ROBISON YEH, LTD.,**

13 *Plaintiff,*

14 *vs.*

15 **SCOTT VINH DUONG, M.D., ANNIE**
16 **LYNN PENACO DUONG, M.D., DUONG**
17 **ANESTHESIA, PLLC and DOE**
18 **DEFENDANTS I-X,**

19 *Defendants.*


Case No.: A-19-789110-B
Dept.: 13

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION
TO ALTER/AMEND JUDGMENT**

20 PLEASE TAKE NOTICE that the Order Denying Defendants' Motion to Alter/Amend
21 Judgment was entered by the Court on July 17, 2019. A copy of said Order is attached hereto.

22 Dated this 17th day of July, 2019.


23 **DICKINSON WRIGHT PLLC**

24 
25 Michael N. Feder
26 Nevada Bar No. 7332
27 Gabriel A. Blumberg
28 Nevada Bar No. 12332
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 8911
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of July, 2019, a true and correct copy of the **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT** was served via the Court's Odyssey E-File & Serve System as follows:

Martin A. Little
Ryan T. O'Malley
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
Attorneys for Defendants


An Employee of Dickinson Wright PLLC



1 **ORDD**
2 **DICKINSON WRIGHT PLLC**
3 **MICHAEL N. FEDER**
4 Nevada Bar No. 7332
5 Email: mfeder@dickinson-wright.com
6 **GABRIEL A. BLUMBERG**
7 Nevada Bar No. 12332
8 Email: gblumberg@dickinson-wright.com
9 8363 West Sunset Road, Suite 200
10 Las Vegas, Nevada 89113-2210
11 Tel: (702) 550-4400
12 Fax: (844) 670-6009
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**
12 **ROBISON YEH, LTD.,**

13 **Plaintiff,**

14 **vs.**

15 **SCOTT VINH DUONG, M.D., ANNIE**
16 **LYNN PENACO DUONG, M.D., DUONG**
17 **ANESTHESIA, PLLC and DOE**
18 **DEFENDANTS I-X,**

19 **Defendants.**

Case No.: A-19-789110-B
Dept.: 13

ORDER DENYING DEFENDANTS'
MOTION TO ALTER/AMEND
JUDGMENT

20 This matter having come for hearing on June 10, 2019, Gabriel A. Blumberg, Esq. of
21 Dickinson Wright PLLC appearing on behalf of Plaintiff Fielden Hanson Isaacs Miyada Robison
22 Yeh. Ltd. ("Fielden Hanson"); Ryan O'Malley, Esq. of Howard and Howard PLLC appearing on
23 behalf of Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong
24 Anesthesia, PLLC ("Defendants"); the Court having reviewed the pleadings and papers on file
25 herein and considered the argument of counsel, and good cause appearing therefore,
26 ...
27 ...
28

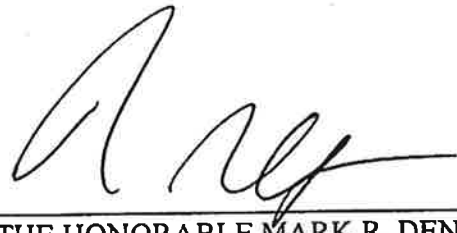
DICKINSON WRIGHT PLLC
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210

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DISTRICT COURT DEPT#13

1 **IT IS HEREBY ORDERED** that Defendants' Motion to Alter/Amend Judgment is
2 **DENIED** for the reasons set forth by the Court on the record at the hearing.

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4 Dated this 15th day of July, 2019.



THE HONORABLE MARK R. DENTON

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9 Respectfully submitted by:


10 **DICKINSON WRIGHT PLLC**



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19 Attorneys for Plaintiff

Approved as to form and content by:

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