IN THE SUPREME COURT
OF THE STATE OF NEVADA

SCOTT VINH DUONG, M.D., ANNIE LYNN PENACO DUONG, M.D., DUONG ANESTHESIA, PLLC and DOE DEFENDANTS I-X,

Appellants,

vs.

FIELDEN HANSON ISAACS MIYADA ROBINSON YEH, LTD.,

Respondent.

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Eight Judicial District Court
Case No. A-19-789110-B

JOINT APPENDIX
VOLUME II

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Docket 79460 Document 2020-09747

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DISTRICT COURT

CLARK COUNTY, NEVADA

FIELDEN HANSON ISAACS MIYADA ROBINSON YEH, LTD., Plaintiff, vs. SCOTT VINH DUONG, M.D., ANNIE LYNN PENACO DUONG, M.D., DUONG ANESTHESIA, PLLC and DOE DEFENDANTS I-X, Defendants.	**CASE NO. A-19-789110-B** **DEPT. NO. XI** **OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

Defendants Scott Vinh Duong, M.D. ("Scott"); Annie Lynn Penaco Duong, M.D. ("Annie"); and Duong Anesthesia, PLLC ("Duong Anesthesia") (collectively "the Duongs" or "Defendants") hereby oppose Plaintiff's Motion for Preliminary Injunction.

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This Opposition is based upon the pleadings and papers on file, the attached Declarations of Scott Vinh Duong, M.D. (**Exhibit A**) and Annie Lynn Penaco Duong, M.D. (**Exhibit B**), the attached points and authorities, the attached exhibits, and whatever argument the Court may entertain at hearing on this matter.

DATED this 26th day of February, 2019.

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POINTS AND AUTHORITIES

I.
INTRODUCTION

The non-compete provisions at issue here are overbroad and not reasonably related to any legitimate business purpose; therefore, they are wholly unenforceable. *See Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016) (holding that a non-competition agreement which extends beyond what is necessary to protect the employer's interest renders the provison wholly unenforceable);[1] *accord Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. v. Tang*, Case No. A-18-783054-C (Jan. 30, 2019) (holding exact non-compete at issue here is overbroad and wholly unenforceable) (Order attached as **Exhibit C**.[2]) The plain language of the provision states that if the Duongs had ever taken a case at a hospital during their time at Fielden Hanson, they are barred from accepting *any* cases from *any* provider at that *entire facility* for a two-year period, even for providers that Fielden Hanson has never worked with, and even if Fielden Hanson later ceases providing any services at that facility. The non-compete's focus on entire *facilities* rather than individual *physicians* is nonsensical because, generally speaking, physicians (and not hospitals) hire anesthesiologists. Moreover, the agreement provides requires the Duongs to *terminate their privileges at every facility* at with which Fielden Hanson has any sort of business relationship, *whether or not the Duongs had ever provided services at those facilities* during their employment. This draconian provision is not "tailored," as Plaintiff suggests, and it has no reasonable relationship to any legitimate business purpose. The non-compete is therefore overbroad and invalid.

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[1] On June 3, 2017, the Nevada Legislature enacted **AB 276**, which modifies *Golden Road's* holding with respect to the construction and severability of non-compete agreements. However, the Agreement at issue in this case was executed on December 2, 2016, well before the enactment of AB 276, but after the holding in *Golden Road*. Thus, **the holding in *Golden Road* controls.** *See* Section IV(A)(1)(a), *infra*.

[2] Although the caption in the *Tang* order names a different plaintiff, the parties have since stipulated to substitute Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. as the plaintiff in that matter. (*See* Stipulation and Order to Change Caption, attached as **Exhibit D.**)

Even if the non-compete were enforceable, the Duongs are not competing with Fielden Hanson. Since their departure, the Duongs have largely limited their practice in Nevada to accepting overflow cases from Red Rock Anesthesiology Consultants ("Red Rock"), which are assigned to them by that group. They have never solicited business from any current or former Fielden Hanson clients; indeed, they have never directly solicited business from *any* physician or physician group. Fielden Hanson is therefore not being harmed by the Duongs' conduct, and it is certainly not experiencing the irreparable harm necessary to support a preliminary injunction. Even if Fielden Hanson were being harmed in some way by the Duongs' conduct, monetary damages are sufficient to remedy the harm at issue. Fielden Hanson's motion should therefore be denied in its entirety.

II
STATEMENT OF FACTS

The Duongs Complete Their Medical Training and Begin Their Careers with Premier Anesthesiology Consultants

The Duongs attended medical school at State University of New York at Downstate. (Ex. A & B at ¶ 4.) They both performed residencies at Montefiore Medical Center, as well as fellowships at the University of Pittsburgh Medical Center. (*Id.*) Scott's fellowship training was in regional anesthesiology, and Annie's was in pediatric anesthesiology at the Children's Hospital of Pittsburgh at UPMC. (*Id.*)

In August of 2016, and immediately following their fellowships, Scott and Annie relocated from Pittsburgh to Las Vegas to join Premier Anesthesia Consultants ("PAC"), which was a subsidiary of a group called Anesthesiology Consultants, Inc. ("ACI"). (*Id.* at ¶¶ 5–6.) At the time the Duongs joined PAC, the group consisted of approximately 16 anesthesiologists. (*Id.* at ¶ 7.) The Duongs' recruitment process with PAC began in or around January of 2016, and at no point during that process were they ever informed that PAC was considering a buy-out from Fielden Hanson or any other group. (*Id.* at ¶¶ 8–9.)

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USAP Comes to Town: The Fielden Hanson Merger

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. (*Id.* at ⁋ 10.) Fielden Hanson is a subsidiary of USAP. (*See* Ex. 1-C to Pl.'s Mot. for Preliminary Injunction, identifying "Fielden, Hanson, Isaacs, Miyada, Robinson, Yeh, Ltd. [as] a subsidiary of U.S. Anesthesia Partners).[3] In connection with this acquisition, USAP/Fielden Hanson required the Duongs to execute Physician-Track Employment Agreements ("Agreement[[4]]") if they wished to continue their employment. *See generally* **Exhibit E-1** (Scott's Agreement) & **Exhibit E-2** (Annie's Agreement).

Thus, within a few months of beginning work in Las Vegas, the Duongs found themselves facing an uncomfortable decision: They could either accept the new terms set forth by USAP/Fielden Hanson or immediately leave the practice which they had just moved across the country to join. (Ex. A & B at ⁋ 12.) They ultimately chose to execute the Agreement. (*See id.*)

USAP's New Terms: The Post-Merger Non-Competition Language

USAP's Agreement (with exhibits) spans about 23 single-spaced pages. (*See generally* Ex. E-1 & E-2.) Many of the Agreement's provisions (including the non-competition provisions at issue in this case) cast their scope in terms of "Facilities," which are broadly defined as:

> 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

[3] *See also Anesthesiology Consultants Inc. Teams with U.S. Anesthesia Partners*, https://www.usap.com/news-and-events/news/anesthesiology-consultants-inc-teams-us-anesthesia-partners (last visited February 25, 2019).

[4] Both Agreements are identical USAP forms except for the names of the counterparty involved, and the term "Agreement" is therefore used in the singular for the remainder of this Opposition to refer to the substance of both Scott and Annie's Agreements.

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> 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[.]"

(*Id.* at pg. 1.) The definition of capital-'F' "Facilities" under the Agreement therefore includes the following classes of healthcare facilities:

(1) facilities at which USAP/Fielden Hanson has a contract to supply healthcare providers;

(2) facilities at which USAP/Fielden Hanson *had* a contract to supply healthcare providers at any time during the 12 months preceding the Agreement, even if it does no longer, and even if it did not have such a contract at any time during the term of the Agreement;

(3) facilities at which USAP/Fielden Hanson had provided anesthesiology or pain management services at any time during the term of the Agreement;

(4) facilities at which USAP/Fielden Hanson had provided anesthesiology or pain management services during the twelve months preceding the Agreement, even if it never did during the term of the Agreement;

(5) any facilities with which USAP/Fielden Hanson had "active negotiations[5] to supply any [healthcare] providers" during the Term of the Agreement, even if those negotiations never ripened into a contract; and

(6) any facilities with which USAP/Fielden Hanson had "active negotiations" during the twelve months preceding the Agreement, even if those negotiations never ripened into a contract, and even if those negotiations had unsuccessfully concluded prior to the term of the Agreement.

[5] The Agreement does not define "active negotiations," which leaves ambiguous how "active" negotiations must be before they trigger any obligation under the Agreement. For example, if a healthcare facility contacts USAP/Fielden Hanson expressing potential interest in forming a relationship and entertains a few meetings before concluding that it is not interested, it is entirely unclear under the Agreement whether these "negotiations" were sufficiently "active" to trigger the Agreement's various obligations.

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Subject to this broad definition of "Facilities," the Agreement contains the following Non-Competition Clause:

> 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.

(Ex. E-1 & E-2 at § 2.8.1, emphases added.) The Agreement also provides that, upon termination, the Duongs must terminate their privileges at any "Facility" as defined by the Agreement, *without regard to whether they had ever provided services* at that Facility:[6]

> 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

[6] Section 6.3 does not include the "twenty-four month period" limitation contained in the non-competition clause, and the Agreement does not articulate when, if ever, the Duongs may re-establish their privileges at the Facilities.

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> 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.

(Ex. E-1 & E-2 at § 6.3, emphases added.) The Agreement also includes a provision requiring a physician to "waive[] 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) [*i.e.* the language quoted above]," which apparently contemplates a waiver of rights if someone *other than* the Duongs seeks to have their privileges terminated at any Facility following their departure. (*See id.* at § 6.4.) The Agreement's non-solicitation provision similarly applies to "any of the Facilities," without regard to whether the Duongs had ever actually practiced or provided services at any given facility. (*Id.* at § 2.8.2.)

The Duongs' Post-Merger Working Conditions Deteriorate

After the merger, various changes were implemented that made the Duongs uncomfortable. (Ex. A & B at ¶ 13.) For example, they were transitioned from 1099 compensation (for contractors) to a W2 salary (for employees). (*Id.*) A compensation plan was implemented which was less transparent than that of PAC/ACI. (*Id.*) USAP took 20% of the Duongs' salaries on an indefinite basis. (*Id.*) In exchange for this 20% "tax," USAP promised improvement in efficiency/work flow and better negotiations/contracts with hospitals, which would ostensibly result in higher income for the members of the practice net of the tax (a notion which USAP refers to as "income repair"). (*See id.*) USAP/Fielden Hanson did not deliver on any of these promises. (*Id.*)

The quality of the practice suffered as well. (*See id.* at ¶ 14.) The sudden expansion of the group from 16 providers to more than 100 made scheduling disorganized and frustrating for surgeons attempting to schedule procedures. (*Id.*) Some surgeons became dissatisfied with the group and began to take their business elsewhere. (*Id.*) Many providers became unhappy with the new system, and morale suffered. (*See id.*) Providers working with the group (including the Duongs) began to feel like interchangeable cogs rather than skilled physicians. (*See id.*)

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In short, the work experience that USAP/Fielden Hanson provided was not what the Duongs had signed up for when they left Pittsburgh and relocated to Las Vegas to work with PAC, and they decided to part ways with the practice. (*Id.*)

The Duongs Separate from USAP/Fielden Hanson

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. (*See* Ex. A & B at ⁋ 6; *see also* Ex. E-1 & E-2 at § 6.2.9 ("Physician may terminate employment pursuant to this Agreement, without cause, by providing ninety (90) days prior written notice to the Practice.")). In doing so, they declined a partnership that they were offered, as well as the bonus associated with it. (Ex. A & B at ⁋ 15.) The Duongs had no intention of competing with USAP following their departure, and (as described below) they did not do so. (*Id.* at ⁋ 17.) However, they also did not conceal their intention to continue working as anesthesiologists in Las Vegas following their departure from Fielden Hanson. (*Id.* at ⁋ 18.)

The Duongs' Post-Separation Anesthesiology Practice and Efforts to Avoid Competition with USAP/Fielden Hanson

In or around November of 2018, the Duongs' notice period ended, and they became independent contractors. (Ex. A & B at ⁋ 19.) Since their departure, they have made affirmative efforts not to compete with USAP/Fielden Hanson. (*Id.* at ⁋ 20.) 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. (*Id.* at ⁋ 21.)

Aside from their relationship with Red Rock, the Duongs have never solicited work from any physician, physician group, or other healthcare provider. (*Id.* at ⁋ 26.) 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. (*Id.* at ⁋ 27.) Nor have they never encouraged any physician, physician group, or healthcare provider to terminate a relationship with USAP or to divert any portion of their anesthesiology coverage

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from USAP. (*Id.* at ⁋ 28.) 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. (*Id.* at ⁋ 29.)

Indeed, in an effort to avoid competing with USAP/Fielden Hanson, the Duongs have declined unsolicited requests for their services. (*Id.* at ⁋⁋ 22–23.) Annie has declined specific patient requests for her services because the surgeons involved work with USAP. (*Id.* at ⁋ 22.) Both of the Duongs have declined coverage requests from Summerlin Hospital's endoscopy suite staff because they were uncertain of the providers' relationship with USAP. (*Id.* at ⁋ 23.)

To whatever extent that the Duongs have ever worked with a physician that had previously worked with USAP, they did so only because that physician had independently requested anesthesia services from Red Rock Anesthesia Consultants, and they were subsequently assigned to the case by that provider. (*Id.* at ⁋⁋ 24–25, 30.) The Duongs have acted in good faith at all times since their departure to avoid competing with USAP/Fielden Hanson, and they have done everything in their power to avoid doing so (short of terminating their privileges at every facility with which USAP has any relationship and leaving town to practice elsewhere).

USAP/Fielden Hanson's Demand and This Litigation

The Duongs' efforts were unfortunately not sufficient for USAP/Fielden Hanson. In or around December of 2018, the Duongs received cease and desist letters from John H. Cotton & Associates, Ltd., acting as counsel for "Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. a subsidiary of U.S. Anesthesia Partners, Inc." (*See* **Exhibit F**.) The letter referenced Section 2.8 of the Agreement, which it characterized as "specifically stat[ing] that [the Duongs] recognized USAP's decision to enter into the Agreement with [them] was induced primarily because of [their] covenants and assurances of

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[their] non-competition and non-solicitation[7] were necessary in order to protect USAP from unfair business competition." (*Id.*) The letter goes on to allege a breach of the non-competition provision, and asserts that the Duongs "have additionally breached Section 6.3 by not withdrawing from the medical staff of every facility in which [they] hold medical staff privileges." (*Id.*) On or around January 14, 2019, the Duongs responded to the cease and desist letters, declining to cease their practice and terminate their privileges at every hospital at which USAP/Fielden Hanson has or had a relationship. (*See* **Exhibit G**.)

On February 8, 2019, Fielden Hanson commenced this lawsuit. On February 19, 2019, Fielden Hanson brought this Motion for Preliminary Injunction. For the reasons stated below, the Court should deny that Motion.

III.
LEGAL STANDARD

NRCP 65 and NRS 33.010 permit the issuance of preliminary injunctions under certain circumstances. "A preliminary injunction is available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy." *Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 726 P.2d 335, 337 (1986); *see also Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978) (plaintiff failed to meet its burdens and thus denial of preliminary injunction relief was proper exercise of discretion).

Where a claim for money damages is a sufficient remedy, there is no need to grant a restraining order. *Ramada Inns*, 94 Nev. at 780, 587 P.2d at 1330 (1978) (affirming trial court's denial of motion for preliminary injunction because "money damages [were] an adequate

[7] This is rather inconsistent with Fielden Hanson's assertion that it "hand-selects providers who not only demonstrate excellent clinical knowledge and skill, but also compassion for their patients." (Pl.'s Mot. at 6:6–7.) To be sure, the Duongs are excellent, skilled, and compassionate anesthesiologists, which made them all the more surprised to learn that USAP/Fielden Hanson's decision to employ them was "induced primarily" by their mere execution of USAP's non-competition agreement.

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remedy for the vindication of appellant's right."). The availability of adequate money damages do not support Plaintiff's claim of irreparable harm nor justify injunctive relief:

> [T]he temporary loss of income, ultimately recovered, does not usually constitute irreparable injury . . . . The key word in this consideration is irreparable. Mere injuries, however substantial in terms of money, time and energy expended . . . are not enough.

Los Angeles Memorial Coliseum Comm v. N.F.L., 634 F.2d 1197, 1201 (9th Cir. 1980) (emphasis added).

Nevada law requires that, "in considering preliminary injunctions, courts [must] also weigh . . . the public interest." *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't,* 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *see also Salazar v. Buono*, 559 U.S. 700, 714, (2010) ("[A] court should be particularly cautious when contemplating relief that implicates public interests."). Thus, in considering preliminary injunctions, Nevada courts weigh the potential hardships to the relative parties and others, and the public interest. *See Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187. Post-employment anti-competitive covenants must be scrutinized particularly closely, "because a loss of a person's livelihood is a very serious matter." *See Traffic Control Servs., Inc. v. United Rentals Nw.*, Inc., 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004).

IV.
ARGUMENT

Plaintiff is unlikely to prevail on the merits, it faces no irreparable harm, and the balance of hardships is in favor of the Duongs. Therefore, no grounds exist for granting a preliminary injunction, and Plaintiff's Motion should be denied.

A. USAP does not Enjoy a Reasonable Likelihood of Success on the Merits

Plaintiff is unlikely to prevail. The scope of the non-compete is overbroad and not reasonably related to protecting a legitimate business interest of Plaintiff; it is therefore wholly unenforceable. Even if the non-compete were not wholly unenforceable, the Duongs are not competing with Plaintiff and have never directly solicited the business of any physician or

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physician group since their departure; rather, they simply accept overflow cases assigned to them by Red Rock. The Duongs have therefore not violated the Agreement.

1. The Non-Compete Language in the Agreement at Issue Here is Facially Unreasonable and Invalid

Plaintiff's Motion acknowledges that the Agreement purportedly bars the Duongs from accepting *any* cases at *any* "Facility" at which the Duongs had ever provided services as Fielden Hanson employees, even for surgeons that had never worked with Fielden Hanson and have no intention of doing so. (*See* Pl.'s Mot. at 14:4–14.) This is nonsensical; barring the Duongs from accepting *any* cases at an entire hospital facility (even those for surgeons who have never worked with USAP and have no intention of doing so) simply because they had been sent to cover a surgical case at that facility at some point during their employment does not protect USAP's legitimate business interests. The overbreadth of this provision would be sufficient by itself to invalidate the non-competition language in the Agreement, but it does not stop there; the Agreement also purportedly requires the Duongs to terminate their staff privileges at every "Facility," regardless of whether the Duongs had ever taken a case there during their employment, and with no indication as to when (if ever) they may reinstate their privileges at those Facilities. Indefinitely stripping a physician of his or her staff privileges at a facility has the practical effect of completely barring that physician from the facility. The non-compete is therefore not "specifically tailored only to preclude [the Duongs] from working at Facilities they serviced for Fielden Hanson." (*See* Pl.'s Mot. at 17:2–5.) It instead cuts with an axe, requiring the Duongs (and any other physicians bound under USAP's form agreement) to indefinitely terminate their privileges at any Facility with which Fielden Hanson (and perhaps USAP as a whole) has a contractual relationship or had provided a healthcare professional at *any time* during their employment or the year prior.

Read as a whole, the Agreement's non-competition language is astonishingly overbroad, and the Nevada Supreme Court's decision in *Golden Road* precludes "blue-lining" it to render it acceptable. Plaintiff will therefore fail on the merits.

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a. NRS 613.195(5) Does Not Operate Retroactively

Plaintiff's suggestion that the Court should construe AB 276 to operate retrospectively, if accepted, would violate the Duongs' due process rights. *See K-Mart Corp. v. State Indus. Ins. Sys.*, 101 Nev. 12, 21, 693 P.2d 562, 567 (1985). "Retroactivity is not favored in the law." *Cnty. of Clark v. LB Props., Inc.*, 129 Nev. 909, 912, 315 P.3d 294, 296 (2013) (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). This is so because "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 820, 313 P.3d 849, 854 (2013) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994)). Legislative enactments therefore only apply prospectively unless their language requires that they be applied retrospectively. *See LB Props*, 129 Nev. at 912, 315 P.3d at 296; *accord Bowen*, 488 U.S. at 208.

AB 276 clearly affects the holding in *Golden Road*; however, it is not at all clear that the legislature intended that bill to do so *retrospectively*. Although Plaintiff suggests that the legislative history of AB 276 stands for the proposition that it was "adopted specifically to address and overturn the Nevada Supreme Court's decision in [*Golden Road*],"[8] this is simply not the case. Indeed, the legislative history that Plaintiff cites does not say *anything* about retroactivity, nor does it even mention *Golden Road* by name. (*See* Senate Committee on Commerce, Labor, and Energy May 24, 2017 Minutes, attached as **Exhibit H**.) Instead, the cited legislative history contains a statement from Misty Grimmer (a public affairs professional representing the Nevada Resort Association) expressing the Resort Association's support of A.B. 276 because "a specific lawsuit came forth" which prohibited blue-lining, and the bill "would allow a court to keep the good parts of a noncompete agreement and toss out or renegotiate the excessive parts." (Ex. H at 15.) Even in her capacity as a lobbyist, Ms.

[8] *See* Pl.'s Mot. at 18 note 3.

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Grimmer says nothing about retroactivity. (*Id.*) Nor does any member of the legislature, nor does anyone else. (*See generally* Ex. H.)

In short, A.B. 276 was enacted after the Agreement was executed. *Golden Road* was the law at the time of execution, and it prohibited blue-lining an overbroad non-compete agreement. The Duongs had the right to expect that a court would analyze the Agreement under the state of the law as it existed when they executed the Agreement, and they have that right now, especially in the absence of any intent by the legislature that A.B. 276 operate retrospectively. The Court should decline to give the statute retroactive application.

b. Golden Rd. holds that a Non-Compete is Wholly Invalid if any Portion is Invalid

Golden Rd. Motor Inn, Inc. v. Islam holds that when a non-compete agreement extends beyond what is necessary to protect the employer's interest, the agreement is wholly unenforceable and courts may not modify or "blue pencil" the contract to make it reasonable. 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016). Therefore, if any terms of a non-compete agreement are found to be unreasonable, the entire agreement is unenforceable and the court will not edit or narrow the non-compete agreement in any manner. *Id.* The Court explained that its prohibition of modifying unreasonable terms avoids "the possibility of trampling the parties' contractual intent" and creating an agreement not actually contemplated by the parties. *Id.* The Court further explained that because an employer-drafted contract containing unenforceable provisions would likely be signed by an employee, if the Court chose to modify the agreement to make it enforceable, it would encourage "employers with superior bargaining power 'to insist upon unreasonable and excessive restrictions, secure in the knowledge that the promise will be upheld in part, if not in full.'" *Id.* Accordingly, the Court held that unreasonable non-compete agreements are wholly unenforceable. *Id.*

c. Covenants Not to Compete are Strictly Construed

An agreement by an employee not to compete is generally considered an unenforceable restraint of trade unless it is reasonable in scope and breadth. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 404, 632 P.2d 1155, 1158-59 (1981). A restraint of trade is unreasonable if it is

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greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted. *Ellis v. McDaniel*, 95 Nev. 455, 458, 596 P.2d 222, 224 (1979). Nevada courts therefore "strictly construe the language of covenants not to compete; and in the case of an ambiguity, that language is construed against the drafter." *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 489, 117 P.3d 219, 225 (2005).

Post-employment anti-competitive covenants are scrutinized with greater care than are similar covenants incident to the sale of a business. *Hotel Riviera*, 97 Nev. at 404, 632 P.2d at 1158–59. Thus, noncompetition agreements are strictly limited to the protection of a legitimate business interest of the employer. *Duneland Emergency Physician Med. Corp. v. Brunk*, 723 N.E. 2d 963 (Ind. Ct. App. 2000). In order for a plaintiff to enjoy a probability of success on the merits of its case to enforce a non-compete clause, the Court must consider whether the provisions of the non-compete would likely be found reasonable at trial. *Hanson v. Edwards*, 83 Nev. 189, 191-92, 426 P.2d 792, 793 (1967).

For example, in evaluating the reasonableness of the non-compete provision at issue in *Golden Road*, the Court looked to its prior decisions in *Jones v. Deeter*, 913 P.2d 1272 (Nev. 1996), wherein it held that a five-year time restriction was unreasonable, and *Camco, Inc. v. Baker*, 113 Nev. 512 (1997), which concluded that a geographic restriction of 50 miles from any area which was the "target of a corporate plan for expansion" was unreasonable. *Id.* The Court reasoned that if such restrictions were unreasonable in those cases, then prohibiting an employee "from employment, affiliation, or service with any gaming business" was also unreasonable. *Id.* Additionally, the Court found that prohibiting an employee from working in any capacity, even as a custodian, did not further any protectable any legitimate business interests on the part of the employer. *Id.* Accordingly, the Court determined that the provision was overbroad and unreasonable. *Id.*

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d. The Non-Compete at Issue Here is Overbroad and Therefore Invalid

The plain language of the non-compete at issue here purports to prevent the Duongs from "provid[ing] Anesthesiology and Pain Management Services at any of the Facilities at which [he] has provided any Anesthesiology and Pain Management Services . . . within the twenty-four month period prior to the date of . . . termination" of the Agreement. (Ex. E-1 & E-2 at § 2.8.2.) On its face, this provision prevents the Duongs from accepting cases at any "Facility" at which they had even taken a case during their time at Fielden Hanson, even if it were to later cease providing anesthesiology services at those "Facilities." But Plaintiff's focus on *hospitals* (or "facilities") misses the point because, generally speaking, hospitals do not hire anesthesiologists—*physicians* do. A physician conducting a surgical procedure at a hospital at which she has privileges may, in the overwhelming majority of cases, hire any anesthesiologist she chooses. The only relevant relationship between the anesthesiologist and the hospital is whether the anesthesiologist carries privileges at that facility. Nevertheless, the plain language of the non-compete at issue purports to lock an anesthesiologist out of an entire hospital the moment that he takes a single case for a single provider at that hospital. This is not a reasonable means for Plaintiff to protect its business. *See Golden Rd.*, 376 P.3d at 156.

The Agreement also requires the Duongs to terminate their staff privileges at *every single "Facility"* under the Agreement's broad definition of that term, regardless of whether the Duongs had ever provided services there as USAP employees, and with no indication of when (if ever) they may apply to reinstate their privileges at those Facilities. This means that, under the plain language of the Agreement, the Duongs must terminate their privileges at:

(1) every facility at which USAP/Fielden Hanson has a contract to supply healthcare providers;

(2) every facility at which USAP/Fielden Hanson *had* a contract to supply healthcare providers at any time during the 12 months preceding the Agreement, even if it does no longer, and even if it did not have such a contract at any time during the term of the Agreement;

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(3) every facility at which USAP/Fielden Hanson had provided anesthesiology or pain management services at any time during the term of the Agreement;

(4) every facility at which USAP/Fielden Hanson had provided anesthesiology or pain management services during the twelve months preceding the Agreement, even if it never did during the term of the Agreement;

(5) every facility with which USAP/Fielden Hanson had "active negotiations to supply any [healthcare] providers" during the Term of the Agreement, even if those negotiations never ripened into a contract; and

(6) every facility with which USAP/Fielden Hanson had "active negotiations" during the twelve months preceding the Agreement, even if those negotiations never ripened into a contract, and even if those negotiations had unsuccessfully concluded prior to the term of the Agreement.

This stripping of staff privileges has no set duration in the Agreement; it is therefore apparently indefinite. The Duongs must also waive their due process rights in connection with their staff privileges at any USAP "Facility," again, apparently indefinitely. This sweeps far more broadly than is necessary to protect any legitimate business purpose of USAP/Fielden Hanson, and it cannot be salvaged through judicial reconstruction. *See Golden Rd.*, 376 P.3d at 156.

2. The Duongs are Not Competing With USAP/Fielden Hanson

Although the overbreadth of the language addressed in the previous section invalidates the entire non-compete under *Golden Rd.*, it is worth noting that the Duongs are complying with the portions of the non-compete which do appear to be reasonably related to a business purpose. The non-compete purports to preclude a physician from

> call[ing] on, solicit[ing] or attempt[ing] 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[.]"

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(Ex. E-1 & E-2 at § 2.8.1). Unlike the language addressed in the previous section, this portion of the non-compete does appear to have some reasonable relation to a legitimate business purpose, at least to the extent that it applies to physicians or physician groups rather than entire hospitals. Its plain language precludes the Duongs from soliciting business from surgeons who hire Plaintiff to provide anesthesiology services, which would amount to competing with Plaintiff.

However, this language describes precisely what the Duongs are *not* doing. As set forth at length in their Declarations, the Duongs have never solicited any business from any physician or physician group doing business with Plaintiff since their departure. (*See* Ex. A & B at ⁋⁋ 19–30.) In fact, the Duongs have never directly solicited *any* physician or physician group since their departure from USAP/Fielden Hanson, whether they work with USAP/Fielden Hanson or not. (*Id.* at ⁋ 19.) Plaintiff's assertion that "[the Duongs'] conduct has actually harmed and disrupted Fielden Hanson's business by diverting business away from [it]" is therefore simply untrue.

In short, the overbreadth of the non-compete makes it wholly unenforceable under *Golden Rd.*, and the Duongs are not competing with Fielden Hanson in any event. Plaintiff therefore does not enjoy a substantial likelihood of success on the merits, and their Motion should be denied.

B. Plaintiff Does Not Face Irreparable Harm

Conclusory allegations, with no evidentiary support, are insufficient to demonstrate irreparable harm. *Oakland Tribune Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (holding conclusory affidavits of an "interested party"—plaintiff's principal shareholder—as to "loss of reputation competitiveness and goodwill" deemed insufficient to establish irreparable harm); *Am. Passage Media Corp. v. Cass Communications, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (holding conclusory affidavits from plaintiffs executives delineating "disruptive effect" on plaintiff's business are insufficient); *accord Paramount Ins., Inc. v. Rayson & Smitley,* 86 Nev. 644, 650, 472 P.2d 530, 534 (1970) (recognizing that conclusory

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allegations in an affidavit were insufficient to warrant extraordinary relief of a writ of attachment).

In its Motion, Plaintiff cites no evidence of irreparable harm to justify a preliminary injunction except for an invocation of Section 2.8.3 of the Agreement, which provides that "[i]n the event of any breach by Physician of the provisions of this Section 2.8, the practice would be irreparably harmed[.]" (Ex. E-1 & E-2 at § 2.8.3.) This is specious; a provision in an adhesion contract executed two years in the past is not evidence of real-world irreparable harm in the present, and courts recognize such provisions as the boilerplate they are. *See, e.g.*, *Smith, Bucklin & Associates, Inc. v. Sonntag*, 83 F.3d 476, 481 (D.C. Cir. 1996) ("Although there is a contractual provision that states that the company has suffered irreparable harm if the employee breaches the covenant and that the employee agrees to be preliminarily enjoined, this by itself is an insufficient prop."); *Guttenberg v. Emery*, 26 F. Supp. 3d 88, 101 (D.D.C. 2014) ("Parties may agree beforehand that injunctive relief should issue in certain circumstances . . . but such agreements are not binding on a court. Rather, [a court] must look to the standard guiding the issuance of a preliminary injunction.").

Contractual boilerplate aside, it is difficult to imagine how Plaintiff would be "irreparably harmed" if it fails in its effort to enjoin the Duongs from accepting cases for *any* provider performing surgeries at *any* hospital in which the Duongs had ever taken a case during their time at Fielden Hanson, as well as requiring them to terminate their privileges at *every* "Facility" with which it has a relationship. It is indeed hard to imagine how Plaintiff would be harmed at all under these circumstances, but to whatever extent harm may occur, monetary damages are a sufficient remedy. *See, e.g.*, *Wisc. Gas Co. v. Federal Energy Reg. Comm'n.*, 244 U.S. App. D.C. 349 (D.C. Cir. 1985) ("It is . . . well settled that economic loss does not, in and of itself, constitute irreparable harm.").

C. The Balance of Hardships Favors the Duongs

Although Plaintiff does not face any significant harm if its Motion is denied, the Duongs face potentially disastrous harm if it is granted. "In considering preliminary

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injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest." *Univ. and Comm. College Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 100 P.3d 179, 187 (2004). The public interest in free competition must necessarily be considered by courts in determining whether to grant injunctive relief. *See, e.g., Cincinnati Bengals, Inc. v. Bergey*, 453 F. Supp. 129, 147 (S.D. Ohio 1974) (the public interest should "encourage to the fullest extent practicable free and open competition in the marketplace"). In Nevada, the public interest in free and open competition is embodied by NRS 598A.030.2(b), which states that "[i]t is the policy of this state . . . to preserve and protect the free, open and competitive nature of our market system". And, "[w]here . . . the effect of [an] injunction would be disastrous to an established and legitimate business though its destruction or interruption in whole or in part, strong and convincing proof of the right on the part of the complainant, and of the urgency of his case, is necessary to justify an exercise of the injunctive power." *Rhodes Mining Co. v. Belleville Placer Mining Co.*, 32 Nev. 230, 106 P. 561, 562 (1910).

Granting Plaintiff's Motion would, as a practical matter, prevent the Duongs from taking any anesthesiology cases for any provider at nearly every hospital in Las Vegas. It would indeed terminate their privileges at all of these hospitals, and strip them of any due process right to regain them. (Ex. E-1 & E-2 at §§ 6.3, 6.4) This is, to say the least, a substantial hardship. On the other hand, Plaintiff does not face any significant hardship if the Duongs are permitted to continue working while not soliciting any of Fielden Hanson's clients. The balance of hardships therefore favors the Duongs.

D. To the Extent any Injunction Issues, the Court Must Require Plaintiff to Post a Substantial Bond

The underlying purpose of requiring a bond where an injunction is issued is "(1) to discourage parties from requesting injunctions based on tenuous legal grounds; and (2) to assure judges that defendants will be compensated for their damages if it later emerges that the defendant was wrongfully enjoined." *Sionix Corp. v. Moorehead*, 299 F. Supp. 2d 1082, 1086

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(S.D. Cal. 2003), *accord Tracy v. Capozzi*, 98 Nev. 120, 642 P.2d 591 (1982). Thus, in order to protect a party subject to an injunction, the bond amount must be sufficient to compensate it for all damages incurred as a result of the wrongful injunction. *See id.*

Here, the Duongs' income from their anesthesiology practice amounts to approximately $26,000 per month each, or $52,000 per month collectively. (Ex. A & B at ¶ 2.) The Duongs' lost income from an improperly granted injunction would therefore be substantial. The merits of Plaintiff's case are, at best, highly questionable, and the balance of hardships strongly favors the Duongs. Litigating this case through final judgment would almost certainly take at least a year, and very probably more than two. Thus, if a preliminary injunction is granted, a bond of $1 million is appropriate.

E. A Preliminary Injunction Should Not Issue Without a Full Evidentiary Hearing

Finally, even if the Court were to decline to deny Plaintiff's motion outright, it should not grant a preliminary injunction without first conducting a full evidentiary hearing following a brief period of discovery.

Facts related to the structure of the transaction between Fielden Hanson, USAP, and its predecessor-in-interest, Premier Anesthesiology Consultants, are unknown at this point and are potentially dispositive of the case. For example, if the transaction between USAP/Fielden Hanson and PAC was an asset purchase or sale, the non-competition clause would be nullified because covenants not to compete are generally not assignable. *See Traffic Control Servs., Inc. v. United Rentals Nw., Inc.*, 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004) ("We . . . hold that, absent an agreement negotiated at arm's length, which explicitly permits assignment and which is supported by separate consideration, employee noncompetition covenants are not assignable."); *cf. Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720 (2015) (clarifying that the rule in Traffic Control does not apply to a sale of 100% membership interest in an entity where the equity sale does not create a new entity).

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IV.
CONCLUSION

Plaintiff's Motion lacks merit and should be denied.

DATED this 26th day of February, 2019.

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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 **OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** 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:

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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 **February 26, 2019**, at Las Vegas, Nevada.

/s/ Anya Ruiz

An Employee of Howard & Howard Attorneys PLLC

4833-2728-8969, v. 2

EXHIBIT A

DECLARATION OF ANNIE LYNN PENACO DUONG, M.D.

I, Annie Lynn Penaco Duong, M.D., declare as follows:

1. I am a physician licensed and board-certified in anesthesiology and pediatric anesthesiology. I am licensed to practice in Nevada, and I am a Defendant in this lawsuit.

2. My income from my anesthesiology practice is approximately $26,000 per month.

3. I am married to Scott Duong, M.D. ("Scott"), who is also a defendant in this action.

4. Scott and I attended medical school at State University of New York at Downstate. We both performed residencies at Montefiore Medical Center, as well as fellowships at the University of Pittsburgh Medical Center. I did my fellowship training in pediatric anesthesiology at the Children's Hospital of Pittsburgh at UPMC.

My Tenure with USAP and its Predecessor

5. In August of 2016, and immediately following our fellowships, Scott and I had relocated from Pittsburgh to Las Vegas to join Premier Anesthesia Consultants ("PAC").

6. As I understand it, PAC was a subsidiary of a group called Anesthesiology Consultants, Inc. ("ACI").

7. At the time we joined PAC, the group consisted of approximately 16 anesthesiologists.

8. Our recruitment process with PAC began in or around January of 2016.

9. At no point during the recruitment process were we ever informed that PAC was considering a buy-out with U.S. Anesthesia Partners ("USAP") or any other group.

10. In or around December of 2016, USAP came to Las Vegas in a merger deal that involved PAC/ACI and another group called Summit Anesthesia Consultants.

11. As a result of the merger, the practice group suddenly grew to over 100 anesthesiologists.

12. Thus, within a few months of beginning work in Las Vegas, our only choices were to accept the new terms set forth by USAP or immediately leave the practice for which we had just relocated.

13. After the merger, various changes were implemented that made us uncomfortable. We were transitioned from a 1099 to a W2 salary, a compensation plan was implemented which was less transparent than that of PAC/ACI, and USAP "corporate" took 20% of our salary on an indefinite basis. The sudden expansion of the group made scheduling extremely disorganized and frustrating. USAP promised income repair, improvement in efficiency/work flow, and better negotiations/contracts with hospitals, but none of these changes were delivered upon.

14. Many providers were unhappy with the new system and there was a constant cloud of negativity that made us feel like we were no longer physicians, but merely bodies utilized for shift work. This was not what Scott and I had signed up for when we left Pittsburgh and relocated to Las Vegas to work with PAC.

My Departure from USAP

15. In August of 2018, Scott and I provided notice of our intent to resign in accordance with Section 6.2.9 of the Agreement. In doing so, we declined a partnership we were offered and the bonus associated with it.

16. We could not remain at USAP under the circumstances, but did not feel as though we could leave Las Vegas, as we had just bought a house here in March 2018.

17. I had no intention of competing with USAP following my departure from the practice, and I have not done so.

18. However, I also never concealed my intention to continue working as an anesthesiologist following my departure from USAP.

My Practice Following My Departure

19. On or around November 26, 2018, my notice period ended, and I became an independent contractor.

20. Since my departure, I have made affirmative efforts not to compete with USAP.

21. My practice following my departure from USAP has consisted primarily of assignments from Red Rock Anesthesia Consultants.

22. On two occasions, I have declined specific patient requests for my services because the surgeons involved work with USAP, in order to avoid the appearance that I was interfering with USAP's business.

23. On a few occasions, Summerlin Hospital's endoscopy suite staff has reached out to Scott or me for help covering certain cases, but we have declined because we were uncertain of the providers' relationship with USAP.

24. I have worked with a group called "Las Vegas Surgical Associates," which includes Dr.'s Peter Caravella, Anne O'Neill, Yogesh Patel, Damon Schroer, Charles Kim, Arthur Fusco, and David Chiapaikeo. From my understanding, this surgical group was dissatisfied with USAP after the acquisition and chose to cease doing business with them prior to my departure.

25. I have also worked with Tarek Ammar, M.D., a gastroenterologist. From my understanding, USAP had made some scheduling errors with Dr. Ammar, which led to him moving his anesthesiology coverage to Red Rock Anesthesia Consultants. This happened to occur just before my departure from USAP; however, I did not solicit Dr. Ammar, nor did I in any way encourage him to divert any portion of his anesthesiology coverage from USAP.

26. Aside from my direct relationship with Red Rock Anesthesia Consultants, I have never directly solicited work from any physician, physician group, or other healthcare provider.

27. Specifically, and to be clear, I have never solicited any work from any physician, physician group, or healthcare provider with whom I have ever had a relationship as a result of my time at USAP.

28. I have never 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.

29. To my 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 my departure or my affiliation with Red Rock or any other provider.

30. To whatever extent that I have ever worked with a physician that had previously worked with USAP, I did so because that physician had independently requested anesthesia services from Red Rock Anesthesia Consultants, and I was subsequently assigned to the case by that group.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, except to the extent that any statements are made on information and belief, in which case I believe those statements to be true.

Executed on: 2/25/19 (Date)

Annie Penaco Duong

Annie Lynn Penaco Duong, M.D.

4827-4559-5017, v. 1

EXHIBIT B

DECLARATION OF SCOTT DUONG, M.D.

I, Scott Duong, M.D., declare as follows:

1. I am a licensed physician and board-certified anesthesiologist, and I am a Defendant in this lawsuit.

2. My income from my anesthesiology practice is approximately $26,000 per month.

3. I am married to Annie Lynn Penaco Duong, M.D. ("Annie"), who is also a defendant in this action.

4. Annie and I attended medical school at State University of New York at Downstate. We both performed residencies at Montefiore Medical Center, as well as a fellowship at the University of Pittsburgh Medical Center. My fellowship training was in regional anesthesiology.

My Tenure with USAP and its Predecessor

5. In August of 2016, and immediately following our fellowships, Annie and I had relocated from Pittsburgh to Las Vegas to join Premier Anesthesia Consultants ("PAC").

6. As I understand it, PAC was a subsidiary of a group called Anesthesiology Consultants, Inc. ("ACI").

7. At the time we joined PAC, the group consisted of approximately 16 anesthesiologists.

8. Our recruitment process with PAC began in or around January of 2016.

9. At no point during the recruitment process were we ever informed that PAC was considering a buy-out with U.S. Anesthesia Partners ("USAP") or any other group.

10. In or around December of 2016, USAP came to Las Vegas in a merger deal that involved PAC/ACI and another group called Summit Anesthesia Consultants.

11. As a result of the merger, the practice group suddenly grew to over 100 anesthesiologists.

12. Thus, within a few months of beginning work in Las Vegas, our only choices were to accept the new terms set forth by USAP or immediately leave the practice for which we had just relocated.

13. After the merger, various changes were implemented that made us uncomfortable. We were transitioned from a 1099 to a W2 salary, a compensation plan was implemented which was less transparent than that of PAC/ACI, and USAP "corporate" took 20% of our salary on an indefinite basis. The sudden expansion of the group made scheduling extremely disorganized and frustrating. USAP promised income repair, improvement in efficiency/work flow, and better negotiations/contracts with hospitals, but none of these changes were delivered upon.

14. Many providers were unhappy with the new system and there was a constant cloud of negativity that made us feel like we were no longer physicians, but merely bodies utilized for shift work. This was not what Annie and I had signed up for when we left Pittsburgh and relocated to Las Vegas to work with PAC.

My Departure from USAP

15. In August of 2018, Annie and I provided notice of our intent to resign in accordance with Section 6.2.9 of the Agreement. In doing so, we declined a partnership we were offered and the bonus associated with it.

16. We could not remain at USAP under the circumstances, but did not feel as though we could leave Las Vegas, as we had just bought a house here in March 2018.

17. I had no intention of competing with USAP following my departure from the practice, and I have not done so.

18. However, I also never concealed my intention to continue working as an anesthesiologist following my departure from USAP.

19. On or around November 26, 2018, our notice period ended, and we became independent contractors.

My Practice Following My Departure

20. Since my departure, I have made affirmative efforts not to compete with USAP.

21. My practice following my departure from USAP has consisted primarily of assignments from Red Rock Anesthesia Consultants.

22. On two occasions, Annie has declined specific patient requests for her services because the surgeons involved work with USAP, in order to avoid the appearance that she was interfering with USAP's business.

23. On a few occasions, Summerlin Hospital's endoscopy suite staff has reached out to Annie or me for help covering certain cases, but we have declined because we were uncertain of the providers' relationship with USAP.

24. I have worked with a group called "Las Vegas Surgical Associates," which includes Dr.'s Peter Caravella, Anne O'Neill, Yogesh Patel, Damon Schroer, Charles Kim, Arthur Fusco, and David Chiapaikeo. From my understanding, this surgical group was dissatisfied with USAP after the acquisition and chose to cease doing business with them prior to my departure.

25. I have also worked with Tarek Ammar, M.D., a gastroenterologist. From my understanding, USAP had made some scheduling errors with Dr. Ammar, which led to him moving his anesthesiology coverage to Red Rock Anesthesia Consultants. This happened to occur just before my departure from USAP; however, I did not solicit Dr. Ammar, nor did I in any way encourage him to divert any portion of his anesthesiology coverage from USAP.

26. Aside from my direct relationship with Red Rock Anesthesia Consultants, I have never directly solicited work from <u>any</u> physician, physician group, or other healthcare provider.

27. Specifically, and to be clear, I have never solicited any work from any physician, physician group, or healthcare provider with whom I have ever had a relationship as a result of my time at USAP.

28. I have never 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.

29. To my 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 my departure or my affiliation with Red Rock or any other provider.

30. To whatever extent that I have ever worked with a physician that had previously worked with USAP, I did so because that physician had independently requested anesthesia services from Red Rock Anesthesia Consultants, and I was subsequently assigned to the case by that group.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, except to the extent that any statements are made on information and belief, in which case I believe those statements to be true.

Executed on: 2/25/19

(Date)

Scott Duong, M.D.

4835-4617-9209, v. 1

EXHIBIT C

ODM
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. ANESTHESIA PARTNERS, Plaintiff, vs. DEVIN CHERN TANG, M.D., SUN ANESTHESIA SOLUTIONS, A Nevada Corporation, DOE Defendants I-X, Defendants.	CASE NO. A-18-783054-C DEPT. NO. XVI **ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION**

On October 19, 2018, Plaintiff U.S. Anesthesia Partners ("USAP" or "Plaintiff") filed its Motion for Preliminary Injunction. Defendants Devin Chern Tang ("Dr. Tang") and Sun Anesthesia Solutions ("Sun Anesthesia") (collectively "Defendants") opposed the Motion on November 9, 2018. USAP submitted a Reply in support of its Motion on November 15, 2018. On November 16, 2018, Defendants submitted a supplemental Declaration in support of their Opposition.

The Court heard the Motion on November 19, 2018. After argument, the Court ordered supplemental briefing on the enforceability of covenants not to compete lacking a geographic limitation. The parties timely submitted their supplemental briefs on December 7, 2018.

Having considered the record, the briefing, and the arguments of counsel, and good cause appearing, the Court finds as follows:

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FINDINGS OF FACT

1. In August of 2016, Dr. Tang accepted a position with Premier Anesthesiology Consultants ("PAC"), which was a subsidiary of an entity called Anesthesiology Consultants, Inc. ("ACI").

2. In or around December of 2016, PAC/ACI was acquired by USAP.

3. In connection with this acquisition, Dr. Tang executed a Physician-Track Employment Agreement ("Employment Agreement") as a condition of his continued employment with USAP. (*Id.*)

4. The Employment Agreement contained the following Non-Competition Clause:

> 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.

5. The Employment Agreement defines "Facilities" 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) 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"

6. In or around March of 2018, Dr. Tang provided 90 days' notice of his intent to terminate his employment with USAP in the manner provided by the Employment Agreement.

7. In or around June of 2018, Dr. Tang's notice period expired, and his employment with USAP was terminated.

8. Dr. Tang continued to work as an anesthesiologist after his departure from USAP by accepting overflow anesthesiology cases from University Medical Center and an anesthesiology practice called Red Rock Anesthesia Solutions ("Red Rock").

9. USAP became aware that Dr. Tang had performed anesthesia services at Southern Hills Hospital and St. Rose Dominican Hospital – San Martin Campus. USAP has contractual relationships with these facilities, and USAP therefore believed that Dr. Tang's conduct violated Employment Agreement. This lawsuit followed.

CONCLUSIONS OF LAW

1. The "Facilities" referenced in the Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang is so vague as to render the non-competition agreement unreasonable in its scope. As defined by the Non-Competition Clause of the Employment Agreement, the Facilities from which Dr. Tang would be prohibited from providing anesthesia services and/or soliciting business include:

a. All Facilities with which USAP has a contract to supply healthcare providers;

b. Facilities at which those providers provided anesthesiology and pain management services; and

c. Facilities with which USAP had active negotiations;

all during the unspecified term of Dr. Tang's employment and the twelve months preceding his term of employment.

2. The Non-Competition Clause of the Employment Agreement fails to designate facilities or a geographic boundary where Dr. Tang is prohibited from working and/or soliciting business with any specificity.

3. The Non-Competition Clause of the Employment Agreement fails to consider whether USAP's active contracts with facilities survive or whether USAP's active negotiations yield active contracts by the end of Tang's term of employment. At the time of signing the Employment Agreement, this potentially prohibited Tang from working with and/or soliciting any of USAP's current or future customers.

4. The scope of the Non-Competition Clause is subject to change over the course of Dr. Tang's employment, and even after his departure, based upon relationships with facilities USAP establishes after execution of the Employment Agreement. Dr. Tang therefore could not reasonably ascertain or anticipate the geographic scope of the non-competition agreement at the time of its execution.

5. The Non-Competition Clause of the Employment Agreement between USAP and Dr. Tang lacks any geographic limitation or qualifying language distinguishing the particular Facilities or customers to which it applies.

6. The Court does not have authority to "blue pencil" the Non-Competition Clause of the Employment Agreement because the amendment to NRS Chapter 613, more particularly NRS 613.195(5), does not apply retroactively to agreements entered into prior to the enactment of the amendment, which agreements are governed by *Golden Rd. Motor Inn, Inc. v. Islam,* 132 Nev. Adv. Op. 49, 376 P.3d 151 (2016).

7. The Non-Competition Clause of the Employment Agreement is therefore unreasonable in its scope.

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ORDER

Based upon the foregoing findings of fact and conclusions of law, and good cause appearing, the Court ORDERS, ADJUDGES, AND DECREES that USAP's Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

DATED this _____ day of _____, 2019.

_____
HONORABLE TIMOTHY C. WILLIAMS

Respectfully submitted by:

HOWARD & HOWARD ATTORNEYS PLLC

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Ryan T. O'Malley (#12461)
3800 Howard Hughes Parkway, Ste. 1000
Las Vegas, NV 89169
Attorneys for Defendants

Approved as to form and content by:

DICKINSON WRIGHT PLLC

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Las Vegas, Nevada 89113
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4837-9976-4613, v. 4

EXHIBIT D

SAO
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. ANESTHESIA PARTNERS, Plaintiff, vs. DEVIN CHERN TANG, M.D., SUN ANESTHESIA SOLUTIONS, A Nevada Corporation, DOE Defendants I-X, Defendants.	Case No.: A-18-783054-C Dept.: 16 **STIPULATION AND ORDER TO CHANGE CAPTION**

Plaintiff U.S. Anesthesia Partners, by and through its attorneys, the law firm of Dickinson Wright PLLC, and Defendants Devin Chern Tang and Sun Anesthesia Solutions, by and through their attorneys, the law firm of Howard & Howard PLLC, hereby stipulate and agree that Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. shall be substituted as the Plaintiff in this matter in place of U.S. Anesthesia Partners.

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The caption on all future filings shall reflect Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. as the sole Plaintiff. A copy of the proposed caption going forward is attached hereto as Exhibit 1.

Dated this 15th day of February, 2019

DICKINSON WRIGHT PLLC

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

Dated this 15 day of February, 2019

HOWARD & HOWARD ATTORNEYS PLLC

Martin A. Little (#7067)
Ryan T. O'Malley (#12461)
3800 Howard Hughes Parkway, Ste. 1000
Las Vegas, NV 89169
Attorneys for Defendants

IT IS HEREBY ORDERED that Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. is substituted in as the Plaintiff in this matter in place of U.S. Anesthesia Partners.

Dated this 21 day of February, 2019

HONORABLE TIMOTHY C. WILLIAMS

CT

EXHIBIT 1

DICKINSON WRIGHT PLLC
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD., Plaintiff, vs. DEVIN CHERN TANG, M.D., SUN ANESTHESIA SOLUTIONS, A Nevada Corporation, DOE Defendants I-X, Defendants.	Case No.: A-18-783054-C Dept.: 16

EXHIBIT E-1

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd.,
(d/b/a Anesthesiology Consultants, Inc.),
a Nevada professional corporation

PARTNER-TRACK PHYSICIAN RETENTION BONUS AGREEMENT

THIS RETENTION BONUS AGREEMENT (this "Agreement"), is entered into as of December 2, 2016 ("Execution Date"), by and between Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd., d/b/a Anesthesiology Consultants, Inc., a Nevada professional corporation (the "Company"), and Scott Vinh Duong, M.D., an individual resident of Nevada ("Physician"). This Agreement will become effective upon the effectiveness of the Employment Agreement (as defined below) (the date of such effectiveness, the "Effective Date"). This Agreement is being entered into with reference to the following facts:

A. The Company, U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation ("Parent"), USAP Nevada (Isaacs), PLLC (d/b/a U.S. Anesthesia Partners of Nevada, PLLc), a Nevada professional limited liability company (the "Buyer"), and USAPNV Merger Sub, Inc., a Nevada corporation ("Merger Sub"), are party to an Agreement and Plan of Merger dated as of November 4, 2016 (the "Merger Agreement"), pursuant to which, on the terms and conditions set forth in the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company being the surviving entity of such merger and becoming a wholly owned subsidiary of Buyer, and the current shareholders of the Company will cease to own any securities in the Company (the "Contemplated Transactions").

B. Physician will execute a new Partner-Track Physician Employment Agreement ("Employment Agreement") with the Company to be effective on the day after the closing date of the Contemplated Transactions, pursuant to which he or she will be compensated for professional services.

C. The Employment Agreement is for an initial two-year term.

D. The Company has determined to take appropriate steps, including entering into this Agreement, as additional consideration to properly incentivize Physician to execute the Employment Agreement and perform future services under the terms thereof, and the Physician is entering into this Agreement and the Employment Agreement with the intention of providing future services under the terms thereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Company and the Physician agree as follows:

1. Retention Bonus. Subject to Section 3 below, a cash bonus in the amount of $100,000 (the "Bonus") shall be due and payable by the Company to Physician on the schedule described on Schedule 1 attached hereto (the "Payment Date"); provided, that, Physician shall not have breached the Employment Agreement at any time prior to the Payment Date and that the Physician shall have satisfied the conditions in Sections 3 and 4 of this Agreement as of the

Payment Date and shall have executed the Omnibus Joinder Agreement attached to the Subscription Agreement.

2. Withholding. The Company may deduct and withhold from any payments made to Physician under this Agreement the amounts that the Company, in its sole discretion, is required to deduct and withhold for any federal, state or local income or employment taxes. Neither the Company, Buyer, Parent nor any of their respective affiliates shall be liable to Physician or any other person as to any unexpected or adverse tax consequences realized by Physician and Physician shall be solely responsible for the timely payment of all taxes arising from this Agreement that may be imposed on Physician.

3. Subscription Agreement. It is a condition to Physician's eligibility to receive the Bonus that Physician agrees on the Payment Date to contribute the amount set forth on Schedule 1 attached hereto to Parent in exchange for shares of common stock, $0.001 par value per share, of Parent ("Parent Stock") at an acquisition price per share equal to the then fair market value of the Parent Stock as determined in good faith by the board of directors of Parent (the "Stock Purchase"). It is a further condition to Physician's eligibility to receive the Bonus that Physician agrees on the Payment Date to the release of certain matters. Physician may satisfy these conditions by executing and delivering to the Company on the Payment Date the Stock Subscription Agreement attached hereto as Exhibit A (the "Subscription Agreement") and the Release attached as Exhibit B to the Subscription Agreement. On the Payment Date, the Company will deliver that portion of the Bonus that is necessary to effect the Stock Purchase to Parent on Physician's behalf and Physician agrees to execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the Stock Purchase.

4. Continuing Employment. It is a further condition to Physician's eligibility to receive the Bonus and to purchase Parent Stock that Physician be employed by the Company as of the Payment Date.

5. Section 409A. This Agreement is intended to be exempt from or comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and notwithstanding anything herein to the contrary shall be interpreted in a manner consistent with that intention. Physician consents to the Company adopting such conforming amendments as the Company deems necessary, in good faith and in its reasonable discretion, to comply with Section 409A of the Code and avoid the imposition of taxes under Code Section 409A. Each payment made pursuant to any provision of this Agreement shall be considered a separate payment and not one of a series of payments for purposes of Code Section 409A. While it is intended that all payments and benefits provided under this Agreement to Physician will be exempt from or comply with Code Section 409A, the Company makes no representation or covenant to ensure that the payments under this Agreement are exempt from or compliant with Code Section 409A. The Company will have no liability to Physician or any other party if a payment or benefit under this Agreement is challenged by any taxing authority or is ultimately determined not to be exempt or compliant. If, upon Physician's "separation from service" (as defined in Code Section 409A), Physician is then a "specified employee" (as defined in Section 409A of the Code), then only to the extent necessary to comply with Code Section 409A and avoid imposition of taxes under Code Section 409A, the Company shall defer payment of

certain of the deferred compensation amounts owed to Physician until the earlier of Physician's death or the first business day of the seventh month following Physician's separation from service.

6. 83(b) Election. Physician covenants and agrees to timely (and in any event, within 30 days of the Payment Date) make and file with the Internal Revenue Service an election under Section 83(b) of the Code in the form of Exhibit C attached hereto and will deliver a copy of such Code Section 83(b) election to the Company at or prior to the time of such filing.

7. General.

(a) Entire Understanding; Amendment. This Agreement embodies the entire understanding of the parties and supersedes all prior or contemporaneous oral or written agreements between the parties with respect to the subject matter hereof, and constitutes a single integrated agreement. There are no promises, terms, conditions, or obligations, oral or written, express or implied, other than those contained herein, with respect to such subject matter. This Agreement may not be amended or modified except in a writing signed by the Company and Physician, and no provision may be waived except in a writing signed by the party waiving compliance. The preamble and recitals to this Agreement shall be considered a part of this Agreement and not merely recitations of information.

(b) Governing Law; Venue. This Agreement shall be governed and construed under the internal laws of the State of Nevada, without application of choice of law or conflicts of law principles. All disputes arising hereunder shall be resolved exclusively in state or federal courts located in the City and County of Nevada, State of Nevada, to which jurisdiction and venue the parties hereto irrevocably consent.

(c) Severability. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative to any extent by any court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to render it enforceable and the rights and obligations of the parties hereunder shall be construed and enforced accordingly.

(d) Counterparts; Facsimile or Electronic Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed in facsimile copy or electronic copy actually received by the recipient's e-mail system with the same binding effect as the original.

(e) Confidentiality. Each of the parties hereto agrees to keep the terms of this Agreement confidential, including the fact that the Company is considering the Contemplated Transactions; provided that Physician and the Company may disclose the terms of this Agreement to the party's counsel, accountants and advisers and as may be required to comply with any legal requirement including without limitation any tax reporting obligations. The parties agree to instruct their advisors that they must similarly agree to keep the details of this Agreement confidential. This Section 7(e) shall not apply to information concerning Physician's compensation.

(f) Termination. Notwithstanding anything to the contrary hereof, if the Partner-Track Physician Employment Agreement is not executed and delivered to the Company by the Physician as of the Effective Date, this Agreement shall be terminated with not further force and effect and the Company shall have no obligation to make any payments under the terms hereof.

(g) Assignment. No party shall have the right to assign any right or obligation hereunder without obtaining the prior written consent of each the other parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Retention Bonus Agreement as of the day and year first above written.

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

By: _____
Name: W. Bradford Isaacs, M.D.
Title: President

PHYSICIAN:

_____
Print Name: Scott Vinh Duong, M.D.

IN WITNESS WHEREOF, the parties have executed this Retention Bonus Agreement as of the day and year first above written.

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

By: _____
Name:
Title:

PHYSICIAN:

_____
Name: Scott Vinh Duong, M.D.

SCHEDULE 1

Payment Schedule

The Bonus shall be payable to Physician on the date that Physician is admitted as Physician-Partner of the Company, subject to the terms and conditions of the Agreement. Any portion of the Bonus shall be payable only if Physician is then employed by Company on such date:

Subscription of Parent Common Stock*

Contribution Amount:	$50,000

* The number of shares of Parent Common Stock will be based on the then fair market value at the time of the bonus.

EXHIBIT A

STOCK SUBSCRIPTION AGREEMENT

(SEE ATTACHED)

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT is dated as of _____ __, 20__ (this "Agreement"), by and between U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (the "Corporation") and the individual named on the signature page hereto (the "Investor").

W I T N E S S E T H:

WHEREAS, the Investor is entering into a new Employment Agreement (the "Employment Agreement") with Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI") in connection with the Investor's promotion to Physician-Partner;

WHEREAS, the Investor entered into a Retention Bonus Agreement (the "Bonus Agreement") with ACI dated December 2, 2016, pursuant to which the Investor is entitled to receive the Bonus upon promotion to Physician-Partner, subject to the terms and conditions thereof;

WHEREAS, pursuant to the Bonus Agreement, the Investor agreed to utilize a portion of the Bonus payable to the Investor thereunder to purchase certain shares of Common Stock, $0.001 par value per share of the Corporation (the "Common Stock"), pursuant to the terms hereof. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bonus Agreement;

WHEREAS, the Corporation desires to issue and sell to the Investor and the Investor desires to subscribe for and purchase from the Corporation that number of shares of Common Stock as set forth on the signature page hereto (the "Shares"), on the terms and conditions described herein; and

WHEREAS, it is a condition to the issuance of Common Stock by the Corporation that the Investor enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained and incorporating the recitals set forth above, the parties hereto hereby agree as follows:

ARTICLE I.

ISSUANCE, SALE AND DELIVERY OF SHARES; CONTRIBUTIONS; CLOSING

SECTION 1.01. Issuance, Sale and Delivery of Shares; Contribution. The Investor hereby agrees to purchase and hereby subscribes for the number of Shares set forth on the signature page to this Agreement for the purchase price set forth on the signature page to this Agreement. On the Payment Date, the Investor will deliver (or cause to be delivered) payment in cash or check for such Shares to the Corporation. The Shares being issued to the Investor hereunder will be subject to the vesting conditions set forth in the Vesting and Stockholders Arrangement Agreement (as defined below).

SECTION 1.02. Closing. Upon the terms and subject to the conditions of this Agreement, the issuance, sale and delivery of the Shares contemplated by SECTION 1.01 (the "Closing") will take place on the Payment Date at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 (such date being herein called the "Closing Date").

SECTION 1.03. Stock Restriction Agreements; Release. As a condition to the issuance of the Shares by the Corporation, the Investor shall be obligated to, and hereby irrevocably agrees to, execute (a) the omnibus joinder agreement (the "Omnibus Joinder") in the form attached hereto as Exhibit A agreeing to become a party to, and bound by, the Amended and Restated Stockholders Agreement of the Corporation, as amended (the "Stockholders Agreement"), the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements") and (b) the Release in the form attached hereto as Exhibit B.

SECTION 1.04. Spousal Consent & Joinder. As a condition to the issuance of Shares by the Corporation, if married, the Investor's spouse shall duly complete, execute and deliver to the Corporation a Spousal Consent & Joinder in the form attached hereto as Exhibit C, to be delivered to the Corporation prior to Closing.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES OF CORPORATION

The Corporation represents and warrants to the Investor that:

SECTION 2.01. Corporate Existence and Power. The Corporation is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Corporation has the corporate power and authority necessary to (i) own its properties and assets, (ii) carry on its business as now being conducted and (iii) execute and deliver this Agreement and perform its obligations hereunder, including the issuance, sale and delivery of the Shares.

SECTION 2.02. Authorization; Validity. The execution and delivery by the Corporation of this Agreement and the consummation of the transactions contemplated hereby (including the issuance, sale and delivery of the Shares) have been duly authorized by all necessary corporate action on the part of the Corporation. This Agreement has been duly executed and delivered by the Corporation. This Agreement constitutes, and each Stock Restriction Agreement constitutes, a valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies and (iii) with respect to provisions relating to indemnification and contribution, as limited by considerations of public policy and by federal or state securities laws.

SECTION 2.03. Governmental Authorization. Assuming the accuracy of the Investor's representations and warranties set forth in ARTICLE III hereof, no order, license, consent, authorization or approval of, or exemption by, or action by or in respect of, or notice to, or filing or registration with, any governmental body, agency or official is required by or with respect to the Corporation in connection with the execution, delivery and performance by the Corporation of this Agreement except (i) for such filings as may be required under Regulation D promulgated under the Securities Act of 1933, as amended ("Regulation D"), or under any applicable state securities laws, (ii) for such other filings and approvals as have been made or obtained, or (iii) where the failure to obtain any such order, license, consent, authorization, approval or exemption or give any such notice or make any filing or registration would not have a material adverse effect on the ability of the Corporation to perform its obligations hereunder and thereunder.

SECTION 2.04. Noncontravention. The execution, delivery and performance by the Corporation of this Agreement does not (i) violate the Certificate of Incorporation or Bylaws of the Corporation, (ii) violate any law, rule, regulation, judgment, injunction, order or decree applicable to or binding upon the Corporation, (iii) violate any contract, agreement, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which the Corporation is a party or (iv) require any consent or other action by any person under, constitute a default under (with due notice or lapse of time or both), or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Corporation or to a loss of any benefit to which the Corporation is entitled under any provision of any agreement or other instrument binding upon the Corporation or any of its assets or properties.

SECTION 2.05. Valid Issuance of Shares. At Closing, the Shares will have been duly and validly authorized and when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be validly issued, fully paid and nonassessable shares of Common Stock.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

The Investor represents and warrants to the Corporation that:

SECTION 3.01. Authorization; Power; Validity. This Agreement has been duly executed and delivered by the Investor and each Stock Restriction Agreement to which the Investor is (or will be) a party will be duly executed and delivered by the Investor at Closing, pursuant to the execution of the Omnibus Joinder. This Agreement constitutes, and each Stock Restriction Agreement to which the Investor is (or will be) a party, when executed and delivered by the Investor at Closing will constitute, a valid and binding agreement of the Investor, enforceable against the Investor in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies and (iii) with respect to provisions relating to indemnification and contribution, as limited by considerations of public policy and by federal or state securities laws.

SECTION 3.02. Governmental Authorization. No order, license, consent, authorization or approval of, or exemption by, or action by or in respect of, or notice to, or filing or registration with, any governmental body, agency or official is required by or with respect to the Investor in connection with the execution, delivery and performance by the Investor of this Agreement and each Stock Restriction Agreement to which the Investor is (or will be) a party except (i) for such filings and notices of sale as may be required under Regulation D or under any applicable state securities laws, (ii) for such other filings and approvals as have been made or obtained, or (iii) where the failure to obtain any such order, license, consent, authorization, approval or exemption or give any such notice or make any filing or registration would not have a material adverse effect on the ability of the Investor to perform the Investor's obligations hereunder or thereunder.

SECTION 3.03. Noncontravention. The execution, delivery and performance by the Investor of this Agreement and each Stock Restriction Agreement to which the Investor is (or will be) a party does not and will not (i) violate any law, rule, regulation, judgment, injunction, order or decree applicable to or binding upon the Investor, (ii) violate any material contract, agreement, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which the Investor is a party or is bound, (iii) require any consent or other action by any person under, constitute a default under (with due notice or lapse of time or both), or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Investor under any provision of any material agreement or other material instrument binding upon the Investor or any of its assets or properties or (iv) result in the creation or imposition of any material lien, claim, charge, pledge, security interest or other encumbrance with respect to any Shares acquired hereunder.

SECTION 3.04. Acquisition for Investment. The Investor is acquiring the Shares being purchased by the Investor hereunder for investment for the Investor's own account and not with a view to, or for sale in connection with, any distribution thereof.

SECTION 3.05. Private Placement.

(a) The Investor's financial situation is such that the Investor can afford to bear the economic risk of holding the Shares being purchased by the Investor hereunder for an indefinite period of time, and the Investor can afford to suffer the complete loss of the Investor's investment in the Shares.

(b) The Investor's knowledge and experience in financial and business matters are such that the Investor is capable of evaluating the merits and risks of the Investor's investment in the Shares or the Investor has been advised by a representative possessing such knowledge and experience.

(c) The Investor understands that the Shares acquired hereunder are a speculative investment which involves a high degree of risk of loss of the entire investment therein, that there will be substantial restrictions on the transferability of the Shares and that following the date hereof there will be no public market for the Shares and that, accordingly, it may not be possible for the Investor to sell or pledge the Shares, or any interest in the Shares, in case of emergency or otherwise.

(d) The Investor and the Investor's representatives, including, to the extent the Investor deems appropriate, the Investor's legal, professional, financial, tax and other advisors, have reviewed all documents provided to them in connection with the Investor's investment in the Shares, and the Investor understands and is aware of the risks related to such investment.

(e) The Investor and the Investor's representatives have been given the opportunity to examine all documents and to ask questions of, and to receive answers from, the Corporation and its representatives concerning the Corporation and its subsidiaries, the terms and conditions of the Investor's acquisition of the Shares and related matters and to obtain all additional information which the Investor or the Investor's representatives deem necessary.

(f) The Investor is an "accredited investor" as such term is defined in Regulation D.

(g) The Investor does not have any plan or intention to sell, exchange, transfer or otherwise dispose of (including by way of gift) any of its shares of Common Stock immediately after the acquisition of any such Shares.

SECTION 3.06. No Other Representations and Warranties. The Investor hereby acknowledges and agrees that the representations and warranties set forth in ARTICLE II hereof are the only representations, warranties and statements being relied on by the Investor in connection with the Investor's acquisition of the Shares.

ARTICLE IV.

MISCELLANEOUS

SECTION 4.01. Survival. All of the covenants, agreements, representations and warranties contained herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

SECTION 4.02. Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service, sent by certified or registered mail, postage prepaid, or sent by facsimile (subject to electronic confirmation of such facsimile transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one business day after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by facsimile prior to 5:00 p.m. (EST) on any business day or the next succeeding business day if sent by facsimile after 5:00 p.m. (EST) on any business day or on any day other than a business day or (iv) five business days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or facsimile number, or to such other address or addresses or facsimile number or numbers as such party may subsequently designate to the other parties by notice given hereunder:

if to the Corporation, to it at:

U.S. Anesthesia Partners Holdings, Inc.
450 East Las Olas Blvd., Suite 850
Ft. Lauderdale, Florida 33301
Facsimile Number: (713) 458-4426
Attention: Kristen Bratberg

with copies (which shall not constitute notice) to:

U.S. Anesthesia Partners Holdings, Inc.
12222 Merit Drive, Suite 700
Dallas, TX 75251
Attention: Amy Sanford, General Counsel

and

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Facsimile number: (212) 596-9090
Attention: Anthony J. Norris

if to the Investor, to the Investor at the address set forth for the Investor on the signature page hereto

with a copy (which shall not constitute notice) to:

Sheppard, Mullin, Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6017
Fax No.: (310) 228-3988
Attention: Eric A. Klein, Esq.

SECTION 4.03. Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and, in the case of an amendment, signed by (i) the Corporation and (ii) the Investor.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

SECTION 4.04. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such cost or expense.

SECTION 4.05. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party hereto shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the Corporation and the Investor.

SECTION 4.06. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within such State.

SECTION 4.07. Jurisdiction. Each of the parties to this Agreement hereby irrevocably and unconditionally submits, for itself and its assets and properties, to the exclusive jurisdiction of the Delaware Court of Chancery, and any appellate court from such court, in any action or proceeding arising out of or relating to this Agreement, the agreements delivered in connection with this Agreement, or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment relating thereto, and each of the parties to this Agreement hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such courts; (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in the Delaware Court of Chancery; (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery; and (iv) waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery. Each of the parties to this Agreement hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties to this Agreement hereby irrevocably consents to service of process in the manner provided for notices in SECTION 4.02. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

SECTION 4.08. Waiver Of Jury Trial. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER OR IN CONNECTION WITH THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ANY OF THE OTHER AGREEMENTS DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.08.

SECTION 4.09. Counterparts; Third Party Beneficiaries. This Agreement may be executed in any number of counterparts (including via email with scan attachment or facsimile transmission), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. No provision of this Agreement shall confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 4.10. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, among the parties with respect to the subject matter hereof.

SECTION 4.11. Severability. If one or more provisions of this Agreement are finally held to be unenforceable under applicable law, such provision shall be deemed to be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforced in accordance with its terms to the maximum extent permitted by law.

[*Remainder of Page Intentionally Blank*]

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Stock Subscription Agreement as of the day and year first above written.

CORPORATION: U.S. ANESTHESIA PARTNERS HOLDINGS, INC.

By: _____
Name: Kristen Bratberg
Title: President and CEO

INVESTOR

Signature: _____

Print Name: Scott Duong, M.D.

Number of Shares of Common Stock:

Purchase Price per Share:

Address: _____

_____

[Stock Subscription Agreement Signature Page]

EXHIBIT A

OMNIBUS JOINDER AGREEMENT

(See Attached)

OMNIBUS JOINDER AGREEMENT

This OMNIBUS JOINDER AGREEMENT (the "Joinder") is made and entered into as of the Closing Date by and between U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (hereinafter referred to as the "Corporation") and _____ (the "Joining Party"). Capitalized terms used but not otherwise defined in this Joinder shall have the meanings ascribed to such terms in the Stock Subscription Agreement (the "Agreement") between the Joining Party and the Corporation to which this Joinder is attached.

WHEREAS, the Corporation is selling and issuing certain shares of Common Stock (the "Shares") to the Joining Party.

WHEREAS, the terms of the Agreement require the Joining Party, as a holder of such interests, to become a party to (i) the Amended and Restated Stockholders Agreement of the Corporation, as amended (the "Stockholders Agreement"), (ii) the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and (iii) the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting and Stockholders Arrangement Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements"), and the Joining Party agrees to do so in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and incorporating the recitals set forth above, the parties to this Joinder hereby agree as follows:

1) Agreement to be Bound. The Joining Party hereby agrees that upon execution of this Joinder, he or she shall become a party to each of the Stock Restriction Agreements and shall be fully bound by, and subject to, all of the covenants, terms and conditions of each of the Stock Restriction Agreements as though an original party thereto and shall be deemed a "Stockholder," "ACI Co-Invest Stockholder," "Other Investor" and "Investor," as the case may be, for all purposes thereof.

2) Successors and Assigns. Except as otherwise provided herein, this Joinder shall bind and inure to the benefit of and be enforceable by the Corporation and its successors and assigns and the Joining Party and any subsequent holders of the Shares and the respective successors and assigns of each of them, so long as they hold any of the Shares.

3) Counterparts. This Joinder may be executed in separate counterparts (including via email with scan attachment or facsimile transmission) each of which shall be an original and all of which taken together shall constitute one and the same agreement.

4) Notices. For purposes of the Stock Restriction Agreements, all notices, demands or other communications to the Joining Party shall be directed to the address, email, or facsimile of Joining Party as set forth on the signature page to the Agreement.

IN WITNESS WHEREOF, this Joinder is hereby executed and accepted as of the date above written.

Joining Party

By: _____
Name: Scott Duong, M.D.

Accepted:

U.S. Anesthesia Partners Holdings, Inc.

By: _____
Name: Kristen Bratberg
Title: President and CEO

EXHIBIT B

RELEASE

(See Attached)

RELEASE – SUBSCRIPTION AGREEMENT

This RELEASE (this "Release") dated as of [●], 20__ is executed and delivered by the undersigned (the "Releasing Party"), to and in favor of U.S. Anesthesia Partners Holdings, Inc. ("Parent" or "Parent") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI" and together with Parent, each a "Company" and collectively, the "Companies"), and each of the other Released Parties (as defined below). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Subscription Agreement (as defined below).

RECITALS

WHEREAS, the Releasing Party has entered into a new Physician Employment Agreement (the "Employment Agreement") and a Retention Bonus Agreement (the "Retention Bonus Agreement") with ACI and as a condition to the payment of the bonus under the Retention Bonus Agreement, the Releasing Party has entered into a Stock Subscription Agreement (the "Subscription Agreement") to purchase shares of common stock of Parent; and

WHEREAS, in order to induce Parent to enter into the Subscription Agreement, the Releasing Party has agreed to execute and deliver this Release.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration and incorporating the recitals set forth above, the Releasing Party hereby agrees as follows:

Section 1. Release. The Releasing Party on the Releasing Party's own behalf and on behalf of the Releasing Party's past, present and future affiliates, agents, attorneys, administrators, heirs, executors, spouses, trustees, beneficiaries, representatives, successors and assigns claiming by or through the Releasing Party (collectively, the "Related Persons"), hereby absolutely, unconditionally and irrevocably RELEASES and FOREVER DISCHARGES the Companies and IMMI, LLC (successor in interest to Integrated Medical Management, Inc.) ("IMMI") and their respective Subsidiaries, and their respective past, present and future directors, managers, members, shareholders, officers, employees, agents, subsidiaries, affiliates, attorneys, representatives, successors and assigns (each, a "Released Party" and collectively, the "Released Parties") from the following (collectively, the "Releasing Party Claims"): all claims (including any derivative claim on behalf of any Person), actions, causes of action, suits, arbitrations, proceedings, debts, liabilities, obligations, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, fees, expenses, judgments, executions, indemnification rights, claims and demands arising out, relating to, against or in any way connected with any of the Companies, IMMI or their respective Subsidiaries or their respective businesses, including, without limitation, any and all actions, activities, assets, liabilities and the ownership of any securities, whether known or unknown, suspected or unsuspected, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by the Releasing Party, whether the same be in administrative proceedings, in arbitration, at law, in equity or mixed, which the Releasing Party ever had, now has or hereafter may have against any or all of the Released Parties, in respect of any and all agreements, liabilities or obligations entered into or incurred on or prior to the date hereof (including, without limitation, any organizational

document of ACI), or in respect of any event occurring or circumstances existing on or prior to the date hereof, whether or not relating to claims pending on, or asserted after, the date hereof, including, without limitation, any claims relating to salary, vacation pay or other compensation (other than any retention bonus payable pursuant to the Retention Bonus Agreement); provided, however, that the foregoing release does not extend to, include or restrict or limit in any way, and each Releasing Party hereby reserves such Releasing Party's rights, if any, and the right of the other Releasing Parties, if any, to pursue any and all Releasing Party Claims that such Releasing Party may now or in the future have solely on account of (a) rights of such Releasing Party under (i) the Employment Agreement, (ii) the Retention Bonus Agreement and (iii) the Subscription Agreement and each of the other agreements relating to the Subscription Agreement to which such Releasing Party is a party, (b) any rights or claims for benefits (other than any severance or deferred compensation) under benefit plans of the Companies or IMMI (including, without limiting the generality of the foregoing, COBRA benefits and rights to account balances, earnings thereon and forfeiture allocations), (c) any rights of recovery under any of the insurance policies of the Companies or IMMI by reason of the Releasing Party's status as a director, manager, officer, employee or agent of any Company or IMMI, or as a trustee or fiduciary of any benefit plan, in each instance with respect to periods prior to the Closing, (d) rights under any applicable workers' compensation statutes arising out of compensable job related injuries, (e) any rights to indemnification for serving as an officer, director, manager, agent or employee of any Company or IMMI, providing professional medical services on behalf of any Company, or serving at the request of any Company as a trustee or fiduciary of any benefit plan, provided that such rights exist as a matter of law or contract or pursuant to the corporate documents of the applicable Company, and (f) any claim which, as a matter of applicable law, cannot be released. The Releasing Party acknowledges that the Employment Agreement and the Retention Bonus Agreement are the only agreements between the Releasing Party and any Released Party with respect to compensation to be paid to the Releasing Party by any Released Party.

Section 2. No Additional Facts. The Releasing Party hereby expressly waives any rights the Releasing Party may have under applicable law to preserve Releasing Party Claims which the Releasing Party does not know or suspect to exist in the Releasing Party's favor at the time of executing the release provided in Section 1. The Releasing Party understands and acknowledges that the Releasing Party may discover facts different from, or in addition to, those which the Releasing Party knows or believes to be true with respect to the claims released herein, and agrees that the release provided in Section 1 shall be and remain effective in all respects notwithstanding any subsequent discovery of different or additional facts. If the Releasing Party discovers that any fact relied upon in entering into the release provided in Section 1 was untrue, or that any fact was concealed, or that an understanding of the facts or law was incorrect, the Releasing Party shall not be entitled to any relief as a result thereof, and the Releasing Party surrenders any rights the Releasing Party might have to rescind the release provided in Section 1 on any ground. Such release is intended to be and is final and binding regardless of any claim of misrepresentation, promise made with the intention of performing, concealment of fact, mistake of law, or any other circumstances whatsoever.

Section 3. No Suits or Actions. The Releasing Party hereby irrevocably covenants to refrain from, and shall cause each of its Related Persons to refrain from, asserting any claim or demand, or commencing, instituting or causing to be commenced, any suit, proceeding or manner of action of any kind against any Released Party based upon any Releasing Party Claim.

If the Releasing Party (or any of its Related Persons) does any of the things mentioned in the immediately preceding sentence, then the Releasing Party shall indemnify the Released Parties (or any of them) in the amount of the value of any final judgment or settlement (monetary or other) and any related cost (including reasonable legal fees) entered against, paid or incurred by the Released Parties (or any of them).

Section 4. No Assignment of Releasing Party Claims. The Releasing Party represents and warrants to the Released Parties that there has been no assignment or other transfer of any interest in any Releasing Party Claim.

Section 5. Severability. If any provision of this Release is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Release will remain in full force and effect. Any provision of this Release held invalid or unenforceable only in part of degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 6. Amendment; Governing Law. This Release may not be amended, modified or supplemented except in a writing signed by the Releasing Party, Parent and the Companies. This Release shall be governed by and construed under the laws of the State of Delaware without regard to any principles of conflicts of law thereof that would cause the laws of any other jurisdiction to be applied.

Section 7. Captions. The section or paragraph headings or titles herein are for convenience of reference only and shall not be deemed a part of this Agreement.

Section 8. Signatures. Facsimile or pdf signatures shall have the same legal effect as manual signatures.

[*The remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Release as of the date first above written.

THE RELEASING PARTY:

_____
Print Name:

EXHIBIT C

SPOUSAL CONSENT & JOINDER

(See Attached)

SPOUSAL CONSENT & JOINDER

I have read and clearly understand the Amended and Restated Stockholders Agreement of U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (the "Corporation"), as amended (the "Stockholders Agreement"), the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements"), each of which has been executed by my spouse. I hereby acknowledge that my spouse has agreed to various terms and conditions with respect to ownership of equity securities of the Corporation (the "Shares"), of which he or she is an owner of record or beneficially, and in which I may now have or hereafter may have a community property or other interest. I have been advised and encouraged to obtain separate legal counsel to review the Stock Restriction Agreements. In connection with this review (which I have either conducted or elected to forego at my sole discretion), I have (i) been granted access to the books and records of the Corporation, (ii) reviewed in full the Stock Restriction Agreements and the documents referenced therein, and (iii) the expectation that such terms and conditions will be binding on me with respect to any analysis and determination of my marital rights. In consideration of the foregoing, I hereby expressly consent to the execution and delivery of the Stock Restriction Agreements and documents referenced therein or related thereto by my spouse, and I join in, accept and consent to the terms thereof and agree to abide and to be bound thereby, and I agree to execute and deliver all documents and to do all things reasonably requested to carry out and complete the purposes thereof.

Furthermore, with respect to the Shares held in my spouse's name, I, the undersigned, hereby appoint my spouse as my attorney-in-fact to (i) represent me in all matters with regard to the Stock Restriction Agreements, (ii) bind my interests, jointly with his or her own, upon his or her execution of any documents relating to the Stock Restriction Agreements and documents referenced therein or related thereto, and (iii) do, on my behalf, all things reasonably necessary to carry out and complete the purposes of the Stock Restriction Agreements, all without my further consent or authorization; the foregoing appointment being coupled with an interest and expressly hereby made irrevocable. I agree to be bound by these provisions and will not bequeath any part of my community interest in the Shares by my will, if I predecease my spouse, to any person or party other than my spouse. I direct that the residuary clause in my will, if any, shall not be deemed to apply to my community interest in the Shares.

I have executed this Spousal Consent on the date indicated below, to be effective immediately on my execution.

Dated: _____ By: _____
Name:

EXHIBIT B

ELECTION UNDER SECTION 83(b) OF THE INTERNAL REVENUE CODE

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

   TAXPAYER'S NAME: _____

   TAXPAYER'S SOCIAL SECURITY NUMBER: _____

   ADDRESS: _____

   _____

   TAXABLE YEAR: Calendar Year 2016

2. The property which is the subject of this election is _____ shares of common stock, $0.001 par value per share (the "Parent Stock"), of U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation ("Parent").

3. The Parent Stock was transferred to the undersigned on _____.

4. The Parent Stock is subject to the following restrictions: The Parent Stock is subject to forfeiture to Parent for no consideration if the employment status as a Physician-Partner of the undersigned by Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd., d/b/a Anesthesiology Consultants, Inc., a Nevada professional corporation, is changed, in certain circumstances, prior to the fifth anniversary of the date the shares of Parent Stock were transferred. Furthermore, the Parent Stock is non-transferable within the meaning of Treasury Regulation § 1.83-3(d).

5. The fair market value of the Parent Stock at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: $_____ per share x _____ shares = $_____.

6. For the property transferred, the undersigned paid $_____ per share x _____ shares = $_____.

7. The amount to include in gross income is $0. [The result of the amount reported in Item 5 minus the amount reported in Item 6.]

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated:_____ _____

Taxpayer: _____

EXHIBIT E-2

Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd.,
(d/b/a Anesthesiology Consultants, Inc.),
a Nevada professional corporation

PARTNER-TRACK PHYSICIAN RETENTION BONUS AGREEMENT

THIS RETENTION BONUS AGREEMENT (this "Agreement"), is entered into as of December 2, 2016 ("Execution Date"), by and between Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd., d/b/a Anesthesiology Consultants, Inc., a Nevada professional corporation (the "Company"), and Annie Lynn Penaco Duong, M.D., an individual resident of Nevada ("Physician"). This Agreement will become effective upon the effectiveness of the Employment Agreement (as defined below) (the date of such effectiveness, the "Effective Date"). This Agreement is being entered into with reference to the following facts:

A. The Company, U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation ("Parent"), USAP Nevada (Isaacs), PLLC (d/b/a U.S. Anesthesia Partners of Nevada, PLLc), a Nevada professional limited liability company (the "Buyer"), and USAPNV Merger Sub, Inc., a Nevada corporation ("Merger Sub"), are party to an Agreement and Plan of Merger dated as of November 4, 2016 (the "Merger Agreement"), pursuant to which, on the terms and conditions set forth in the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company being the surviving entity of such merger and becoming a wholly owned subsidiary of Buyer, and the current shareholders of the Company will cease to own any securities in the Company (the "Contemplated Transactions").

B. Physician will execute a new Partner-Track Physician Employment Agreement ("Employment Agreement") with the Company to be effective on the day after the closing date of the Contemplated Transactions, pursuant to which he or she will be compensated for professional services.

C. The Employment Agreement is for an initial two-year term.

D. The Company has determined to take appropriate steps, including entering into this Agreement, as additional consideration to properly incentivize Physician to execute the Employment Agreement and perform future services under the terms thereof, and the Physician is entering into this Agreement and the Employment Agreement with the intention of providing future services under the terms thereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Company and the Physician agree as follows:

1. Retention Bonus. Subject to Section 3 below, a cash bonus in the amount of $100,000 (the "Bonus") shall be due and payable by the Company to Physician on the schedule described on Schedule 1 attached hereto (the "Payment Date"); provided, that, Physician shall not have breached the Employment Agreement at any time prior to the Payment Date and that the Physician shall have satisfied the conditions in Sections 3 and 4 of this Agreement as of the

Payment Date and shall have executed the Omnibus Joinder Agreement attached to the Subscription Agreement.

2. Withholding. The Company may deduct and withhold from any payments made to Physician under this Agreement the amounts that the Company, in its sole discretion, is required to deduct and withhold for any federal, state or local income or employment taxes. Neither the Company, Buyer, Parent nor any of their respective affiliates shall be liable to Physician or any other person as to any unexpected or adverse tax consequences realized by Physician and Physician shall be solely responsible for the timely payment of all taxes arising from this Agreement that may be imposed on Physician.

3. Subscription Agreement. It is a condition to Physician's eligibility to receive the Bonus that Physician agrees on the Payment Date to contribute the amount set forth on Schedule 1 attached hereto to Parent in exchange for shares of common stock, $0.001 par value per share, of Parent ("Parent Stock") at an acquisition price per share equal to the then fair market value of the Parent Stock as determined in good faith by the board of directors of Parent (the "Stock Purchase"). It is a further condition to Physician's eligibility to receive the Bonus that Physician agrees on the Payment Date to the release of certain matters. Physician may satisfy these conditions by executing and delivering to the Company on the Payment Date the Stock Subscription Agreement attached hereto as Exhibit A (the "Subscription Agreement") and the Release attached as Exhibit B to the Subscription Agreement. On the Payment Date, the Company will deliver that portion of the Bonus that is necessary to effect the Stock Purchase to Parent on Physician's behalf and Physician agrees to execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the Stock Purchase.

4. Continuing Employment. It is a further condition to Physician's eligibility to receive the Bonus and to purchase Parent Stock that Physician be employed by the Company as of the Payment Date.

5. Section 409A. This Agreement is intended to be exempt from or comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and notwithstanding anything herein to the contrary shall be interpreted in a manner consistent with that intention. Physician consents to the Company adopting such conforming amendments as the Company deems necessary, in good faith and in its reasonable discretion, to comply with Section 409A of the Code and avoid the imposition of taxes under Code Section 409A. Each payment made pursuant to any provision of this Agreement shall be considered a separate payment and not one of a series of payments for purposes of Code Section 409A. While it is intended that all payments and benefits provided under this Agreement to Physician will be exempt from or comply with Code Section 409A, the Company makes no representation or covenant to ensure that the payments under this Agreement are exempt from or compliant with Code Section 409A. The Company will have no liability to Physician or any other party if a payment or benefit under this Agreement is challenged by any taxing authority or is ultimately determined not to be exempt or compliant. If, upon Physician's "separation from service" (as defined in Code Section 409A), Physician is then a "specified employee" (as defined in Section 409A of the Code), then only to the extent necessary to comply with Code Section 409A and avoid imposition of taxes under Code Section 409A, the Company shall defer payment of

certain of the deferred compensation amounts owed to Physician until the earlier of Physician's death or the first business day of the seventh month following Physician's separation from service.

6. 83(b) Election. Physician covenants and agrees to timely (and in any event, within 30 days of the Payment Date) make and file with the Internal Revenue Service an election under Section 83(b) of the Code in the form of Exhibit C attached hereto and will deliver a copy of such Code Section 83(b) election to the Company at or prior to the time of such filing.

7. General.

(a) Entire Understanding; Amendment. This Agreement embodies the entire understanding of the parties and supersedes all prior or contemporaneous oral or written agreements between the parties with respect to the subject matter hereof, and constitutes a single integrated agreement. There are no promises, terms, conditions, or obligations, oral or written, express or implied, other than those contained herein, with respect to such subject matter. This Agreement may not be amended or modified except in a writing signed by the Company and Physician, and no provision may be waived except in a writing signed by the party waiving compliance. The preamble and recitals to this Agreement shall be considered a part of this Agreement and not merely recitations of information.

(b) Governing Law; Venue. This Agreement shall be governed and construed under the internal laws of the State of Nevada, without application of choice of law or conflicts of law principles. All disputes arising hereunder shall be resolved exclusively in state or federal courts located in the City and County of Nevada, State of Nevada, to which jurisdiction and venue the parties hereto irrevocably consent.

(c) Severability. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative to any extent by any court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to render it enforceable and the rights and obligations of the parties hereunder shall be construed and enforced accordingly.

(d) Counterparts; Facsimile or Electronic Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed in facsimile copy or electronic copy actually received by the recipient's e-mail system with the same binding effect as the original.

(e) Confidentiality. Each of the parties hereto agrees to keep the terms of this Agreement confidential, including the fact that the Company is considering the Contemplated Transactions; provided that Physician and the Company may disclose the terms of this Agreement to the party's counsel, accountants and advisers and as may be required to comply with any legal requirement including without limitation any tax reporting obligations. The parties agree to instruct their advisors that they must similarly agree to keep the details of this Agreement confidential. This Section 7(e) shall not apply to information concerning Physician's compensation.

(f) Termination. Notwithstanding anything to the contrary hereof, if the Partner-Track Physician Employment Agreement is not executed and delivered to the Company by the Physician as of the Effective Date, this Agreement shall be terminated with not further force and effect and the Company shall have no obligation to make any payments under the terms hereof.

(g) Assignment. No party shall have the right to assign any right or obligation hereunder without obtaining the prior written consent of each the other parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Retention Bonus Agreement as of the day and year first above written.

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

By: _____
Name: W. Bradford Isaacs, M.D.
Title: President

PHYSICIAN:

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

IN WITNESS WHEREOF, the parties have executed this Retention Bonus Agreement as of the day and year first above written.

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

By: _____
Name:
Title:

PHYSICIAN:

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

SCHEDULE 1

Payment Schedule

The Bonus shall be payable to Physician on the date that Physician is admitted as Physician-Partner of the Company, subject to the terms and conditions of the Agreement. Any portion of the Bonus shall be payable only if Physician is then employed by Company on such date:

Subscription of Parent Common Stock*

Contribution Amount:	$50,000

* The number of shares of Parent Common Stock will be based on the then fair market value at the time of the bonus.

EXHIBIT A

STOCK SUBSCRIPTION AGREEMENT

(SEE ATTACHED)

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT is dated as of _____ __, 20__ (this "Agreement"), by and between U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (the "Corporation") and the individual named on the signature page hereto (the "Investor").

W I T N E S S E T H:

WHEREAS, the Investor is entering into a new Employment Agreement (the "Employment Agreement") with Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI") in connection with the Investor's promotion to Physician-Partner;

WHEREAS, the Investor entered into a Retention Bonus Agreement (the "Bonus Agreement") with ACI dated December 2, 2016, pursuant to which the Investor is entitled to receive the Bonus upon promotion to Physician-Partner, subject to the terms and conditions thereof;

WHEREAS, pursuant to the Bonus Agreement, the Investor agreed to utilize a portion of the Bonus payable to the Investor thereunder to purchase certain shares of Common Stock, $0.001 par value per share of the Corporation (the "Common Stock"), pursuant to the terms hereof. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bonus Agreement;

WHEREAS, the Corporation desires to issue and sell to the Investor and the Investor desires to subscribe for and purchase from the Corporation that number of shares of Common Stock as set forth on the signature page hereto (the "Shares"), on the terms and conditions described herein; and

WHEREAS, it is a condition to the issuance of Common Stock by the Corporation that the Investor enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained and incorporating the recitals set forth above, the parties hereto hereby agree as follows:

ARTICLE I.

ISSUANCE, SALE AND DELIVERY OF SHARES; CONTRIBUTIONS; CLOSING

SECTION 1.01. Issuance, Sale and Delivery of Shares; Contribution. The Investor hereby agrees to purchase and hereby subscribes for the number of Shares set forth on the signature page to this Agreement for the purchase price set forth on the signature page to this Agreement. On the Payment Date, the Investor will deliver (or cause to be delivered) payment in cash or check for such Shares to the Corporation. The Shares being issued to the Investor hereunder will be subject to the vesting conditions set forth in the Vesting and Stockholders Arrangement Agreement (as defined below).

SECTION 1.02. Closing. Upon the terms and subject to the conditions of this Agreement, the issuance, sale and delivery of the Shares contemplated by SECTION 1.01 (the "Closing") will take place on the Payment Date at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 (such date being herein called the "Closing Date").

SECTION 1.03. Stock Restriction Agreements; Release. As a condition to the issuance of the Shares by the Corporation, the Investor shall be obligated to, and hereby irrevocably agrees to, execute (a) the omnibus joinder agreement (the "Omnibus Joinder") in the form attached hereto as Exhibit A agreeing to become a party to, and bound by, the Amended and Restated Stockholders Agreement of the Corporation, as amended (the "Stockholders Agreement"), the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements") and (b) the Release in the form attached hereto as Exhibit B.

SECTION 1.04. Spousal Consent & Joinder. As a condition to the issuance of Shares by the Corporation, if married, the Investor's spouse shall duly complete, execute and deliver to the Corporation a Spousal Consent & Joinder in the form attached hereto as Exhibit C, to be delivered to the Corporation prior to Closing.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES OF CORPORATION

The Corporation represents and warrants to the Investor that:

SECTION 2.01. Corporate Existence and Power. The Corporation is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Corporation has the corporate power and authority necessary to (i) own its properties and assets, (ii) carry on its business as now being conducted and (iii) execute and deliver this Agreement and perform its obligations hereunder, including the issuance, sale and delivery of the Shares.

SECTION 2.02. Authorization; Validity. The execution and delivery by the Corporation of this Agreement and the consummation of the transactions contemplated hereby (including the issuance, sale and delivery of the Shares) have been duly authorized by all necessary corporate action on the part of the Corporation. This Agreement has been duly executed and delivered by the Corporation. This Agreement constitutes, and each Stock Restriction Agreement constitutes, a valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies and (iii) with respect to provisions relating to indemnification and contribution, as limited by considerations of public policy and by federal or state securities laws.

SECTION 2.03. Governmental Authorization. Assuming the accuracy of the Investor's representations and warranties set forth in ARTICLE III hereof, no order, license, consent, authorization or approval of, or exemption by, or action by or in respect of, or notice to, or filing or registration with, any governmental body, agency or official is required by or with respect to the Corporation in connection with the execution, delivery and performance by the Corporation of this Agreement except (i) for such filings as may be required under Regulation D promulgated under the Securities Act of 1933, as amended ("Regulation D"), or under any applicable state securities laws, (ii) for such other filings and approvals as have been made or obtained, or (iii) where the failure to obtain any such order, license, consent, authorization, approval or exemption or give any such notice or make any filing or registration would not have a material adverse effect on the ability of the Corporation to perform its obligations hereunder and thereunder.

SECTION 2.04. Noncontravention. The execution, delivery and performance by the Corporation of this Agreement does not (i) violate the Certificate of Incorporation or Bylaws of the Corporation, (ii) violate any law, rule, regulation, judgment, injunction, order or decree applicable to or binding upon the Corporation, (iii) violate any contract, agreement, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which the Corporation is a party or (iv) require any consent or other action by any person under, constitute a default under (with due notice or lapse of time or both), or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Corporation or to a loss of any benefit to which the Corporation is entitled under any provision of any agreement or other instrument binding upon the Corporation or any of its assets or properties.

SECTION 2.05. Valid Issuance of Shares. At Closing, the Shares will have been duly and validly authorized and when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be validly issued, fully paid and nonassessable shares of Common Stock.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

The Investor represents and warrants to the Corporation that:

SECTION 3.01. Authorization; Power; Validity. This Agreement has been duly executed and delivered by the Investor and each Stock Restriction Agreement to which the Investor is (or will be) a party will be duly executed and delivered by the Investor at Closing, pursuant to the execution of the Omnibus Joinder. This Agreement constitutes, and each Stock Restriction Agreement to which the Investor is (or will be) a party, when executed and delivered by the Investor at Closing will constitute, a valid and binding agreement of the Investor, enforceable against the Investor in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies and (iii) with respect to provisions relating to indemnification and contribution, as limited by considerations of public policy and by federal or state securities laws.

SECTION 3.02. Governmental Authorization. No order, license, consent, authorization or approval of, or exemption by, or action by or in respect of, or notice to, or filing or registration with, any governmental body, agency or official is required by or with respect to the Investor in connection with the execution, delivery and performance by the Investor of this Agreement and each Stock Restriction Agreement to which the Investor is (or will be) a party except (i) for such filings and notices of sale as may be required under Regulation D or under any applicable state securities laws, (ii) for such other filings and approvals as have been made or obtained, or (iii) where the failure to obtain any such order, license, consent, authorization, approval or exemption or give any such notice or make any filing or registration would not have a material adverse effect on the ability of the Investor to perform the Investor's obligations hereunder or thereunder.

SECTION 3.03. Noncontravention. The execution, delivery and performance by the Investor of this Agreement and each Stock Restriction Agreement to which the Investor is (or will be) a party does not and will not (i) violate any law, rule, regulation, judgment, injunction, order or decree applicable to or binding upon the Investor, (ii) violate any material contract, agreement, license, lease or other instrument, arrangement, commitment, obligation, understanding or restriction of any kind to which the Investor is a party or is bound, (iii) require any consent or other action by any person under, constitute a default under (with due notice or lapse of time or both), or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Investor under any provision of any material agreement or other material instrument binding upon the Investor or any of its assets or properties or (iv) result in the creation or imposition of any material lien, claim, charge, pledge, security interest or other encumbrance with respect to any Shares acquired hereunder.

SECTION 3.04. Acquisition for Investment. The Investor is acquiring the Shares being purchased by the Investor hereunder for investment for the Investor's own account and not with a view to, or for sale in connection with, any distribution thereof.

SECTION 3.05. Private Placement.

(a) The Investor's financial situation is such that the Investor can afford to bear the economic risk of holding the Shares being purchased by the Investor hereunder for an indefinite period of time, and the Investor can afford to suffer the complete loss of the Investor's investment in the Shares.

(b) The Investor's knowledge and experience in financial and business matters are such that the Investor is capable of evaluating the merits and risks of the Investor's investment in the Shares or the Investor has been advised by a representative possessing such knowledge and experience.

(c) The Investor understands that the Shares acquired hereunder are a speculative investment which involves a high degree of risk of loss of the entire investment therein, that there will be substantial restrictions on the transferability of the Shares and that following the date hereof there will be no public market for the Shares and that, accordingly, it may not be possible for the Investor to sell or pledge the Shares, or any interest in the Shares, in case of emergency or otherwise.

(d) The Investor and the Investor's representatives, including, to the extent the Investor deems appropriate, the Investor's legal, professional, financial, tax and other advisors, have reviewed all documents provided to them in connection with the Investor's investment in the Shares, and the Investor understands and is aware of the risks related to such investment.

(e) The Investor and the Investor's representatives have been given the opportunity to examine all documents and to ask questions of, and to receive answers from, the Corporation and its representatives concerning the Corporation and its subsidiaries, the terms and conditions of the Investor's acquisition of the Shares and related matters and to obtain all additional information which the Investor or the Investor's representatives deem necessary.

(f) The Investor is an "accredited investor" as such term is defined in Regulation D.

(g) The Investor does not have any plan or intention to sell, exchange, transfer or otherwise dispose of (including by way of gift) any of its shares of Common Stock immediately after the acquisition of any such Shares.

SECTION 3.06. No Other Representations and Warranties. The Investor hereby acknowledges and agrees that the representations and warranties set forth in ARTICLE II hereof are the only representations, warranties and statements being relied on by the Investor in connection with the Investor's acquisition of the Shares.

ARTICLE IV.

MISCELLANEOUS

SECTION 4.01. Survival. All of the covenants, agreements, representations and warranties contained herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

SECTION 4.02. Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service, sent by certified or registered mail, postage prepaid, or sent by facsimile (subject to electronic confirmation of such facsimile transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one business day after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by facsimile prior to 5:00 p.m. (EST) on any business day or the next succeeding business day if sent by facsimile after 5:00 p.m. (EST) on any business day or on any day other than a business day or (iv) five business days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or facsimile number, or to such other address or addresses or facsimile number or numbers as such party may subsequently designate to the other parties by notice given hereunder:

if to the Corporation, to it at:

U.S. Anesthesia Partners Holdings, Inc.
450 East Las Olas Blvd., Suite 850
Ft. Lauderdale, Florida 33301
Facsimile Number: (713) 458-4426
Attention: Kristen Bratberg

with copies (which shall not constitute notice) to:

U.S. Anesthesia Partners Holdings, Inc.
12222 Merit Drive, Suite 700
Dallas, TX 75251
Attention: Amy Sanford, General Counsel

and

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Facsimile number: (212) 596-9090
Attention: Anthony J. Norris

if to the Investor, to the Investor at the address set forth for the Investor on the signature page hereto

with a copy (which shall not constitute notice) to:

Sheppard, Mullin, Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6017
Fax No.: (310) 228-3988
Attention: Eric A. Klein, Esq.

SECTION 4.03. Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and, in the case of an amendment, signed by (i) the Corporation and (ii) the Investor.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

SECTION 4.04. Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such cost or expense.

SECTION 4.05. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party hereto shall assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the Corporation and the Investor.

SECTION 4.06. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely within such State.

SECTION 4.07. Jurisdiction. Each of the parties to this Agreement hereby irrevocably and unconditionally submits, for itself and its assets and properties, to the exclusive jurisdiction of the Delaware Court of Chancery, and any appellate court from such court, in any action or proceeding arising out of or relating to this Agreement, the agreements delivered in connection with this Agreement, or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment relating thereto, and each of the parties to this Agreement hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such courts; (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in the Delaware Court of Chancery; (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery; and (iv) waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery. Each of the parties to this Agreement hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties to this Agreement hereby irrevocably consents to service of process in the manner provided for notices in SECTION 4.02. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by applicable law.

SECTION 4.08. Waiver Of Jury Trial. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER OR IN CONNECTION WITH THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ANY OF THE OTHER AGREEMENTS DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.08.

SECTION 4.09. Counterparts; Third Party Beneficiaries. This Agreement may be executed in any number of counterparts (including via email with scan attachment or facsimile transmission), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. No provision of this Agreement shall confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 4.10. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, among the parties with respect to the subject matter hereof.

SECTION 4.11. Severability. If one or more provisions of this Agreement are finally held to be unenforceable under applicable law, such provision shall be deemed to be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforced in accordance with its terms to the maximum extent permitted by law.

[*Remainder of Page Intentionally Blank*]

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Stock Subscription Agreement as of the day and year first above written.

CORPORATION: U.S. ANESTHESIA PARTNERS HOLDINGS, INC.

By: _____
Name: Kristen Bratberg
Title: President and CEO

INVESTOR

Signature: _____

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

Number of Shares of Common Stock:

Purchase Price per Share:

Address: _____

_____

[Stock Subscription Agreement Signature Page]

EXHIBIT A

OMNIBUS JOINDER AGREEMENT

(See Attached)

OMNIBUS JOINDER AGREEMENT

This OMNIBUS JOINDER AGREEMENT (the "Joinder") is made and entered into as of the Closing Date by and between U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (hereinafter referred to as the "Corporation") and _____ (the "Joining Party"). Capitalized terms used but not otherwise defined in this Joinder shall have the meanings ascribed to such terms in the Stock Subscription Agreement (the "Agreement") between the Joining Party and the Corporation to which this Joinder is attached.

WHEREAS, the Corporation is selling and issuing certain shares of Common Stock (the "Shares") to the Joining Party.

WHEREAS, the terms of the Agreement require the Joining Party, as a holder of such interests, to become a party to (i) the Amended and Restated Stockholders Agreement of the Corporation, as amended (the "Stockholders Agreement"), (ii) the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and (iii) the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting and Stockholders Arrangement Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements"), and the Joining Party agrees to do so in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and incorporating the recitals set forth above, the parties to this Joinder hereby agree as follows:

1) Agreement to be Bound. The Joining Party hereby agrees that upon execution of this Joinder, he or she shall become a party to each of the Stock Restriction Agreements and shall be fully bound by, and subject to, all of the covenants, terms and conditions of each of the Stock Restriction Agreements as though an original party thereto and shall be deemed a "Stockholder," "ACI Co-Invest Stockholder," "Other Investor" and "Investor," as the case may be, for all purposes thereof.

2) Successors and Assigns. Except as otherwise provided herein, this Joinder shall bind and inure to the benefit of and be enforceable by the Corporation and its successors and assigns and the Joining Party and any subsequent holders of the Shares and the respective successors and assigns of each of them, so long as they hold any of the Shares.

3) Counterparts. This Joinder may be executed in separate counterparts (including via email with scan attachment or facsimile transmission) each of which shall be an original and all of which taken together shall constitute one and the same agreement.

4) Notices. For purposes of the Stock Restriction Agreements, all notices, demands or other communications to the Joining Party shall be directed to the address, email, or facsimile of Joining Party as set forth on the signature page to the Agreement.

IN WITNESS WHEREOF, this Joinder is hereby executed and accepted as of the date above written.

Joining Party

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

Accepted:

U.S. Anesthesia Partners Holdings, Inc.

By: _____
Name: Kristen Bratberg
Title: President and CEO

EXHIBIT B

RELEASE

(See Attached)

RELEASE – SUBSCRIPTION AGREEMENT

This RELEASE (this "Release") dated as of [●], 20__ is executed and delivered by the undersigned (the "Releasing Party"), to and in favor of U.S. Anesthesia Partners Holdings, Inc. ("Parent" or "Parent") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI" and together with Parent, each a "Company" and collectively, the "Companies"), and each of the other Released Parties (as defined below). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Subscription Agreement (as defined below).

RECITALS

WHEREAS, the Releasing Party has entered into a new Physician Employment Agreement (the "Employment Agreement") and a Retention Bonus Agreement (the "Retention Bonus Agreement") with ACI and as a condition to the payment of the bonus under the Retention Bonus Agreement, the Releasing Party has entered into a Stock Subscription Agreement (the "Subscription Agreement") to purchase shares of common stock of Parent; and

WHEREAS, in order to induce Parent to enter into the Subscription Agreement, the Releasing Party has agreed to execute and deliver this Release.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration and incorporating the recitals set forth above, the Releasing Party hereby agrees as follows:

Section 1. Release. The Releasing Party on the Releasing Party's own behalf and on behalf of the Releasing Party's past, present and future affiliates, agents, attorneys, administrators, heirs, executors, spouses, trustees, beneficiaries, representatives, successors and assigns claiming by or through the Releasing Party (collectively, the "Related Persons"), hereby absolutely, unconditionally and irrevocably RELEASES and FOREVER DISCHARGES the Companies and IMMI, LLC (successor in interest to Integrated Medical Management, Inc.) ("IMMI") and their respective Subsidiaries, and their respective past, present and future directors, managers, members, shareholders, officers, employees, agents, subsidiaries, affiliates, attorneys, representatives, successors and assigns (each, a "Released Party" and collectively, the "Released Parties") from the following (collectively, the "Releasing Party Claims"): all claims (including any derivative claim on behalf of any Person), actions, causes of action, suits, arbitrations, proceedings, debts, liabilities, obligations, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, fees, expenses, judgments, executions, indemnification rights, claims and demands arising out, relating to, against or in any way connected with any of the Companies, IMMI or their respective Subsidiaries or their respective businesses, including, without limitation, any and all actions, activities, assets, liabilities and the ownership of any securities, whether known or unknown, suspected or unsuspected, absolute or contingent, direct or indirect or nominally or beneficially possessed or claimed by the Releasing Party, whether the same be in administrative proceedings, in arbitration, at law, in equity or mixed, which the Releasing Party ever had, now has or hereafter may have against any or all of the Released Parties, in respect of any and all agreements, liabilities or obligations entered into or incurred on or prior to the date hereof (including, without limitation, any organizational

document of ACI), or in respect of any event occurring or circumstances existing on or prior to the date hereof, whether or not relating to claims pending on, or asserted after, the date hereof, including, without limitation, any claims relating to salary, vacation pay or other compensation (other than any retention bonus payable pursuant to the Retention Bonus Agreement); provided, however, that the foregoing release does not extend to, include or restrict or limit in any way, and each Releasing Party hereby reserves such Releasing Party's rights, if any, and the right of the other Releasing Parties, if any, to pursue any and all Releasing Party Claims that such Releasing Party may now or in the future have solely on account of (a) rights of such Releasing Party under (i) the Employment Agreement, (ii) the Retention Bonus Agreement and (iii) the Subscription Agreement and each of the other agreements relating to the Subscription Agreement to which such Releasing Party is a party, (b) any rights or claims for benefits (other than any severance or deferred compensation) under benefit plans of the Companies or IMMI (including, without limiting the generality of the foregoing, COBRA benefits and rights to account balances, earnings thereon and forfeiture allocations), (c) any rights of recovery under any of the insurance policies of the Companies or IMMI by reason of the Releasing Party's status as a director, manager, officer, employee or agent of any Company or IMMI, or as a trustee or fiduciary of any benefit plan, in each instance with respect to periods prior to the Closing, (d) rights under any applicable workers' compensation statutes arising out of compensable job related injuries, (e) any rights to indemnification for serving as an officer, director, manager, agent or employee of any Company or IMMI, providing professional medical services on behalf of any Company, or serving at the request of any Company as a trustee or fiduciary of any benefit plan, provided that such rights exist as a matter of law or contract or pursuant to the corporate documents of the applicable Company, and (f) any claim which, as a matter of applicable law, cannot be released. The Releasing Party acknowledges that the Employment Agreement and the Retention Bonus Agreement are the only agreements between the Releasing Party and any Released Party with respect to compensation to be paid to the Releasing Party by any Released Party.

Section 2. No Additional Facts. The Releasing Party hereby expressly waives any rights the Releasing Party may have under applicable law to preserve Releasing Party Claims which the Releasing Party does not know or suspect to exist in the Releasing Party's favor at the time of executing the release provided in Section 1. The Releasing Party understands and acknowledges that the Releasing Party may discover facts different from, or in addition to, those which the Releasing Party knows or believes to be true with respect to the claims released herein, and agrees that the release provided in Section 1 shall be and remain effective in all respects notwithstanding any subsequent discovery of different or additional facts. If the Releasing Party discovers that any fact relied upon in entering into the release provided in Section 1 was untrue, or that any fact was concealed, or that an understanding of the facts or law was incorrect, the Releasing Party shall not be entitled to any relief as a result thereof, and the Releasing Party surrenders any rights the Releasing Party might have to rescind the release provided in Section 1 on any ground. Such release is intended to be and is final and binding regardless of any claim of misrepresentation, promise made with the intention of performing, concealment of fact, mistake of law, or any other circumstances whatsoever.

Section 3. No Suits or Actions. The Releasing Party hereby irrevocably covenants to refrain from, and shall cause each of its Related Persons to refrain from, asserting any claim or demand, or commencing, instituting or causing to be commenced, any suit, proceeding or manner of action of any kind against any Released Party based upon any Releasing Party Claim.

If the Releasing Party (or any of its Related Persons) does any of the things mentioned in the immediately preceding sentence, then the Releasing Party shall indemnify the Released Parties (or any of them) in the amount of the value of any final judgment or settlement (monetary or other) and any related cost (including reasonable legal fees) entered against, paid or incurred by the Released Parties (or any of them).

Section 4. No Assignment of Releasing Party Claims. The Releasing Party represents and warrants to the Released Parties that there has been no assignment or other transfer of any interest in any Releasing Party Claim.

Section 5. Severability. If any provision of this Release is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Release will remain in full force and effect. Any provision of this Release held invalid or unenforceable only in part of degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 6. Amendment; Governing Law. This Release may not be amended, modified or supplemented except in a writing signed by the Releasing Party, Parent and the Companies. This Release shall be governed by and construed under the laws of the State of Delaware without regard to any principles of conflicts of law thereof that would cause the laws of any other jurisdiction to be applied.

Section 7. Captions. The section or paragraph headings or titles herein are for convenience of reference only and shall not be deemed a part of this Agreement.

Section 8. Signatures. Facsimile or pdf signatures shall have the same legal effect as manual signatures.

[*The remainder of this page is intentionally left blank*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Release as of the date first above written.

THE RELEASING PARTY:

_____
Print Name:

EXHIBIT C

SPOUSAL CONSENT & JOINDER

(See Attached)

SPOUSAL CONSENT & JOINDER

I have read and clearly understand the Amended and Restated Stockholders Agreement of U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation (the "Corporation"), as amended (the "Stockholders Agreement"), the Amended and Restated Registration Rights Agreement of the Corporation, as amended (the "Registration Rights Agreement"), and the Vesting and Stockholders Arrangement Agreement (ACI) of the Corporation (the "Vesting Agreement" and together with the Stockholders Agreement and the Registration Rights Agreement, the "Stock Restriction Agreements"), each of which has been executed by my spouse. I hereby acknowledge that my spouse has agreed to various terms and conditions with respect to ownership of equity securities of the Corporation (the "Shares"), of which he or she is an owner of record or beneficially, and in which I may now have or hereafter may have a community property or other interest. I have been advised and encouraged to obtain separate legal counsel to review the Stock Restriction Agreements. In connection with this review (which I have either conducted or elected to forego at my sole discretion), I have (i) been granted access to the books and records of the Corporation, (ii) reviewed in full the Stock Restriction Agreements and the documents referenced therein, and (iii) the expectation that such terms and conditions will be binding on me with respect to any analysis and determination of my marital rights. In consideration of the foregoing, I hereby expressly consent to the execution and delivery of the Stock Restriction Agreements and documents referenced therein or related thereto by my spouse, and I join in, accept and consent to the terms thereof and agree to abide and to be bound thereby, and I agree to execute and deliver all documents and to do all things reasonably requested to carry out and complete the purposes thereof.

Furthermore, with respect to the Shares held in my spouse's name, I, the undersigned, hereby appoint my spouse as my attorney-in-fact to (i) represent me in all matters with regard to the Stock Restriction Agreements, (ii) bind my interests, jointly with his or her own, upon his or her execution of any documents relating to the Stock Restriction Agreements and documents referenced therein or related thereto, and (iii) do, on my behalf, all things reasonably necessary to carry out and complete the purposes of the Stock Restriction Agreements, all without my further consent or authorization; the foregoing appointment being coupled with an interest and expressly hereby made irrevocable. I agree to be bound by these provisions and will not bequeath any part of my community interest in the Shares by my will, if I predecease my spouse, to any person or party other than my spouse. I direct that the residuary clause in my will, if any, shall not be deemed to apply to my community interest in the Shares.

I have executed this Spousal Consent on the date indicated below, to be effective immediately on my execution.

Dated: _____ By: _____
Name:

EXHIBIT B

ELECTION UNDER SECTION 83(b) OF THE INTERNAL REVENUE CODE

The undersigned taxpayer hereby elects, pursuant to § 83(b) of the Internal Revenue Code of 1986, as amended, to include in gross income as compensation for services the excess (if any) of the fair market value of the shares described below over the amount paid for those shares.

1. The name, taxpayer identification number, address of the undersigned, and the taxable year for which this election is being made are:

   TAXPAYER'S NAME: _____

   TAXPAYER'S SOCIAL SECURITY NUMBER: _____

   ADDRESS: _____

   _____

   TAXABLE YEAR: Calendar Year 2016

2. The property which is the subject of this election is _____ shares of common stock, $0.001 par value per share (the "Parent Stock"), of U.S. Anesthesia Partners Holdings, Inc., a Delaware corporation ("Parent").

3. The Parent Stock was transferred to the undersigned on _____.

4. The Parent Stock is subject to the following restrictions: The Parent Stock is subject to forfeiture to Parent for no consideration if the employment status as a Physician-Partner of the undersigned by Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd., d/b/a Anesthesiology Consultants, Inc., a Nevada professional corporation, is changed, in certain circumstances, prior to the fifth anniversary of the date the shares of Parent Stock were transferred. Furthermore, the Parent Stock is non-transferable within the meaning of Treasury Regulation § 1.83-3(d).

5. The fair market value of the Parent Stock at the time of transfer (determined without regard to any restriction other than a nonlapse restriction as defined in § 1.83-3(h) of the Income Tax Regulations) is: $_____ per share x _____ shares = $_____.

6. For the property transferred, the undersigned paid $_____ per share x _____ shares = $_____.

7. The amount to include in gross income is $0. [The result of the amount reported in Item 5 minus the amount reported in Item 6.]

The undersigned taxpayer will file this election with the Internal Revenue Service office with which taxpayer files his or her annual income tax return not later than 30 days after the date of transfer of the property. A copy of the election also will be furnished to the person for whom the services were performed. Additionally, the undersigned will include a copy of the election with his or her income tax return for the taxable year in which the property is transferred. The undersigned is the person performing the services in connection with which the property was transferred.

Dated:_____ _____

Taxpayer: _____

EXHIBIT F

7900

WEST

SAHARA

SUITE 200

LAS VEGAS, NEVADA

89117

TELEPHONE: 702.832.5909

FACSIMILE: 702.832.5910

December 13, 2018

Via Certified Mail

Annie Duong, M.D.
12133 Edgehurst Ct.
Las Vegas, Nevada 89138

RE: Partner-Track Physician Employment Agreement ("Agreement"), between Annie Duong, M.D. ("you") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. a subsidiary of U.S. Anesthesia Partners, Inc. ("USAP") dated December 2, 2016

Dear Dr. Annie Lynn Penaco Duong:

Our law firm has been retained to assure your compliance with the Non-Competition provision of the Partner-Track Employment Agreement that you willingly and voluntarily entered into on December 2, 2016 ("the Agreement"), a copy of which is attached to this correspondence. Section 2.8 expressly states that you recognized that USAP's decision to enter into the Agreement with you was induced primarily because of your covenants and assurances of your non-competition and nonsolicitation were necessary in order to protect USAP from unfair business competition.

Despite the above, since your departure from USAP it has come to its attention that you have breached the Non-Competition provision of the Agreement Section 2.8.1. More specifically, based upon information and belief, you provided professional anesthesia services in violation of that section prior to the expiration of the 24-month term as defined in Agreement upon end of employment with USAP.

Section 2.8.1 specifically prohibits you from directly or indirectly providing anesthesia and/or pain management services, or consultation, management and/or administrative services related thereto, geographically located at any of the facilities defined on page one (1) of the Agreement where such services were provided by you or USAP during the term of your employment at USAP. At the time you executed the Agreement and accepted compensation during your employment, you were fully aware of the Non-Competition provision of Section 2.8.1 and the geographic restriction of the facilities subject to it.

It has also come to USAP's attention that on November 7, 2018 you became a managing member of Duong Anesthesia, PLLC. Yet this was nearly three weeks prior to the end of your employment with USAP on November 25, 2018. You doing so violated multiple provisions of the Agreement including: 1) page two (2) section one (1) regarding your employment with USAP on an exclusive basis unless otherwise approved by USAP which did not occur here; 2) section 2.1 that all of your professional anesthesiology and pain management services shall be provided solely and exclusively as an employee of USAP unless you received prior

written consent of USAP which did not occur here; and 3) section 2.8.1 precluding you for two years becoming an officer or agent of any person or entity which provides anesthesia services at any of the facilities which you provided anesthesia.

You have additionally breached Section 6.3 by not withdrawing from the medical staff of every facility in which you hold medical staff privileges.

As you are undoubtedly aware, USAP and its physician have spent years developing client relations with facilities and physicians in the Law Vegas medical community. The Non-Competition provisions of the Agreement are important protections for the economic interests of the physicians and USAP. By your actions, you have breached the Non-Competition provision.

If you have not notified our firm by December 28, 2018 that you intend to immediately cease your clear violations of Section 2.8.1 of the Agreement we will have no alternative but to commence litigation in Clark County District Court to secure your compliance and seek damages against you for the irreparable harm your conduct has caused and continues to cause upon USAP.

USAP takes this matter very seriously and reserves all rights and remedies it may have, in equity and at law, with respect to the matter set forth herein. I look forward to hearing from you or your counsel.

Very truly yours,

JOHN H. COTTON

Enclosures as listed

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").

W I T N E S S E T H:

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 in 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 N. 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 ("***ACI***") 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 (30^{th}) 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)

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.

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JOHN H. COTTON & ASSOCIATES, Ltd

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LAS VEGAS,
NEVADA
89117

Via Certified Mail

Annie Duong, M.D.
12133 Edgehurst Ct.
Las Vegas, Nevada 89138

00310

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Annie Duong, M.D.
12133 Edgehurst Ct.
Las Vegas, NV 89138

9590 9402 3612 7305 5022 44

2. Article Number *(Transfer from service label)*

7017 3380 0000 8128 2886

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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7900

WEST

SAHARA

SUITE 200

LAS VEGAS, NEVADA

89117

TELEPHONE: 702.832.5909

FACSIMILE: 702.832.5910

December 13, 2018

Via Certified Mail

Scott Duong, M.D.
12133 Edgehurst Ct.
Las Vegas, Nevada 89138

RE: Partner-Track Physician Employment Agreement ("Agreement"), between Scott Duong, M.D. ("you") and Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. a subsidiary of U.S. Anesthesia Partners, Inc. ("USAP") dated December 2, 2016

Dear Dr. Scott Vinh Duong:

Our law firm has been retained to assure your compliance with the Non-Competition provision of the Partner-Track Employment Agreement that you willingly and voluntarily entered into on December 2, 2016 ("the Agreement"), a copy of which is attached to this correspondence. Section 2.8 expressly states that you recognized that USAP's decision to enter into the Agreement with you was induced primarily because of your covenants and assurances of your non-competition and nonsolicitation were necessary in order to protect USAP from unfair business competition.

Despite the above, since your departure from USAP it has come to its attention that you have breached the Non-Competition provision of the Agreement Section 2.8.1. More specifically, based upon information and belief, you provided professional anesthesia services at St. Rose Dominican Hospital- San Martin campus and Summerlin Hospital Medical Center prior to the expiration of the 24-month term as defined in Agreement upon end of employment with USAP.

Section 2.8.1 specifically prohibits you from directly or indirectly providing anesthesia and/or pain management services, or consultation, management and/or administrative services related thereto, geographically located at any of the facilities defined on page one (1) of the Agreement where such services were provided by you or USAP during the term of your employment at USAP. At the time you executed the Agreement and accepted compensation during your employment, you were fully aware of the Non-Competition provision of Section 2.8.1 and the geographic restriction of the facilities subject to it.

It has also come to USAP's attention that on November 7, 2018 you became a managing member of Duong Anesthesia, PLLC. Yet this was nearly three weeks prior to the end of your employment with USAP on November 25, 2018. You doing so violated multiple provisions of the Agreement including: 1) page two (2) section one (1) regarding your employment with USAP on an exclusive basis unless otherwise approved by USAP which did not occur here; 2) section 2.1 that all of your professional anesthesiology and pain management services shall be

provided solely and exclusively as an employee of USAP unless you received prior written consent of USAP which did not occur here; and 3) section 2.8.1 precluding you for two years becoming an officer or agent of any person or entity which provides anesthesia services at any of the facilities which you provided anesthesia.

You have additionally breached Section 6.3 by not withdrawing from the medical staff of every facility in which you hold medical staff privileges.

As you are undoubtedly aware, USAP and its physician have spent years developing client relations with facilities and physicians in the Law Vegas medical community. The Non-Competition provisions of the Agreement are important protections for the economic interests of the physicians and USAP. By your actions at St. Rose Dominican Hospital- San Martin campus and Summerlin Hospital Medical Center, you have breached the Non-Competition provision.

If you have not notified our firm by December 28, 2018 that you intend to immediately cease your clear violations of Section 2.8.1 of the Agreement we will have no alternative but to commence litigation in Clark County District Court to secure your compliance and seek damages against you for the irreparable harm your conduct has caused and continues to cause upon USAP.

USAP takes this matter very seriously and reserves all rights and remedies it may have, in equity and at law, with respect to the matter set forth herein. I look forward to hearing from you or your counsel.

Very truly yours,

JOHN H. COTTON

Enclosures as listed

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").

W I T N E S S E T H:

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 in 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 N. Workman

Name: _____

Title: _____

PHYSICIAN:

Name: Scott Vinh Duong, M.D.

[Signature Page to Partner-Track Employment Agreement]

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 ("***ACI***") 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 (30^{th}) 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)

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.

7017 3380 0000 8128 2893

JOHN H. COTTON & ASSOCIATES, Ltd

7900
WEST
SAHARA
SUITE 200
LAS VEGAS,
NEVADA
89117

Via Certified Mail

Scott Duong, M.D.
12133 Edgehurst Ct.
Las Vegas, Nevada 89138

00338

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Scott DuLong, M.D.
12133 Edgehurst Ct.
Las Vegas, NV 89138

9590 9402 3612 7305 5022 20

2. Article Number *(Transfer from service label)*

7017 3380 0000 8128 2893

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

EXHIBIT G

Tel: 702.667.4811 (direct)

Ryan T. O'Malley
Attorney

email:rto@h2law.com

January 14, 2019

VIA UPS AND E-MAIL:
US Anesthesia Partners
Attn: Amy Marie Sanford, General Counsel
12222 Merit Drive, Suite 700
Dallas, TX 75251
E-mail address: amy.sanford@usap.com

John H. Cotton & Associates, Ltd.
Attn: John H. Cotton, Esq.
7900 W. Sahara Avenue, Suite #200
Las Vegas, NV 89117
E-mail address: jhcotton@jhcottonlaw.com

RE: Cease and Desist Letter to Annie Lynn Penaco Duong, M.D.

Dear Ms. Sanford:

This office has been retained to represent the interests of Annie Lynn Penaco Duong, M.D. ("Dr. Duong") with respect to the above-referenced matter. We received your correspondence dated December 13, 2018, alleging that Dr. Duong had breached a covenant not to compete, and demanding that she cease performing any conduct which US Anesthesia Partners ("USAP") believes violates the agreement.

This request is impossible to evaluate, as USAP does not articulate any specific conduct that it believes violates the non-compete provision; rather, it states only that "based upon information and belief, [Dr. Duong] provided professional anesthesia services in violation of [the non-compete provision] prior to the expiration of the 24-month term as defined in [the] Agreement[.]" In any case, the provision you seek to enforce is void under Nevada law because it is unreasonable and does not serve to protect USAP's legitimate business interests, among other reasons. *See US Anesthesia Partners v. Tang*, No. A-18-783054-C. A brief summary of the applicable law follows.

Factual Background

As you know, Dr. Duong worked at Fielden, Hanson, Isaacs, Miyada, Robison, Yeh, Ltd. d/b/a Anesthesiology Consultants, Inc. ("ACI"), which is now known as US Anesthesia Partners. On December 2, 2016, in connection with her employment, Dr. Duong executed a Partner-Track Employment Agreement ("Agreement"), which contained the following covenant not to compete:

> 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.

The covenant not to compete casts its scope in terms of "Facilities," which the Agreement defines 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) 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".

The covenant not to compete lacks any geographic limitation, nor does it include any further qualifying language distinguishing particular facilities or customers to which it may apply.

Legal Summary

An agreement by an employee not to compete is generally considered a restraint of trade and unenforceable, unless it is reasonable in scope and breadth. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 404, 632 P.2d 1155, 1158–59 (1981). A restraint of trade is unreasonable if it is more burdensome than is required for the protection of the person for whose benefit the restraint is

imposed or imposes undue hardship upon the person restricted. *Ellis v. McDaniel*, 95 Nev. 455, 458, 596 P.2d 222, 224 (1979). Nevada courts therefore "strictly construe the language of covenants not to compete; and in the case of an ambiguity, that language is construed against the drafter." *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 489, 117 P.3d 219, 225 (2005). Post-employment anti-competitive covenants such as the one at issue here are subject to greater scrutiny than are similar covenants incident to the sale of a business. *Hotel Riviera*, 97 Nev. at 404, 632 P.2d at 1158–59.

In *US Anesthesia Partners v. Tang*, the Eighth Judicial District Court applied these principles and held that the non-compete at issue here is unreasonable and wholly unenforceable for the following reasons:

1. The "Facilities" referenced in the non-compete clause of the Agreement are so vague as to render the clause unreasonable in its scope. As defined in the Agreement, the facilities from which a former employee would be prohibited from providing anesthesiology/pain management services or soliciting business include:

a. All facilities with which USAP has a contract to supply healthcare providers;

b. Facilities at which those providers provided anesthesiology and pain management services; and

c. Facilities with which USAP had "active negotiations";

all during the unspecified term of a physician's employment and the twelve months preceding his or her term of employment.

2. The non-compete clause fails to designate facilities or a geographic boundary where the former employee is prohibited from practicing or soliciting business with any specificity.

3. The non-competition agreement fails to consider whether or to what extent USAP's contracts with facilities survive after their creation, or whether USAP's "active negotiations" yield actual contracts by the end of the physician's term of employment. At the time of signing the agreement, this potentially prohibits the employee from working with or soliciting any of USAP's past, current, or future customers.

4. The scope of the clause is subject to change over the course of a physician's employment, and even after the physician's departure, based upon relationships with facilities USAP establishes after execution of the Agreement. An employee therefore cannot reasonably ascertain or anticipate the scope of the clause at the time of its execution.

5. The non-compete clause lacks any geographic limitation or qualifying language distinguishing the particular facilities or customers to which it applies.

See Minute Order, attached to this correspondence as **Exhibit A**. Because the non-compete clause is overbroad, it is wholly unenforceable, and a court may not modify or "blue-pencil" it to make it reasonable. *See Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156 (2016).[1] The non-compete clause, as a whole, is void.

Your invocation of an unenforceable non-compete clause to prevent Dr. Duong from working with any surgeon (whether or not they are USAP clients) at any healthcare facility with which USAP has any sort of past, present, or potential future relationship is not reasonably related to any legitimate business interest of USAP. Dr. Duong's actions have not had, and will not have, any effect on USAP's business.

Be advised that if you proceed to take legal action against Dr. Duong, she will vigorously oppose any proceedings and will seek to recover all fees and costs in defending herself against such frivolous allegations.

Sincerely,

HOWARD & HOWARD ATTORNEYS, PLLC

Ryan T. O'Malley

4810-9976-9733, v. 1

[1] On June 3, 2017, the Nevada Legislature enacted AB 276, which modifies *Golden Road's* holding with respect to the construction and severability of non-compete agreements. However, the Agreement at issue in this case was executed on December 2, 2016, well before the enactment of AB 276, but after the holding in *Golden Road*, which was decided on July 21, 2016. Thus, the holding in *Golden Road* controls.

EXHIBIT H

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-ninth Session
May 24, 2017

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:35 a.m. on Wednesday, May 24, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senatorial District No. 11
Assemblyman Chris Brooks, Assembly District No. 10
Assemblywoman Ellen B. Spiegel, Assembly District No. 20
Assemblyman Justin Watkins, Assembly District No. 35

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Daniel Putney, Committee Secretary

OTHERS PRESENT:

Alanna Bondy, American Civil Liberties Union of Nevada
Wendy Stolyarov, Libertarian Party of Nevada
Janine Hansen, President, Nevada Families for Freedom

John Eppolito, President, Protect Nevada Children
Donald Gallimore, Sr., Protect Nevada Children; NAACP Reno-Sparks Branch 1112
Brian McAnallen, City of Las Vegas
Javier Trujillo, City of Henderson
Lea Tauchen, Retail Association of Nevada
Shannon Rahming, Chief Information Officer, Division of Enterprise Information Technology Services, Department of Administration
Misty Grimmer, Nevada Resort Association
Michael G. Alonso, Caesars Entertainment; International Game Technology
Jesse Wadhams, Las Vegas Metro Chamber of Commerce; Nevada Hospital Association; Nevada Independent Insurance Agents; MEDNAX, Inc.
Samuel P. McMullen, Association of Gaming Equipment Manufacturers
Jessica Ferrato, Solar Energy Industries Association
Travis Miller, Great Basin Solar Coalition
Casey Coffman, Sunworks
Natalie Hernandez
Allen Eli Smith, Black Rock Solar
Jerry Snyder, Black Rock Solar
David Von Seggern, Sierra Club, Toiyabe Chapter
Ender Austin III, Las Vegas Urban League Young Professionals
Larry Cohen, Sunrun
Naomi Lewis, Nevada Conservation League
Katherine Lorenzo, Chispa Nevada
Joshua J. Hicks, Sunstreet Energy Group
Daniel Witt, Tesla, Inc.
Kyle Davis, Nevada Conservation League
Tom Polikalas
Mark Dickson, Simple Power
Louise Helton, Founder, 1 Sun Solar
Jorge Gonzalez, Nevada Solar Owners Association
Joe Booker
Verna Mandez
Scott Shaw, 1 Sun Solar
Donald Gallimore, Sr., NAACP Reno-Sparks Branch 1112
Kevin Romney, Radiant Solar Solutions
Judy Stokey, NV Energy
Ernie Adler, International Brotherhood of Electrical Workers Local 1245

Danny Thompson, International Brotherhood of Electrical Workers Local Nos. 396 and 1245
Jeremy Newman, International Brotherhood of Electrical Workers Local 396
Rusty McAllister, Nevada State AFL-CIO

CHAIR ATKINSON:
I will open the hearing on Senate Bill (S.B.) 538.

SENATE BILL 538: Adopts provisions to protect Internet privacy. (BDR 52-1216)

SENATOR AARON D. FORD (Senatorial District No. 11):
Recently, Congress voted to repeal Internet privacy rules that were passed in 2016 by the Federal Communications Commission (FCC). These rules would have given Internet users greater control over what service providers can do with their data. President Trump signed Senate Joint Resolution 34 in April, and he did so through the Congressional Review Act. This Act allows Congress and the President to overturn recently passed agency regulations. Unfortunately, passage of Senate Joint Resolution 34 prohibits the FCC from implementing similar rules in the future. Under the repealed FCC rules, broadband companies providing Internet service would have been required to obtain permission from their customers to use their sensitive data, including browsing history, geolocation, financial information and medical information, to create targeted advertisements. These rules could have served as a bulwark against excessive data mining, which is the collection of personal information on the Internet as more devices become connected, such as refrigerators and washers.

Consumers in Nevada have little to no competitive choice for broadband access, which makes them vulnerable to data collection by Internet service providers. Broadband providers know their customers' identities. The providers' position gives them the unique technical capacity to surveil users in a way others cannot. Under the repealed FCC rules, customers would have had the ability to decide whether, and how much of, the information could be gathered and used by Internet service providers.

The lack of privacy rules are harmful to cybersecurity. Oftentimes, the injected advertising and tracking software used by marketers have security holes that can be exploited by hackers. Huge databases of consumer data are enticing targets for hackers. We have recently seen the effects of the WannaCry hack

worldwide. Senate Bill 538 is important because it provides guidelines for Internet Website or online service operators with respect to using consumers' information.

Section 3 defines consumer as "a person who seeks or acquires, by purchase or lease, any good, service, money or credit for personal, family or household purposes from the Internet website or online service of an operator."

Section 5 defines operator as a person who meets the following criteria:

> (a) Owns or operates an Internet website or online service for commercial purposes; (b) Collects and maintains covered information from consumers who reside in this State and use or visit the Internet website or online service; and (c) Purposefully directs it activities toward this State, consummates some transaction with this State or a resident thereof or purposefully avails itself of the privilege of conducting activities in this State.

A third party that operates, hosts or manages an Internet Website or online service on behalf of the owner is not included in the definition of operator.

Section 4 defines covered information as "personally identifiable information about a consumer collected by an operator through an Internet website or online service and maintained by the operator in an accessible form." Such information includes but is not limited to a first and last name, a home or physical address, an email address, a telephone number, and a social security number.

Section 6 requires an operator to make available a notice containing certain information relating to the privacy of covered information, which is collected by the operator through an Internet Website or online service, to a consumer. The notice must identify the categories of covered information the operator collects and the third parties with whom the operator may share the covered information. The notice must also include a description of the collection process, a description of the notification process, a disclosure as to whether a third party may collect covered information and the effective date of the notice. An operator may remedy any failure to make such notice available within 30 days after being informed of the failure. Section 7 prohibits an operator from knowingly and willfully failing to remedy such a failure within 30 days. In the event of improper actions, per section 8, the Attorney General is authorized to

seek an injunction or a civil penalty against an operator who engages in this conduct.

Proposed Amendment 4699 (Exhibit C) changes the effective date to October 1 and exempts certain small businesses that do not typically use the Internet for all of their services. This exemption was requested by Facebook.

The City of Las Vegas has proposed an amendment I have not yet determined whether to consider, but I would like a representative from the City of Las Vegas to present the amendment so that we could discuss it.

CHAIR ATKINSON:
Has a representative from the City of Las Vegas talked to you?

SENATOR FORD:
Yes.

SENATOR GANSERT:
Section 4 discusses the different things included under covered information. The sixth item listed is an identifier allowing a specific person to be contacted either physically or online. If an individual looks for an item on, say, Amazon, Amazon can contact the individual about that type of item. The individual is essentially targeted for whatever type of item the good is. This sort of marketing already happens, and it seems like a company would need an identifier to locate the individual again. Does the sixth item preclude such an activity?

SENATOR FORD:
This bill applies to more than just Internet service providers; it applies to edge providers such as Amazon and Facebook. All of the language in this bill was worked out with the industry. I accepted this language in an effort to address any possible concerns. The sixth item listed under covered information would not disallow an edge provider to continue contacting a customer with whom the edge provider already has a relationship.

SENATOR GANSERT:
This bill may not preclude edge providers from this activity, but would it preclude Internet service providers? Are the two types of providers treated differently?

SENATOR FORD:
Edge providers and Internet service providers are treated the same under this bill.

CHAIR ATKINSON:
Is S.B. 538 modeled after legislation from other states?

SENATOR FORD:
Two other states have enacted laws similar to S.B. 538: California and Delaware. Other states, I believe 19, are considering this sort of legislation because of the federal government's actions. Oregon, Illinois and Minnesota are three examples. Many states are looking at Internet privacy legislation because they see it as an opportunity to protect their consumers, even when the federal government has opted not to.

CHAIR ATKINSON:
I asked that question because I wanted to determine if there was a movement happening with this sort of legislation.

SENATOR SPEARMAN:
This bill is timely. There has been news of a certain metastore in Nevada that S.B. 538 directly speaks to.

If we wait until October, would there be remedies for people trying to circumvent the penalties of this bill?

SENATOR FORD:
To be frank, I do not know. I suspect our Attorney General could utilize a deceptive trade practice statute under *Nevada Revised Statutes* (NRS) 598 to intervene. However, the Attorney General is limited based on current statutes. Senate Bill 538 would provide more Internet privacy protections after October 1. The October 1 recommendation came from the Retail Association of Nevada because it is interested in the regulations of this bill, but it needs a little time to implement them.

SENATOR SETTELMEYER:
I am not concerned with who collects the information so much as what information is collected and what is done with such information. I might reach out to other states that have enacted similar laws to determine if these laws

have been able to be enforced. The Internet is so large that it goes beyond state lines and even national lines. How do we enforce a law like this?

I have a lot of constituents worried about the government. In light of this observation, how do you feel about the proposed amendment seeking to exempt the government from this bill?

SENATOR FORD:
I am reserving judgment on that particular amendment because I have not heard any discussion yet. You can specifically ask the sponsor of the amendment your question, and based on what the sponsor says, I can determine whether or not to accept the amendment. Illinois, for example, has a litany of exemptions, many of which I do not agree with. Some of these exemptions are for municipalities. In reference to the City of Las Vegas, it has services for its constituents that require the Internet. The City of Las Vegas is concerned that with the protections this bill provides, it would be unable to provide certain services for its constituents. However, I do not want to speak on behalf of the City of Las Vegas.

I do not disagree with you about what is done with the information collected. The repealed FCC rules went further than what my bill attempts to do. I am only requiring notice and information as to how a consumer may opt out. Other laws go further. The first iteration of this bill actually required permission before information was collected. If consumers said no, services could not have been denied to them for saying so. That requirement was onerous, so we have agreed to the language in front of you. We are hoping to take incremental steps toward providing notice to individuals so that they know what type of information has been collected.

ALANNA BONDY (American Civil Liberties Union of Nevada):
New technologies are making it easier for the government and corporations to learn the minutiae of our online activities. Corporations collect our information to sell to the highest bidder, while an expanding surveillance apparatus and outdated privacy laws allow the government to monitor us like never before. With more and more of our lives moving online, these intrusions have devastating implications for our right to privacy, but more than just privacy is threatened when everything we say, everywhere we go and everyone we associate with are fair game. We have seen that surveillance, whether by the government or corporations, chills free speech and free association, undermines

a free media and threatens the free exercise of religion. Americans should not have to choose between using new technologies and protecting their civil liberties. The ACLU works to promote a future where technology can be implemented in ways that protect civil liberties, limit the collection of personal information and ensure individuals have control over their private data. We support S.B. 538 because it provides notice to consumers about what data is being collected and allows consumers to make more informed decisions about sharing their private information online.

WENDY STOLYAROV (Libertarian Party of Nevada):
I strongly echo the ACLU's sentiments. Individual privacy is absolutely vital. However, we would oppose any amendment exempting the government from the notification requirement.

JANINE HANSEN (President, Nevada Families for Freedom):
We strongly support S.B. 538. This bill is critical to our State. According to a recent *Consumer Reports* survey, 65 percent of Americans lack confidence that their personal information is private and safe from distribution without their knowledge. The Internet privacy issue has moved to the states. One of the things the *Consumer Reports* survey mentions is the many states that are considering similar legislation. These states include Alaska, Connecticut, Illinois, Kansas, Maryland, Massachusetts, Minnesota, Montana, New York, Pennsylvania, Rhode Island, Vermont and Washington. It is absolutely critical that our privacy be protected, as it is one of our most important civil liberties. We are all at risk for identity theft and data collection, not only from private enterprises but also from the government.

SENATOR HARDY:
Ms. Stolyarov, you made a comment about an amendment exempting the government. Could you clarify your comment?

MS. STOLYAROV:
Senator Ford had mentioned there was a forthcoming amendment that would exempt the government from the notification requirement.

SENATOR HARDY:
I am asking what you think.

MS. STOLYAROV:
I am not familiar with the text of the amendment, but if it does exempt the government from the notification requirement, the Libertarian Party of Nevada would be opposed to it. Everyone has the right to know who is collecting his or her data, even if the government is the one doing so.

SENATOR HARDY:
As you understand it, the government is included in this bill without any amendment, correct?

MS. STOLYAROV:
I would hope so.

JOHN EPPOLITO (President, Protect Nevada Children):
I will read from my written testimony in support of S.B. 538 (Exhibit D).

CHAIR ATKINSON:
Are you in favor of this bill?

MR. EPPOLITO:
Yes.

CHAIR ATKINSON:
From your testimony, it does not sound that way.

MR. EPPOLITO:
We would like to see more from S.B. 538.

CHAIR ATKINSON:
You should have testified in neutral then.

MR. EPPOLITO:
This bill is a start; we would like to build upon it.

I will continue reading from Exhibit D. We proposed an amendment to Senator Ford, but we do not think he is going to use it. We also proposed the same amendment to Senator Moises Denis for S.B. 467, but we are not sure if he is going to use it either.

SENATE BILL 467 (1st Reprint): Revises provisions relating to technology in public schools. (BDR 34-1120)

This amendment would at least do something to notify parents of what is going on.

DONALD GALLIMORE, SR. (Protect Nevada Children):
We have been working for seven years to make sure people understand the effects of the breaches of Internet privacy. I will read the rest of Exhibit D. In the amendment mentioned by Mr. Eppolito, we specify opt-in options for parents.

BRIAN MCANALLEN (City of Las Vegas):
We have talked to Senator Ford, and I believe he understands what the City of Las Vegas is trying to do, which is protect the personal information constituents supply to the City of Las Vegas. Our proposed amendment (Exhibit E) would amend the definition of consumer in section 3. The amended definition would include anyone who accesses constituent services from the Internet Website or online service of an operator or exchanges information regarding such services by means of such a Website or online service.

We are trying to develop a new platform for our constituents. We would collect data voluntarily from constituents who select a variety of programs and put personal information online. As a public entity, we are subject to public records requests under NRS 239. Our new platform might not be covered under the current definitions and prohibitions on gathering public data in S.B. 538. We are trying to protect this new platform as technology changes and moves forward. We do not believe constituents who visit our government Websites want their personal identification information to be public. If we do not provide specific protections for our constituents, they will not use our constituent services platform.

Our amendment further defines operator in section 5, subsection 1 to include a government entity. This provides protection for personal identification information. The amendment also adds subsection 3 to section 6, stating, "Notwithstanding any other provision of law, an operator is not required to disclose covered information regarding a consumer pursuant to a public records request made under chapter 239 of NRS."

The amendment was drafted by our attorneys in an attempt to cover new technology. If there is a better way to write the amendment that Senator Ford would accept, we are fine with that.

SENATOR HARDY:
Do you read this bill as not including the government? Do you propose the government be included to protect people's information?

MR. MCANALLEN:
Yes.

JAVIER TRUJILLO (City of Henderson):
We have communicated with Senator Ford in regard to local governments. We support this bill and its intent—we want to protect the personal information of individuals. We also support Senator Ford's and the City of Las Vegas' proposed amendments. We do not feel we are excluded because we have over one million visitors to our Websites. Our goal is to protect our constituents and to make sure their information is protected without being subject to NRS 239.

LEA TAUCHEN (Retail Association of Nevada):
As Senator Ford mentioned, we requested the amendment to postpone the effective date to October 1. This would allow us time to educate and assist our members with compliance. We appreciate Senator Ford's consideration and willingness to make S.B. 538 workable for the retail businesses conducting commerce online in Nevada.

SHANNON RAHMING (Chief Information Officer, Division of Enterprise Information Technology Services, Department of Administration):
I will read from my written testimony in neutral to S.B. 538 (Exhibit F).

SENATOR GANSERT:
What is your opinion on the amendment adding government to this bill?

MS. RAHMING:
I have not seen the amendment.

SENATOR GANSERT:
There is a fiscal note from the Attorney General. Why did you not include one?

MS. RAHMING:
I did not include a fiscal note because I could not tell whether S.B. 538 would affect the State.

SENATOR GANSERT:
We may find out if there is an effect on the State after we figure out the amendment.

CHAIR ATKINSON:
I have received a letter of opposition to S.B. 538 (Exhibit G) from Christopher Oswald, Data and Marketing Association.

I will close the hearing on S.B. 538. The Committee will give Senator Ford time to work on the proposed amendments.

I will open the hearing on A.B. 276.

ASSEMBLY BILL 276 (2nd Reprint): Revises provisions relating to employment practices. (BDR 53-289)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 20):
This bill is about two things: disclosure and job termination.

About 30 years ago, I worked at a Fortune 100 company in New York City. My job got to be quite big; I was responsible for markets all over the place. As a result, my job was cut in half, and another person was hired to do the other half. Our jobs had the same responsibilities; we were simply responsible for different areas. We were putting in long hours. My colleague, whose name was Paul, turned to me and said, "I can't believe how hard we're working and how many late nights we're putting in, and they're only paying us $34,000 a year." I looked at him and said, "How much are you making?" He replied, "$34,000 a year." My salary was in the twenties.

The next morning, I approached my boss and told her, "Paul and I were talking last night, and he told me he makes $34,000 a year. What's up with that?" She looked at me and said, "Well, Paul's a guy." I replied, "Yes, I know Paul's a guy, but what does that have to do with anything?" She said, "He needs more money. He wants to get engaged; he's saving up to buy a ring for his girlfriend. He's going to be supporting a family, and you're single, so you don't need as

much money as he does." At that point, I said, "I'm single, so that means I need more than he does because I'm supporting myself, and he's going to be part of a two-income household."

I told one of my friends, who happened to work in human resources, what had happened to me. She was incensed and said, "That can't be right." I then told her, "I'm telling you as my friend. Please don't do anything with this." The next thing I know, I am called into a corner office of a senior vice president of human resources. She told me, "There's the door." I then said, "Excuse me?" She replied, "There's the door; you're free to leave anytime. I will also tell you it is against company policy to be having these discussions about what you're earning and what your wages are. It's grounds for termination. It's pretty clear from what you told us—and yes, we spoke to Paul—that he initiated the conversation, so we're not going to fire you over this, but we are going to write you up and put it in your file so that if it happens again, you will be fired for having this conversation. By the way, we're not going to fire Paul because, well, he's a guy." I had heard there was wage discrimination, but it had never reached my consciousness that it was actually happening.

The wage gap still exists. In various hearings, you have probably heard that women earn about 78 cents on the dollar compared to men. For women of color, the disparity is even greater. As much as we like to tell ourselves the wage gap does not exist, it still does.

In December 2016, I read a story from Maddy Huffman:

> This summer, I started a job at a powder-coating warehouse working next to a 400-degree oven in 100-degree Texas weather. I was always the first one in and the last one to leave. I picked up the trade quick and produced good, quality work in a safe and timely manner. When the rest of the crew complained it was too hot to wear steel-toed boots and jeans, I never wavered. It was brought to my attention that even though I would media blast, prep and powder, and maintain job flow, I was getting paid a dollar under every male I worked beside. When I brought that to the attention of the manager, I was told that if I improved my attitude and smiled more, they would consider me for a raise in a month or so. I gave them my two weeks' notice at that point.

She went on to talk about what she did afterward, and she landed on her feet just fine. I wrote to her asking if I could share her story, and she wrote back:

> Hi, Ellen. Feel free to share my story. When I approached the manager with my pay concerns, I was told that talking wages was grounds for termination, too. It's funny though—I never brought up wages with the guys I worked with. I honestly didn't care or think twice about it. I was just happy to be working and learning something new, but when it reared its ugly head, I couldn't ignore it. Thank you for fighting for Nevada women and workers.

While I have been working on this bill this Session, I cannot tell you how many women who work in this building and are in this building have come to me and told me their stories. Most of them are afraid to come out and speak publicly because it is grounds for termination where they work. They are afraid of losing their jobs. Wage discrimination is something quiet.

Section 3 basically says somebody cannot be fired for having a discussion about his or her wages. If somebody cannot discuss his or her wages, then that person would not know if he or she were being discriminated against. The individual would not be able to make an informed decision about what to do, whether that be keeping the job, leaving it or trying to get an increase in pay.

Sections 1 and 2 address issues relating to termination and postemployment. These sections specify that an employer can ask an employee to sign a nondisclosure agreement provided it is supported by valuable consideration, is not too burdensome, does not make it impossible for the employee to obtain a new job and is appropriate for what the job is.

This bill has three other important clauses. The first one is what I call "the hairdresser clause." Many times in noncompete agreements, the employee agrees that he or she is not going to take clients away. This is perfectly reasonable from an employer's perspective because a business does not want an employee who leaves to take its entire book of business out the door. However, there is also the perspective of the clients. I am far more loyal to my hairdresser than I am to any hair salon. When my hairdresser has gone from one salon to another, regardless of what she has signed, I will seek her out. Many clients do this for all sorts of services. This clause states that if, say, a

client's hairdresser leaves and does not seek the client out but the client seeks the hairdresser out, then the hairdresser can provide services to that client.

The next clause provides layoff protection. If a company goes through something like a merger or a downturn and has to lay off employees, then those employees are only bound by their noncompete agreements while receiving severance pay. These individuals have to be able to get other jobs.

Another provision this bill contains is bluelining. If a court of law finds that provisions in the noncompete agreement are invalid, it can strike out the invalid components but leave in what is valid.

MISTY GRIMMER (Nevada Resort Association):
We support both portions of A.B. 276: the original part of the bill and the noncompete provisions Assemblywoman Spiegel was willing to add on our behalf. We are asking the Legislature to clarify in statute something that had been the practice of the courts for decades. However, a specific lawsuit came forth in which an entire noncompete agreement was thrown out because one portion of it was excessive. Section 1, subsection 5 would allow a court to keep the good parts of a noncompete agreement and toss out or renegotiate the excessive parts.

Assemblywoman Spiegel brought the other two scenarios she mentioned, which are absolutely legitimate, to our attention as well. An employer cannot lay somebody off and then say, "Oh, by the way, you can't go get a job either." Also, it is common practice that a business cannot tie the hands of its customers. A customer is allowed to go anywhere he or she wants. We support having all of these clarifications in Nevada law.

MICHAEL G. ALONSO (Caesars Entertainment; International Game Technology):
We support A.B. 276. This is a good bill. We like the provisions in it; they are reasonable.

JESSE WADHAMS (Las Vegas Metro Chamber of Commerce; Nevada Hospital Association; Nevada Independent Insurance Agents; MEDNAX, Inc.):
We support both components of A.B. 276. This is a good bill.

SAMUEL P. MCMULLEN (Association of Gaming Equipment Manufacturers):
Sections 1 and 2 are key to us. An innovative industry needs to be able to protect itself, and it needs reasonable tools. This bill provides reasonable tools. We would appreciate the Committee's support of A.B. 276.

CHAIR ATKINSON:
I will close the hearing on A.B. 276 and entertain a motion on this bill.

SENATOR SETTELMEYER MOVED TO DO PASS A.B. 276.

SENATOR GANSERT SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR ATKINSON:
I will open the hearing on A.B. 405.

ASSEMBLY BILL 405 (1st Reprint): Establishes certain protections for and ensures the rights of a person who uses renewable energy in this State and revises provisions governing net metering. (BDR 52-959)

ASSEMBLYMAN CHRIS BROOKS (Assembly District No. 10):
As we have seen so far this Session, there are many important issues to discuss when it comes to customers' rights to generate and store energy in the State. Energy is constantly evolving, requiring renewed assessment and focus on energy policy in Nevada, which I am happy to say has been occurring these past few months. We have seen a lot of great legislation this Session that addresses customers' rights to renewable energy. Assembly Bill 405 goes hand in hand with these other bills, codifying some of the customers' rights into Nevada law. Assembly Bill 405 outlines what Nevada customers' fundamental rights around energy should be, setting a framework to protect Nevadans on what could be the biggest investments of their lives. This is especially necessary now as we move forward with new and potentially disruptive ways to access energy in Nevada.

This bill creates the contractual requirements for the lease, purchase or power purchase agreement of a distributed generation system. This bill establishes the

minimum warranty requirements for an agreement concerning a distributed generation system. Assembly Bill 405 also makes it a deceptive trade practice if a contractor fails to comply with these provisions.

Finally, A.B. 405 creates the Renewable Energy Bill of Rights, which applies to every Nevadan. As a pioneer in Nevada's solar energy industry, I know the experiences solar customers go through. It is one of the biggest purchases a person might make in his or her lifetime. The individual is signing a 20-year contract for complicated energy products. It is difficult to understand exactly what an individual is being asked to sign.

Nevada has a chance to be the Country's leader on solar energy. By creating a more streamlined process for customers, we make it that much more friendly to be a solar customer in the State.

I will read from a table explaining this bill's provisions (Exhibit H). This bill addresses three different models: the lease model, the purchase model and the power purchase agreement. Sections 9 through 11 address the lease model. Sections 12 through 14 mirror sections 9 through 11 but for the purchase model. Sections 15 through 17 mirror the previous sections but for a power purchase agreement.

In my career, I have seen people who sell distributed generation systems make wildly unrealistic claims about rates and savings. Section 18 prevents such claims from occurring by requiring a disclaimer on any contract or proposal in front of a customer. NV Energy suggested the inclusion of this section. This section is one of the more important components of A.B. 405.

Section 19 is also a critical component of this bill.

A lot of individuals read and speak Spanish but have to read complicated forms in English. Section 20 requires documents to be provided in Spanish if requested. NV Energy suggested the inclusion of this section as well.

Section 27 through the end of this bill deal with how we treat returned energy from a distributed generation system. This bill is essentially sections 1 through 26, which are the original parts of A.B. 405, and the provisions of A.B. 270, which take up the rest of this bill.

ASSEMBLY BILL 270: Revises provisions governing net metering. (BDR 58-686)

Assemblyman Justin Watkins was working on A.B. 270, but we decided to combine A.B. 405 and A.B. 270 into one bill. The provisions of A.B. 270 have been amended into A.B. 405.

The State's cumulative capacity for solar generation is currently 2.6 percent. It took Nevada 20 years to get to 2.6 percent. This bill offers a tiered reduction in the value of exported energy, referred to as a net metering adjustment charge, that is between 5 percent and 20 percent. The charge is dependent on the market penetration of solar energy in the State. As the market penetration increases, the charge increases.

In other words, we are basing the charge on peak demand. NV Energy has a peak demand of about 8,000 megawatts across the State. Capacity for solar generation is 2.6 percent of that peak, but this is only one part of the story; the rest of the story is about energy. NV Energy sold approximately 30 million megawatt-hours last year across the State. When we look at the capacity factor of distributed generation systems, it is around 22 percent if we aggregate all of the systems in the State. Considering we are only at 2.6 percent capacity, the capacity factor is 22 percent and only about 40 percent of the energy produced by a distributed generation system ever sees the grid, we are really talking about half of a percent of the grid's energy coming from distributed generation systems. When we talk about moving to a market penetration of 10 percent, that means roughly 2 percent of the energy in our grid would come from distributed generation systems.

It is important to keep these numbers in perspective. We are only moving from half of a percent to 2 percent, all the while creating jobs and giving Nevadans a choice of how they generate their electricity.

SENATOR SETTELMEYER:
I appreciate many aspects of this bill, but I have some concerns, mainly with the step-down process. What is the current exchange rate for solar?

ASSEMBLYMAN BROOKS:
There are two customer classes. One is for net metering. I am not sure where we are currently in the step-down process.

SENATOR SETTELMEYER:
You mentioned a market penetration of 5 percent. The concept of promoting renewable energy is important. I am willing to pay more for energy to do so, and many others are, too. However, how much would rates increase? Has there been an analysis of what this bill's provisions would do to a standard ratepayer?

ASSEMBLYMAN BROOKS:
Assembly Bill 405 would add a few pennies to the bills of average ratepayers, according to the calculations from NV Energy.

SENATOR SETTELMEYER:
How many pennies are you talking about?

ASSEMBLYMAN BROOKS:
I do not necessarily agree with the methodology used to calculate the costs. NV Energy considers lost revenue in what it would have sold to customers if it did not produce its own energy. This component is roughly half the calculation. I do not feel the calculation methodology is proper.

SENATOR SETTELMEYER:
I understand why you disagree with the calculations, but I would like you to find out what the costs would be. I am concerned about what this bill would do to the average ratepayer. Many businesses in my district use a lot of power, including myself.

The rate in this bill is based on 5 percent, but is that 5 percent of the total power sold in the State?

ASSEMBLYMAN BROOKS:
Are you talking about 5 percent on the rate side or the market penetration side?

SENATOR SETTELMEYER:
The market penetration side, if I am correct, takes into consideration the total power sold in the State. Are the percentages for market penetration based on the total power sold in the State or the power sold by Nevada energy companies?

ASSEMBLYMAN BROOKS:
Assembly Bill 405 is an expansion of current net metering law, which applies to NV Energy. We are basing the numbers on NV Energy's 2016 peak demand across the State.

SENATOR SETTELMEYER:
It seems to me that the total megawatts sold refers to the total amount sold in the State, which brings in the various co-ops.

ASSEMBLYMAN BROOKS:
This bill refers to NV Energy.

SENATOR SETTELMEYER:
I will try to find the answer in the bill text.

ASSEMBLYMAN BROOKS:
There are two components. One is the all-time peak, which is a moment in time. This component is separate from the amount of energy sold in the State. The all-time peak for 2016 was 8,000 megawatts, and the amount of energy sold in 2016 was 30 million megawatt-hours.

SENATOR SETTELMEYER:
Is the energy sold only by NV Energy?

ASSEMBLYMAN BROOKS:
It is sold by NV Energy or the companies referred to in this bill.

SENATOR SETTELMEYER:
I did not read A.B. 405 that way.

CHAIR ATKINSON:
Which section of this bill relates to consumer protection?

ASSEMBLYMAN BROOKS:
Consumer protection is addressed in sections 2 through 20.

CHAIR ATKINSON:
Do these sections apply to all scenarios? There was some debate about this before. Some individuals felt they were covered, but some were not covered.

ASSEMBLYMAN BROOKS:
Yes. Within sections 2 through 20, the three different models—purchase, lease and power purchase agreement—are addressed. There are more similarities among these models than differences, but the definition of each model is unique. All three models require making the customer aware of the recovery fund. Also, there cannot be false claims about savings.

CHAIR ATKINSON:
Are you saying the consumer protection provisions apply to all scenarios?

ASSEMBLYMAN BROOKS:
Yes.

CHAIR ATKINSON:
What is the typical warranty for a rooftop solar system?

ASSEMBLYMAN BROOKS:
In the industry, the warranty is all over the place. This bill states that the warranty must be a minimum of seven years.

CHAIR ATKINSON:
How can you or A.B. 405 define what the warranty is? The warranty comes from the manufacturer.

ASSEMBLYMAN BROOKS:
I misspoke earlier. The warranty is a minimum of ten years. Assembly Bill 405 states that the company must provide, at minimum, a ten-year warranty.

CHAIR ATKINSON:
It is ten years, not seven, correct?

ASSEMBLYMAN BROOKS:
Correct. In the industry, there are warranties between 10 years and 20 years.

CHAIR ATKINSON:
This bill refers to the minimum warranty a company must offer, but can the company offer a longer warranty?

ASSEMBLYMAN BROOKS:
Yes. There are companies that offer warranties longer than ten years.

CHAIR ATKINSON:
In regard to lease customers, does this bill protect them for the life of the system for the entire term of the lease? I assume the system would be covered for the entire term of the lease.

ASSEMBLYMAN BROOKS:
Regarding the purchase model, the process is fairly straightforward. The system must be covered by a warranty from the company for a certain number of years. In a lease, the process is a little different. Customers do not own the equipment. It is in the equipment owner's best interests to make sure the system is operating. We did, however, include roof penetration in the minimum ten-year warranty requirement. The system would be covered under the minimum ten years. The owner would be on the hook for the system to work after that period. If the system breaks down, the owner is not receiving any money, and the lease customer is not receiving any savings.

CHAIR ATKINSON:
Which agency is going to police this bill's provisions? How will customers know where to go to have their issues rectified?

ASSEMBLYMAN BROOKS:
Section 20 makes any violation of sections 2 through 20 a deceptive trade practice and consumer fraud. If a customer feels a company has violated any of these sections, he or she has the right to sue to recover any damages. Under the deceptive trade practice statutes, the Attorney General can prosecute these violations. Additionally, customers can go through the State Contractors' Board for contractor violations, and there is a recovery fund associated with that. When fraud took place a few years ago, many solar customers accessed the recovery fund to recover some of their money.

CHAIR ATKINSON:
Are you saying there is no simple answer in regard to who is going to police this bill because of the different variables? I am asking this because we might get to a point where the provisions of A.B. 405 become tasking.

ASSEMBLYMAN BROOKS:
There is no enforcement agency specific to this type of contract. These solar contracts would be similar to many other contracts in that if a company committed fraud, the consumer would have recourse, which, in this case, would be to approach the Attorney General or sue. The most important part of this bill is that any violation of sections 2 through 20 would be considered consumer fraud. This provides a consumer with all of the protections under the deceptive trade practice statutes.

CHAIR ATKINSON:
In the past, people who were aggrieved were not sure where to go to have their issues rectified. Your description of what a consumer would do is not clear to me. We need to provide clarity with respect to that. People need somewhere to go. We can talk about this and work on it, but we need to figure something out.

SENATOR SETTELMEYER:
Section 28 refers to the cumulative installed capacity of all net metering systems in the State. I am concerned with that. With the turnout on the Energy Choice Initiative last election, it is clear things will change in the future. I am concerned about forcing one group to pay for the entire State. We should consider rewording this section to ensure A.B. 405 only applies to the regulated industry. We have some unregulated energy providers in Nevada.

ASSEMBLYMAN BROOKS:
This bill is already targeted toward the regulated energy industry, but I am willing to clarify that language. This bill refers to NV Energy. I am also open to adding language that would predict where our State might be in the future.

SENATOR SETTELMEYER:
I do not want A.B. 405 to apply to the entire State. I do not want people to pay for something they are not a part of. This bill refers to the entire State, not just NV Energy.

SENATOR GANSERT:
Because the majority of Nevadans voted yes on the Energy Choice Initiative last election, there is a sense that our State's citizens want an open, competitive energy market. Currently, we only have one major provider: NV Energy.

Section 10, subsection 19, which is probably repeated for the purchase and power purchase agreement models, gives options when it comes to the sale of the property or the death of the lessee. If we have open, competitive markets and different providers of energy in the State, I am not sure how this bill would work. Right now, it sounds like individuals get 20-year contracts. If we have a major energy provider that decides to no longer be an energy provider, what would happen to the individuals in 20-year contracts with that provider?

ASSEMBLYMAN BROOKS:
The question of what are we going to do has come up over and over again on almost everything we have done regarding energy this Session. First of all, the Energy Choice Initiative has to pass again, and then the Legislature has to come up with what it wants to do to meet the intent of the Initiative. Assembly Bill 405 addresses some of what the Legislature has to do by giving people a choice in how they procure their electricity.

From where we are now to the complete deregulation of the energy market, we are going to be somewhere in that spectrum. There could be a provider of last resort that is responsible for the customers in the State who have made solar agreements. If a company came to the State wanting to do business, that company could look at customers with net metered systems and the rules in place and then decide these customers were good to have in its portfolio. The company could court these customers through rates or tariffs.

In future sessions, Legislators will have to address where Nevada wants to go as a State around the subject of energy choice. Depending on how far we go down the path of energy choice, A.B. 405 might survive, or we might rewrite every energy statute in NRS.

SENATOR GANSERT:
If somebody has a 20-year agreement with a power company, can that power company transfer the agreement to another entity?

ASSEMBLYMAN BROOKS:
Yes. There are currently 40 or 60 power purchase agreements in the State between NV Energy and other entities. Those agreements would have to be transferred and dealt with.

The lease transfer provision you mentioned is between a business and a Nevadan; the provision does not involve the utility.

SENATOR GANSERT:
I am concerned about the warranty. The minimum warranty requirement is 10 years, but some contracts last 20 years.

You also mentioned a recovery fund. Are we planning for recourse if contractors go out of business? Are there contributions to the recovery fund to guarantee money is available in the long term?

ASSEMBLYMAN BROOKS:
There is a mechanism whereby all contractors pay into the recovery fund. There are provisions for recovering money if there was fraud or the contractor went out of business in the middle of a customer's project. All installing contractors pay into the recovery fund.

CHAIR ATKINSON:
Everybody on this Committee believes the Energy Choice Initiative will pass again; 72 percent of Nevada voters voted yes last election. Nevadans have spoken, and they will speak again in a couple of years. I do not agree that every energy bill this Session would conflict with the Initiative. Some energy bills would stand alone. Assembly Bill 405 is not as specific, and it puts years on a customer. Some of the other energy bills do not put as many years on a customer.

There are individuals who have some concerns with this bill. We may have to do something, and we may need some language that addresses whether the Initiative becomes a reality in the State. We cannot ignore this; we have to talk about it as we go forward. It is not fair to our constituents to ignore it.

SENATOR SPEARMAN:
In one or two sentences, tell me what the purpose of this bill is.

ASSEMBLYMAN BROOKS:
This bill is meant to bring solar back to the State and to protect consumers while we do it.

SENATOR SPEARMAN:
The question of consumer protection is a recurring theme throughout all of the energy bills this Session. If we are talking about consumer protection and renewable energy, how do these two things intersect? People do not understand how much energy Nevada imports and what the exposure would be if our base load increased.

ASSEMBLYMAN BROOKS:
That is one important component of consumer protection that incorporating renewable energy is trying to address. Over 80 percent of Nevada's energy is imported in the form of fossil fuels. By giving a consumer the ability to generate and store his or her electricity, the consumer is protected from potential price increases in the future. That is one of the key components of the choice to generate one's energy.

SENATOR SPEARMAN:
What do you mean by 80 percent? Do you have a dollar figure regarding how much our State pays someplace else to get our energy?

ASSEMBLYMAN BROOKS:
NV Energy sold 30 million megawatt-hours last year. Of that 30 million, over 80 percent was generated from imported energy, namely natural gas. I do not have an exact dollar amount.

SENATOR SPEARMAN:
Although you do not have an exact figure, it is clearly 80 percent, correct?

ASSEMBLYMAN BROOKS:
Yes.

SENATOR SPEARMAN:
The closest business model I could find was Xcel Energy, which operates in eight states. One of those states is Texas, which is completely deregulated and has choice for all of its consumers. It would be my expectation, in terms of what the Chair has said, to determine a way in which this bill would work. We could learn from Texas. My major concern is the fact that the price of natural gas is expected to increase. We need to work on something to protect consumers. If 80 percent of the energy we receive is ready to increase in price, we need to determine how to use A.B. 405 and other energy legislation for the

benefit of consumers. This bill is mainly for solar, but anyone who has heard me talk over the last two or three years knows I am trying to get our State to a place where we have a good energy mix, including solar, wind, biofuels, geothermal, etc. How can this bill help move Nevada forward and protect our State's consumers should there be a spike in the price of natural gas?

ASSEMBLYMAN BROOKS:
Choice will provide protection to consumers. There is a tremendous amount of reliability associated with the ability to create and store one's energy. This also insulates consumers from rate increases such as price shocks from out-of-state commodities. If somebody is generating a good portion of his or her energy, the other portion of it, which has to be bought and is subject to price escalation, is minimized. The risks are mitigated.

SENATOR SPEARMAN:
Is the storage piece of A.B. 405 complementary to a bill the Chair is sponsoring, S.B. 204?

SENATE BILL 204 (1st Reprint): Requires the Public Utilities Commission of Nevada to investigate and establish biennial targets for certain electric utilities to procure energy storage systems under certain circumstances. (BDR 58-642)

ASSEMBLYMAN BROOKS:
Yes.

CHAIR ATKINSON:
Section 24, subsection 6 mentions priority. What do you mean by priority given to rooftop solar customers during the planning process?

ASSEMBLYMAN BROOKS:
The priority aspect is trying to address how we bring on new resources. Instead of potentially investing in a power plant where money is funneled elsewhere, we are looking at investing in and giving priority to Nevadans. If somebody is a Nevadan and that person has invested his or her money in a system, there is value to that. There is value to the system being a Nevada asset installed using Nevada labor. We would like to see that given priority in the planning process. "Given priority" is an intentionally vague statement meant to encourage planners when adding new resources.

CHAIR ATKINSON:
Some people place renewable energy and solar in different categories, but I look at them as one thing. Why would you not want the utility to look at all types of renewable energy?

ASSEMBLYMAN BROOKS:
We do look at all types of renewable energy. It is going to take all types of renewable energy to achieve our State's energy goals. Geothermal, wind, solar, distributed generation and storage are needed to achieve what most Nevadans feel our energy goals are. This bill addresses customer-generators. When we look at resource planning or the value of these systems, we want to make sure Nevadans receive priority in the planning process.

CHAIR ATKINSON:
Are you referring to Nevadans as a whole or Nevadans as the customers of these systems? Why would you not want the customer to pay for the least cost project?

ASSEMBLYMAN BROOKS:
We do want that. We are talking about half of a percent of the grid's energy. We want to increase that to 2 percent. When we look at the other 98 percent of our State's energy, there is room for everything. We want a small piece of the energy mix to receive priority in the planning process.

CHAIR ATKINSON:
Is this bill more about priority then?

ASSEMBLYMAN BROOKS:
Yes.

SENATOR SETTELMEYER:
I believe this bill gives priority to renewable energy in general. Assemblyman Brooks has used the term "rooftop solar," but I do not think that is the intent. Are you saying renewable energy in general receives a priority?

ASSEMBLYMAN BROOKS:
I am saying that customer-generators receive priority. Each Nevadan who generates his or her electricity receives priority.

SENATOR SETTELMEYER:
I appreciate and agree with that concept. You keep on referring to rooftop solar, but I feel that is incorrect.

ASSEMBLYMAN BROOKS:
I will stop using that term.

CHAIR ATKINSON:
Many of us have been involved with energy issues for a while. We are trying to get things right.

Section 24, subsection 7 mentions a change in rate class. Can you explain why you are changing the rate class rooftop customers are currently in?

ASSEMBLYMAN BROOKS:
A residential user is a residential user. We want all residential users to be in the same rate class. When people are divided into different rate classes based on their behaviors, they can be assessed different costs and fees. There are no two ratepayers in the entire system that are the same. To break people up into multiple rate classes within a rate class opens up an individual to discriminatory fees. We want to keep residential ratepayers in the same rate class, regardless of how much energy the utility sells them, and address the value or credit of any returned energy.

CHAIR ATKINSON:
Section 24, subsection 4 mentions fair credit. Who defines fair credit? In my district, 31 percent are Hispanic and 28 percent are African American. There are also a lot of low-income families. How would fair credit affect my constituents?

ASSEMBLYMAN BROOKS:
Fair credit is meant to be a guiding principle for regulators who come up with tariffs and statutes governing how energy is returned. Fair credit is intentionally vague rather than a defined amount.

CHAIR ATKINSON:
Senator Spearman mentioned Texas has choice, and it seems like Texas is doing well. We have this bill in front of us, and we may move to choice. I do not know how many states had energy mandates and then moved to choice. I do

not think that was the case in Texas. We are trying to avoid moving backward in two years.

JESSICA FERRATO (Solar Energy Industries Association):
We have a survey regarding states that have moved to some form of deregulation and how they have handled it. All of these states except for one still have net metering. Texas companies still offer net metering to their customers. We can get you this information.

CHAIR ATKINSON:
Are you saying you can get the information for us, or do you have it?

MS. FERRATO:
We have it. We will get it to you.

CHAIR ATKINSON:
I have asked quite a few people for information, but I have not received anything.

SENATOR CANNIZZARO:
How much does it cost for the installation of a solar project on a house? What are the upfront costs? What costs would customers pay over time?

ASSEMBLYMAN BROOKS:
It depends on the business model. The average solar system for purchase is around $12,000. The lease and power purchase agreement models have little to no upfront costs, and customers pay a recurring cost based on the amount of energy their systems produce. Usually, customers pay a discounted rate of what the retail energy would cost. I do not know the percentage of customers using each business model, but the average installed cost is around $12,000, which is considerably less than when I installed a system on my house about 15 years ago.

SENATOR CANNIZZARO:
If the $12,000 is paid up front, does the customer pay additional costs over time, or is the $12,000 the total cost?

ASSEMBLYMAN BROOKS:
An upfront purchase would be $12,000. For example, in my house, I paid the upfront cost of installation, and I have not spent another penny since. That is not always the case, but that is my case.

SENATOR CANNIZZARO:
I echo some of the concerns raised by my colleagues. I am curious to see how A.B. 405 would affect ratepayers who do not have these types of systems. It is important for us to see the cost differential.

ASSEMBLYMAN BROOKS:
The renewable energy components of an average ratepayer's bill are a little over 2 percent. These components cover everything our State has done in the past 10 to 15 years in regard to renewable energy.

CHAIR ATKINSON:
We realize these components exist, but we want to know what the cost of an addition would be. You may not agree with the calculations done by NV Energy, but we still need to see a number.

ASSEMBLYMAN BROOKS:
The components of all renewable energy in our State equal 2 percent of an average ratepayer's bill. We are at half of a percent in terms of renewable energy from distributed generation. We are able to draw conclusions from these numbers. The added cost to a ratepayer's bill would be negligible.

CHAIR ATKINSON:
Section 24, subsection 3, paragraph (c) states that anyone can install a rooftop solar system, but it also states that the person does not need to obtain permission from the utility. I find this dangerous. Who assumes liability for this? Why would somebody not obtain permission from the utility?

ASSEMBLYMAN BROOKS:
This subsection refers only to systems that do not return energy to the utility.

CHAIR ATKINSON:
That is not clear.

ASSEMBLYMAN BROOKS:
Subsection 3 uses the language, "on the customer's side."

CHAIR ATKINSON:
That is why this provision is dangerous.

SENATOR SETTELMEYER:
I believe Assemblyman Brooks is referring to people who are off the grid. If people do not rely on the grid, the utility should not have a say. However, the way this subsection reads, if a meter is tied to the grid but does not feed energy into the system, the utility does not have any input.

ASSEMBLYMAN BROOKS:
If a person's system does not have the ability to export energy to the utility, then that person should not need to obtain permission from the utility to install the system. That is the intent. If the language is not clear, we should clarify it.

SENATOR SETTELMEYER:
Are you indicating that if somebody is not exporting energy but is still tied to the grid, the power company should have no say?

ASSEMBLYMAN BROOKS:
Yes. If somebody generates energy on his or her system and it has no ability to get back to the utility, then why would permission be required from the utility?

SENATOR SETTELMEYER:
I hooked up a barbed-wire fence to an NV Energy fence. I did not think anything of it. I found out that if there were a short circuit in NV Energy's system, it could travel two miles down the barbed-wire fence and kill someone. This has happened before. It is a safety issue. If a person's system is tied to the grid, the utility should have some input into that system.

ASSEMBLYMAN BROOKS:
Section 24, subsection 3, paragraph (c), subparagraph (2) states that the system must meet "reasonable safety requirements." There are building codes and equipment listing agencies people have to comply with. The industry and technology are changing rapidly. For example, I have a 27-kilowatt battery I use to drive. I did not ask the utility to integrate this battery into my electric system, nor should I have had to. It is not my intention for the utility to not have input

on generators that can feed into the system; that would be ridiculous and unsafe. This subsection is meant specifically for technologies that do not interact with the utility.

CHAIR ATKINSON:
The language is unclear.

Does section 28 address the subsidy people are talking about?

ASSEMBLYMAN BROOKS:
Section 28 lays out how returned energy would be treated. The Public Utilities Commission of Nevada (PUCN), the Bureau of Consumer Protection, NV Energy and the industry all weighed in and were unable to determine what, if anything, the subsidy was. There are many opinions about the subsidy. Instead of constantly litigating the subsidy, I am trying to put into statute that the State wants to encourage distributed generation and renewable energy. There are a multitude of factors that need to be taken into consideration that have not been thoroughly addressed. Assembly Bill 405 is a public policy decision to encourage a technology and a type of implementation of that technology.

CHAIR ATKINSON:
Do you believe section 28 addresses the subsidy?

ASSEMBLYMAN BROOKS:
Yes. As technologies become more affordable over time, the issue of a subsidy should be addressed.

CHAIR ATKINSON:
None of the information about the subsidy was consistent. However, I believe there was a subsidy. I agree that the number may not have been consistent, but the subsidy was still there.

MS. FERRATO:
We support A.B. 405. The Solar Energy Industries Association (SEIA) is the national trade association for the solar industry. Through advocacy and education, SEIA and its member companies work to make solar energy a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public regarding the benefits of solar. Assembly Bill 405 encourages the deployment of

residential rooftop solar in Nevada. Our goal is to make it feasible for residents to put solar on their homes in a timely fashion and in a sustainable manner that is fair to all customers and puts people back to work. In addition, we would like to ensure consumers are protected and that solar companies are held to a higher standard as the solar industry returns to the State.

Legislation is necessary because the solar industry in Nevada is at a standstill, and customers are not getting what they want. The 2015 net metering decision increased charges on solar customers, making rooftop solar unaffordable for Nevadans and all but crushing the rooftop solar industry here. Statewide solar applications fell by 99 percent, from 21,923 in 2015 to 287 in 2016. Nevada's solar industry was effectively shut down, and over 2,600 Nevadans lost their jobs. Assembly Bill 405 would restore rooftop solar policies and make solar affordable to Nevadans, which would bring solar jobs back to the State. At SEIA, we are seeing this effect firsthand. We have a number of member companies that have laid off and transferred hundreds of employees throughout the State. Many long-term local solar businesses have closed up shop, and some are in the process of doing so. Others are holding on by a thread. We are here today to ask for your support in reestablishing this industry, as solar has the potential for tremendous job creation. Nearly 260,000 Americans work in solar, which is more than double the number from 2010. By 2021, the number is expected to increase by more than 360,000 workers. In 2015, Nevada was the No. 1 state for solar jobs per capita, but in 2016, Nevada was one of the few states to actually lose solar jobs. We would like Nevada to benefit from these solar jobs and the local investment that comes along with them.

This bill would allow Nevadans to benefit from our natural resource by setting up a long-term rate structure that provides certainty and predictability for consumers in the solar industry. We would also like to reestablish the solar industry in a way that is thoughtful and allows for long-term sustainability in the State. For the past two years, SEIA has worked to ensure consumer protection is at the forefront of our industry. There is a simple reason why: our industry survives based on satisfied customers telling family members, friends and neighbors about their experiences. The disclosures, as outlined in A.B. 405, would allow consumers to understand key terms in their agreements, easily compare offers and ask hard questions of potential solar providers. Solar customers would have transparency and certainty that companies are going to adhere to strong standards.

Every agreement, under the consumer protection language, would require a cover page telling customers what is outlined in the agreement. The cover page would direct customers to go to the Contractors' Board based on issues with their contractors.

CHAIR ATKINSON:
You mentioned this bill would bring solar back. Where did everybody go?

MS. FERRATO:
Many companies, based on the net metering decision, left the State. It was not feasible for customers to purchase rooftop solar anymore.

CHAIR ATKINSON:
When you say you want to bring solar back, you give the impression that solar does not exist in the State anymore. That is disingenuous. The solar industry came to a screeching halt; there is no doubt about that. Some of the actions we took last Session left some uncertainty, but we are trying to fix this.

MS. FERRATO:
This bill would allow us to bring new jobs to the State.

ASSEMBLYMAN JUSTIN WATKINS (Assembly District No. 35):
I support A.B. 405. My bill, A.B. 270, was amended into this bill.

If this bill were to pass, consumers would talk to a lawyer for their issues. Section 20 makes any violation of sections 2 through 20 consumer fraud. Attorney fees and costs would be awarded regardless of what the damages were. If a solar customer were ripped off for $50, as a lawyer, I could represent that client.

In regard to the ten-year warranty on the systems, that is four years longer than the statute of limitations on construction defects. A customer would be able to pursue legal action for four years longer than he or she would be able to pursue legal action for, say, the contractor that built his or her house.

CHAIR ATKINSON:
I think you misinterpreted my question about who would police this bill. When A.B. 405 is all said and done, there has to be a place where people go for their grievances. A customer can hire an attorney, but he or she still has to go to the

place that was designated. There has to be a place for a representative of a customer, such as a lawyer, to go to have the customer's concerns addressed.

SENATOR SETTELMEYER:
If people have problems with an energy company, they go to the PUCN because the company is regulated. Solar companies are not regulated, so customers are left with one option: hiring an attorney. I appreciate your comment about the attorney fees.

Everybody keeps on using the term "contractor." We should be saying "licensed contractor" because the Contractors' Board can only resolve issues for licensed contractors. If a contractor is not licensed, then a customer needs to talk to an attorney.

TRAVIS MILLER (Great Basin Solar Coalition):
We represent the majority of local installers in northern Nevada and well over 1,000 registered voters in the area as well. We tend to promote rate structures and energy options for consumers, especially in the energy field. We are in full support of A.B. 405. The Energy Choice Initiative won the support it did last election because of the issues that are being corrected in this bill. The Initiative should not be a cause for concern because it can go forward in the future.

As far as where somebody goes to correct an issue, the Contractors' Board is the first stop. There should not be any unlicensed contractors installing these systems. This bill provides the stability people in the community need to make an investment like this.

CASEY COFFMAN (Sunworks):
We support A.B. 405, especially because we support transparency in contracts. We also support best practices. The cost calculated for nonsolar customers is 26 cents per year. That is incredibly insignificant. Most people would be okay spending an additional 26 cents per year for the opportunity to have renewable energy in the State.

NATALIE HERNANDEZ:
I support A.B. 405. This bill would help put Nevada's clean energy economy back on track. It would promote the growth of innovative industries such as the rooftop solar industry, spur economic growth and create local jobs across our State. Renewable energy is where the Country is headed. Last year, solar

accounted for 1 out of every 50 jobs in the U.S. Nevada has the ability to lead the Country in solar and clean energy.

ALLEN ELI SMITH (Black Rock Solar):
I used to be an electrician at Black Rock Solar. Black Rock Solar chose to transition away from building solar systems in the State because of the business climate. I am encouraged by A.B. 405 because it provides the sort of accountability for an investment any homeowner would seek. It also provides for the Renewable Energy Bill of Rights, which is important. Empowering Nevadans to employ Nevada contractors to build solar arrays in Nevada and providing sustainability and independence for Nevadans are good things. These dollars stay in Nevada. I encourage you all to support A.B. 405.

JERRY SNYDER (Black Rock Solar):
Black Rock Solar was formed in 2007 and incorporated in 2008 to install solar systems on nonprofits and schools. We have been obliged to stop doing this because it no longer makes sense to do so on a nonprofit basis. However, we are going forward with trying to develop the solar field otherwise, and this bill is an important part of that. The 2015 PUCN decision has shown us how vital legislative leadership is in Nevada. I appreciate how seriously the Committee members are considering this bill.

DAVID VON SEGGERN (Sierra Club, Toiyabe Chapter):
I will read from my written testimony in support of A.B. 405 (Exhibit I).

ENDER AUSTIN III (Las Vegas Urban League Young Professionals):
This bill would not only encourage economic development and spur job creation but also have an invaluable environmental impact by increasing renewable energy generation. I am not here today as a dad, but if I were, I would tell you I am always thinking about what is next. Assembly Bill 405 looks at what is next. I am not necessarily here as a Nevadan, but as a Nevadan, I am concerned about the economy. This bill would strengthen a flooding industry that can diversify our State's economic base. As a social justice, economic and class justice fighter, I support destroying barriers to economic freedom for poor, disadvantaged and disenfranchised individuals. Assembly Bill 405 does this by opening the rooftop solar market to many who are on the lower rungs of the economic spectrum. As a preacher, I am charged to protect God's creation, and A.B. 405 does so by marching toward a greener Nevada. I hope the Committee considers passing this bill.

LARRY COHEN (Sunrun):
Sunrun is the largest dedicated residential solar company in the Country. We support A.B. 405, which would restore the rooftop solar industry in Nevada. I have managed Sunrun's Las Vegas branch since its inception in 2014, and I experienced the abrupt halt of the industry firsthand in 2015. After the 2015 PUCN decision, several hundred of our hardworking employees lost their jobs through no fault of their own. Many were forced to find work in other industries or move their families out of Nevada to keep their good-paying jobs working for Sunrun. Our employees have helped over 3,000 Nevadans take control of their electricity bills by going solar with Sunrun. Assembly Bill 405 establishes a fair approach to compensate families for the clean energy they generate and send to the grid. This bill offers Nevadans the freedom to choose rooftop solar to meet the energy needs of their homes. We appreciate the Committee's consideration of A.B. 405 and the opportunity to revitalize this innovative industry in the State.

NAOMI LEWIS (Nevada Conservation League):
I support A.B. 405. Almost everyone in Room 4412E of the Grant Sawyer State Office Building today supports A.B. 405.

Over 2,000 jobs were lost when the PUCN decided to change net metering rates. I have friends who were affected by this decision. Some of my friends had great-paying jobs with good benefits, but these jobs were taken away from them. Losing such a great job can be devastating, and when somebody is a college student who has to pay $400 for a textbook, losing a job can hit hard. Assembly Bill 405 would bring these jobs back to Nevada and then some.

The University of Nevada, Las Vegas, has some great opportunities for students who want to get involved with solar energy, such as the internationally recognized Solar Decathlon team and the minor in Solar and Renewable Energy. If opportunities for solar energy are not in the State, people will be forced to move, and Nevada will lose some talented and intelligent people who can bring innovative change to the State.

I urge the Committee to pass A.B. 405 because it is important to me, my future and thousands of other people's futures in the State.

KATHERINE LORENZO (Chispa Nevada):
We support rooftop solar for several reasons. The future of our electric grid is smart, flexible and decentralized. Having community members produce electricity from their homes makes them think more about their energy use and feel a sense of connection to their neighbors. By bringing the solar industry back to Nevada, we are opening the door for our communities to obtain new, good-paying jobs and are supporting the generation of solar entrepreneurs. Additionally, this bill protects consumers from being misled or ripped off. By generating more clean energy and moving away from fossil fuels, we can reduce air pollution that affects our health and the environment. Communities of color are often on the front lines dealing with these impacts. I urge you to support A.B. 405 to improve the well-being of Nevada's communities.

JOSHUA J. HICKS (Sunstreet Energy Group):
Sunstreet Energy Group is a provider of rooftop solar on new homes. It is a highly popular consumer choice issue to put solar on one's roof. There has been a lot of uncertainty in the last few years, and that has stalled rooftop solar installations. We support A.B. 405 because it creates certainty and predictability. These are important facets of the homebuilding process because they help consumers and get everyone on the right track.

DANIEL WITT (Tesla, Inc.):
We support A.B. 405. We firmly believe this bill has the potential to reinvigorate the solar industry in the State. Tesla, through SolarCity, has more than 1,200 employees in the southern part of Nevada, 550 of whom had to be relocated after the 2015 PUCN decision. We especially support the tenets of this bill that provide transparency and consistency throughout the distributed energy resources industry to protect consumers who choose to invest in these technologies. Nevada has long considered itself a leader in the renewable energy space. The Chair and this Committee have been extremely vigorous in their pursuit of renewable energy with bills like S.B. 204, S.B. 145 and S.B. 146.

SENATE BILL 145 (1st Reprint): Revises provisions relating to energy. (BDR 58-54)

SENATE BILL 146 (2nd Reprint): Revises provisions governing the filing of an integrated resources plan with the Public Utilities Commission of Nevada. (BDR 58-15)

All of these bills work in collaboration with A.B. 405. This bill will advance reliable energy technologies like storage that will continue to make the grid more efficient over time.

KYLE DAVIS (Nevada Conservation League):
We support A.B. 405. This bill is a key piece to reestablish Nevada's reputation as a clean energy leader, which is well-deserved considering the clean energy policies that have been passed in the State over the last few years. We send a lot of natural gas out of State. This bill allows us to take more control of our clean energy future and gives Nevadans the option to control their own destinies through rooftop solar. We know Nevadans want to see more clean energy, and A.B. 405 is an important piece of everything we are doing this Session to help our State realize its potential as a clean energy leader.

TOM POLIKALAS:
I support A.B. 405. I would like to address the issue of risk. When we put all of our eggs in the natural gas basket, that could impact all of us as consumers. The U.S. Energy Information Administration reports natural gas prices will increase over the coming decades, and that is corroborated by private sector analysts who identify reasons why natural gas is going to increase in price. Liquefied natural gas terminals are being put in place so that U.S. producers can export to markets in Europe and Asia, where the price of natural gas is much higher. The expected economic impact is that natural gas prices will rise in the U.S.

I also support this bill because of jobs. On March 31, the Senate Subcommittee on Energy heard testimony from Jackie Kimble from the American Jobs Project. She identified solar and battery technologies as key sectors for an economic cluster that could bring 28,000 jobs to the State. The Subcommittee also heard testimony from Lee F. Gunn, a retired Vice Admiral of the U.S. Navy. He identified distributed generation as a key national security issue. Grid resiliency and international security are enhanced when we have more distributed generation.

Having worked for 15 years in utility marketing and communications, I can say that any customer is valuable. There is a tremendous value to acquiring a net metered customer.

MARK DICKSON (Simple Power):
We hope to increase our workforce with passage of A.B. 405. Last year, over 260,000 jobs were in the solar industry in the U.S., more than all of the other fossil-fuel industries combined. Our State also spent almost three quarters of a billion dollars purchasing outside energy. The solar industry is burgeoning, and we want to be a part of that. We echo the support of the other companies here today, and we fully support A.B. 405.

LOUISE HELTON (Founder, 1 Sun Solar):
I have seen colleagues lose their businesses and friends lose their jobs. I have seen suppliers close up shop and leave the State altogether. Distributors have lost money, and hardworking Nevadans have lost their solar careers. At the same time we were killing our solar industry, even though it was never our intention to do so, other places were building their solar companies, moving forward, adding lots of jobs and bringing economic diversification and development to their communities. The Clean LA Solar program was said to have created 4,500 jobs and generated $500 million in economic activity, according to the Los Angeles Business Council. In the Interim, while we were hoping to make a policy correction, Nevadans tried hard to have their voices be heard. It was incredible that over 100,000 Nevadans signed the petition to bring back net metering. That is a difficult thing to accomplish. I have been fortunate enough to have a diversified business that has allowed me to hang on. I am begging you to pass this bill to allow us to put hardworking Nevadans back to work and to help us be a leader in the solar field.

JORGE GONZALEZ (Nevada Solar Owners Association):
We support A.B. 405. I lost my job when the solar industry in Nevada went down, but that did not drive me away from the renewable energy field.

The warranty is covered in three issues. One is the product itself. The real question, however, is the labor warranty. What is that going to be? I would love to see a number at ten years so that it matches the warranty on the product.

The price of solar has dropped drastically. If somebody buys solar right now as a homeowner and that person has the credit, he or she will pay less for power going out 15 to 20 years. Solar is feasible, and if people are waiting to go solar, they are going to be in a much better position if A.B. 405 passes.

JOE BOOKER:
I worked at a solar company that closed down in 2015. I lost my family there; I considered my coworkers my family. I ask the Committee to support A.B. 405 to bring sanity back to my life. I have been on the "solarcoaster" for a long time, and I would like to get off.

VERNA MANDEZ:
Ever since I was young, I have wanted to work in the solar industry. It is disheartening to me that my State does not allow me to advance in this field. Solar energy is the energy of the future, and it will benefit generations to come. My community wants solar, and I want to own a home one day where I can have rooftop solar. I want to be able to lower my electric bill through the natural sunshine of this overwhelmingly warm and sunny State. It is my right to go solar. The State should not infringe upon this right in any way, shape or form. Renewable energy is where the Country is headed. Nevada has the ability to lead the Country in solar and clean energy. Assembly Bill 405 is instrumental to the progress of the State. I hope you all put Nevada back on the path to be a renewable energy leader.

SCOTT SHAW (1 Sun Solar):
My former company, Go Solar Energy Solutions, could not hold on. We had to close our doors as a result of the 2015 PUCN decision. I am fortunate enough to work at another solar company and look forward to possibly hiring 50 individuals this year. This bill addresses all of the uncertainty the 2015 PUCN decision set into the market.

I support the consumer protections this bill would put in place. If there are bad actors in an industry, that is going to color the whole industry. It is important to adhere to transparency and consumer protections. This bill sets certainty in the rate of exchange for net metering.

DONALD GALLIMORE, SR. (NAACP Reno-Sparks Branch 1112):
We support A.B. 405. My family has used solar since 1983. We believe in solar and the future of solar. Twenty-six hundred jobs is a significant number, and we want to see those jobs come back.

KEVIN ROMNEY (Radiant Solar Solutions):
We are a licensed installer of solar and storage in Henderson, Nevada. We support A.B. 405. This bill would provide wonderful protections to consumers

and allow our State to reignite the economic engine of rooftop solar. This bill would allow us to produce energy in Nevada that is sold to Nevadans, allowing us to not need to import energy from out of State or outside of the Country. There are also national security interests through the local production of energy. We hope the Committee passes A.B. 405 so that rooftop solar businesses can grow the economy and, in turn, grow other businesses.

JUDY STOKEY (NV Energy):
We are neutral to A.B. 405. Two major issues need to be addressed before anything moves forward. The first issue is what would happen in an energy choice environment. There would be 20-year commitments if this bill were to pass. We also have grandfathered customers with 20-year contracts. We do not know who would be responsible for these customers if the Energy Choice Initiative were to pass again. The second issue is cost. Everybody has his or her own number, but our number comes out to be over $60 million annually if this bill were to pass.

We want to make sure we go about this bill the right way. We would like to continue working with Assemblyman Brooks. The consumer protection piece of this bill is great. We need to make some minor modifications, but some unfortunate circumstances arose a few years ago.

ERNIE ADLER (International Brotherhood of Electrical Workers Local 1245):
We are neutral to A.B. 405 because we are trying to figure out how this bill works with all of the other renewable energy bills this Session. With the Energy Choice Initiative looming, people who sign up for leases need the ability to cancel their contracts if electricity is deregulated. Otherwise, they are going to be stuck with some fairly large monthly payments on something that does not benefit them. I have submitted an amendment (Exhibit J) to add a provision to allow people to get out of their leases before the 20-year period elapses.

DANNY THOMPSON (International Brotherhood of Electrical Workers Local Nos. 396 and 1245):
We are not against net metering, but we have concerns with the way this bill is written. It is prudent for people to have a mechanism to get out of their leases should the Energy Choice Initiative pass.

We are also concerned with section 24 regarding the permission aspect. This section talks about meters; people off the grid do not have meters. We fear that

some of our members would be killed by this. Without the permission of or information from the utility, a lineman could be putting his life at risk. This section includes the language "reasonable safety requirements," but we suggest replacing this with language conforming to all local and State requirements. I do not know what reasonable safety requirements are, but I do know what the codes are.

Unless these systems are installed by licensed contractors, the provision relating to the Contractors' Board does not mean anything. Requiring that both the installation and maintenance be done by licensed contractors is important.

JEREMY NEWMAN (International Brotherhood of Electrical Workers Local 396):
I appreciate the Chair and Senator Settelmeyer looking out for the well-being of myself and other linemen. There are good and bad contractors out there. We want to make sure the utility is notified to ensure the safety of linemen in the field.

RUSTY MCALLISTER (Nevada State AFL-CIO):
We are neutral to A.B. 405. We have heard people talk about the Renewable Energy Bill of Rights, but I am wondering if we could have a bill of rights for customers who receive their power from the utility. Although 26 cents per year may seem insignificant, somebody still has to pay it. The companies that lease these systems receive a 30 percent federal tax credit that they sell to tax equity funds. Somebody has to pay for that. Nevada taxpayers have paid $1.2 million in subsidies to bring one solar company to the State. Although the solar industry certainly needs to be brought back to Nevada, the average person is not going to be able to install these systems. Realistically, only a certain segment of the population is going to be able to have these systems. All of the people I represent have to pay for A.B. 405.

ASSEMBLYMAN BROOKS:
I have three examples of states that had net metering and then went to choice: California, Massachusetts and Maine. I will submit the document containing these examples to the Committee.

Mr. Thompson made a statement about licensed contractors. I agree that only licensed contractors should be able to install rooftop solar systems. That is currently the law.

In reference to section 24, I am not against people notifying the utility or displaying placards. I want utility workers to feel safe if they approach an energy system. Section 24, subsection 3, paragraph (c), subparagraphs (1) and (2) could be clarified for the protection of our utility workers.

CHAIR ATKINSON:
I am aware California had net metering and then went to choice, but the state did not know there was an impending ballot measure. Because we know the Energy Choice Initiative is looming, we have to put some safeguards in. We all recognize choice is coming.

SENATOR SPEARMAN:
I wanted to address Mr. McAllister's point about people not being able to afford solar systems. I took this into consideration when sponsoring S.B. 407.

SENATE BILL 407 (1st Reprint): Creates the Nevada Clean Energy Fund. (BDR 58-1133)

The Nevada Clean Energy Fund is designed to level the playing field for seniors and low- and moderate-income individuals. The Fund provides an investment opportunity for them so that they can participate in the renewable energy process.

Part of the renewable energy discussion is economic justice. Protecting the environment should not only be accessible to those with the right credit scores or those with cash lying around.

CHAIR ATKINSON:
I have received letters of support for A.B. 405 from Bo Balzar, Bombard Renewable Energy (Exhibit K); Laura Bennett, TechNet (Exhibit L); Janette Dean (Exhibit M); and Greg Ferrante, Nevada Solar Owners Association (Exhibit N).

I will close the hearing on A.B. 405 and open the meeting for public comment.

MR. EPPOLITO:
Senate Bill No. 463 of the 78th Session would have helped Nevada children. It was passed in the Senate 21 to 0. That would have been one of the strongest student data privacy protection bills in the Country. Unfortunately, the bill got

gutted with an amendment. The Senate tried to protect Nevada children, but we still have nothing to protect them.

Two states have policies to protect their children: California and Oklahoma. In February 2016, the ACLU and the Tenth Amendment Center agreed on model legislation that 16 states started working on.

Remainder of page intentionally left blank; signature page to follow.

CHAIR ATKINSON:
Hearing no more public comment, I adjourn the meeting at 11:47 a.m.

RESPECTFULLY SUBMITTED:

Daniel Putney,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	10		Attendance Roster
S.B. 538	C	5	Senator Aaron D. Ford	Proposed Amendment 4699
S.B. 538	D	66	John Eppolito / Protect Nevada Children	Written Testimony
S.B. 538	E	5	Brian McAnallen / City of Las Vegas	Proposed Amendment
S.B. 538	F	2	Shannon Rahming / Division of Enterprise Information Technology Services, Department of Administration	Written Testimony
S.B. 538	G	2	Christopher Oswald / Data and Marketing Association	Letter of Opposition
A.B. 405	H	16	Assemblyman Chris Brooks	Explanation Table
A.B. 405	I	1	David Von Seggern / Sierra Club, Toiyabe Chapter	Written Testimony
A.B. 405	J	1	Ernie Adler / International Brotherhood of Electrical Workers Local 1245	Proposed Amendment
A.B. 405	K	1	Bo Balzar / Bombard Renewable Energy	Letter of Support
A.B. 405	L	1	Laura Bennett / TechNet	Letter of Support
A.B. 405	M	3	Janette Dean	Letter of Support
A.B. 405	N	1	Greg Ferrante / Nevada Solar Owners Association	Letter of Support

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s) vs. Scott Duong, M.D., Defendant(s)	Case No.: A-19-789110-B Department 13

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Mark R. Denton.

☒ This reassignment follows the filing of a Peremptory Challenge of Judge ELIZABETH GONZALES.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

Motion for Preliminary Injunction, on 03/11/2019, at 9:00 AM

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Heather Kordenbrock
Heather Kordenbrock, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 27th day of February, 2019

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-19-789110-B.

/s/ Heather Kordenbrock
Heather Kordenbrock, Deputy Clerk of the Court

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD., Plaintiff, vs. SCOTT VINH DUONG, M.D., ANNIE LYNN PENACO DUONG, M.D., DUONG ANESTHESIA, PLLC and DOE Defendants I-X, Defendants.	Case No.: A-19-789110-B Dept.: 13 **PLAINTIFF FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD.'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME**

Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson") by and through its attorneys, the law firm of Dickinson Wright PLLC, hereby submits its Reply in Support of its Motion for Preliminary Injunction on Order Shortening Time.

This Reply is based on the following Memorandum of Points and Authorities, the declaration of Gabriel A. Blumberg attached hereto as Exhibit 1 and the exhibit attached thereto; the papers and pleadings already on file herein, and any oral argument the Court may entertain on this matter.

...

...

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants' Opposition must be rejected because it requires this Court to ignore the Employment Agreements,[1] ignore the law, and ignore Nevada's public policy in order to deny injunctive relief. If the Court follows even one of these three fundamental guideposts, however, then it must grant the Motion and enter a preliminary injunction.

First, the Court must respect the parties' right and freedom to contract by enforcing the plain language of the Employment Agreements, which contain an unambiguous stipulation whereby Defendants agreed to the entry of a preliminary injunction if they violated the Non-Competition Clause. Defendants have not denied working at Non-Competition Facilities following the termination of their employment with Fielden Hansen and therefore concede they breached the Non-Competition Clause. This breach mandates entry of a preliminary injunction pursuant to the parties' stipulation in the Employment Agreements.

Second, the Court must reject Defendants' flawed argument that the Non-Competition Clause is wholly unenforceable because they believe certain provisions are unreasonable. Defendants' premise is unsound because the Non-Competition Clause is narrowly tailored to protect Fielden Hanson's legitimate business interests. Indeed, it is so narrowly tailored that it permits Defendants to continue performing anesthesia in Clark County for the duration of the two year temporal restriction. Thus, the Non-Competition Clause fits snugly within the contours of non-compete provisions previously deemed reasonable by the Nevada Supreme Court.

Furthermore, even if the Court concludes that some portion of the Non-Competition Clause is unreasonable, Defendants' request to nullify the entire Non-Competition Clause still must be denied because it relies on legislatively overruled case law that contradicts the parties' agreement and Nevada public policy. The Nevada Legislature clearly evidenced its intent in AB 276 to have

[1] All capitalized terms herein shall have the same meaning ascribed to them in Fielden Hanson's Motion for Preliminary Injunction.

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district courts blueline any overly restrictive non-compete provisions. *See* NRS 613.195(5) (emphasis added) ("the court ***shall*** revise the covenant to the extent necessary and enforce the covenant as revised"). This statute effectuates long-standing Nevada public policy and establishes a rule for construing contracts that must be applied to all cases arising after the Nevada Supreme Court's holding in *Golden Rd. Motor Inn, Inc. v. Islam*, 376 P.3d 151 (2016). If the statute is not applied, the Legislature and the parties' intent will be overridden, thereby causing an impermissible absurd result that the Nevada Supreme Court has repeatedly cautioned should be prevented through reasonable, common sense application of Nevada statutes.

For all these reasons and those that follow, this Court grant the Motion and preliminarily enjoin Defendants from performing anesthesia services at any of the Non-Competition Facilities or soliciting any business from any of the Non-Competition Facilities.

II.

LEGAL ARGUMENT

A. Defendants Are Bound by their Contractual Agreement Acknowledging Irreparable Harm and Requiring Entry of Injunctive Relief

In the Employment Agreements, Defendants stipulated that any breach of the Non-Competition Clause would cause Fielden Hanson irreparable harm and therefore entitle Fielden Hanson to injunctive relief to prevent further breaches of the Non-Competition Clause. Ex. 1-A to Motion at ¶ 2.8.3. Despite this unambiguous stipulation, Defendants now beg the Court to ignore the plain language of the parties' agreement. Defendants' pleas must be rejected because they knowingly and voluntarily agreed to the entry of injunctive relief in this exact scenario and cannot now be heard to argue against injunctive relief. *Vitalink Pharmacy Servs., Inc. v. Grancare, Inc.*, 1997 WL 458494, at *9 (Del. Ch. Aug. 7, 1997) (holding that a contractual stipulation that breach of the non-compete clause would cause "substantial and irreparable harm" "alone suffices to establish the element of irreparable harm, and [defendant] cannot be heard to contend otherwise.").

A number of courts across the country have recognized that parties can stipulate to irreparable harm and entry of an injunction. *North Atlantic Instruments, Inc. v. Haber*, 188 F.3d

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38, 49 (2d. Cir. 1999) (citing *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir.1999)); *Cirrus Holding Co. v. Cirrus Indus., Inc.*, 794 A.2d 1191, 1209 (Del. Ch. 2001) ("contractual stipulations as to irreparable harm alone suffice to establish that element for the purpose of issuing preliminary injunctive relief."); *True N. Commc'ns Inc. v. Publicis S.A.*, 711 A.2d 34, 44 (Del. Ch. 1997) ("The irreparable harm element of the injunction standard is established by [defendant's] own contractual stipulation" that its breach "will constitute irreparable harm to [plaintiff], entitling [plaintiff] to injunctive relief.").

It is likely that the Nevada Supreme Court would follow these jurisdictions, as opposed to the District of Columbia,[2] for two reasons. First, Nevada often relies on Delaware law in business cases where Nevada has not issued governing authority on a topic. *See, e.g., Green on Behalf of Smith & Wesson Holding Corp. v. Monheit*, 2010 WL 11579099, at *5 (D. Nev. Mar. 3, 2010) ("Nevada courts look to Delaware law for guidance on issues of corporate law"). Thus, the Nevada Supreme Court would likely find Delaware's law to be most instructive on this issue.

Second, enforcing the parties' agreed upon contractual terms best serves Nevada's "long-recognized public 'interest in protecting the freedom of persons to contract.'" *Izquierdo v. Easy Loans Corp.*, 2014 WL 2803285, at *3 (D. Nev. June 19, 2014) (citing *Hansen v. Edwards*, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967)); *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009) ("Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy."). Indeed, Nevada courts are even willing to enforce parties' agreements that modify or constrict rights afforded by Nevada's default laws. *See, e.g., Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture*, 300 P.3d 124, 128 (Nev.2013) ("Nevada law allows parties to contractually agree to shorter limitations periods."). Thus, this Court should adhere to Nevada's long-standing policy of enforcing parties' contractual terms and enforce Defendants' stipulation to entry of injunctive relief in this matter where they are violating the Non-Competition Clause.

[2] The District of Columbia is the only jurisdiction Defendants cited for the proposition that their stipulation to injunctive relief should be ignored.

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B. The Non-Competition Clause Is Reasonable[3]

If the Court does not grant injunctive relief based on the parties' agreement and Defendants' stipulation that Fielden Hansen is entitled to obtain an injunction, the Court still should issue a preliminary injunction because Fielden Hansen is seeking to enforce a reasonable Non-Competition Clause.

1. The Non-Competition Clause Only Prohibits Defendants from Working at 26 Specified and Unchanging Non-Competition Facilities

"The medical profession is not exempt from a restrictive covenant provided the covenant meets the tests of reasonableness." *Hansen v. Edwards*, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967) (citing *Foltz v. Struxness*, 215 P.2d 133 (Kan.1950) (area of 100 miles for a period of ten years); *Cogley Clinic v. Martini*, 253 Iowa 541, 112 N.W.2d 678 (1962) (25 mile radius for three years); *Lovelace Clinic v. Murphy*, 76 N.M. 645, 471 P.2d 450 (1966) (county limits and three years)). This is because the "substantial risk of losing patients to an employee is itself an adequate basis for a reasonably designed restraint." *Id.* Furthermore, Nevada enforces reasonable restrictive covenants because it "has an interest in protecting the freedom of persons to contract, and in enforcing contractual rights and obligations." *Id.*

The Non-Competition Clause is valid and enforceable because it imposes reasonable restrictions that are narrowly tailored to protect Fielden Hanson's legitimate business interests. Rather than imposing broad territorial restrictions, the Non-Competition Clause only restricts Defendants from performing anesthesia services at the specified Non-Competition Facilities. This very limited geographic restriction therefore only precludes Defendants from working at the specific 26 locations that they serviced for Fielden Hansen. As a result, not only can Defendants continue to work in the field of anesthesiology, but they can also do so at numerous locations within Clark County, Nevada, and elsewhere, including medical centers adjacent to Non-Competition Facilities if they so desired.[4]

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[3] This Court is not bound by Judge Williams' decision regarding a similar non-compete clause and thus should form its own opinion based on the arguments presented in this matter (which differ from those presented in the case pending before Judge Williams).

[4] Defendants also argue that the Employment Agreements contain an unreasonable provision requiring them to

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2. The Cases Cited by Defendants Illustrate the Reasonableness of the Non-Competition Clause

In attempting to discredit the reasonableness of the Non-Competition Clause, Defendants actually demonstrate that the limited restrictions contained in the Non-Competition Clause are reasonable. Defendants first cite to *Jones v. Deeter*, 112 Nev. 291, 913 P.2d 1272 (1996), in which the Nevada Supreme Court analyzed a non-compete clause that sought to prohibit an employee from working within a 100 mile radius of Reno/Sparks for a period of five years. *Jones v. Deeter*, 112 Nev. at 296. The Nevada Supreme Court found that the five year duration was unreasonable, but did not find that the 100 mile radius geographic restriction was unreasonable. *Id.*

Defendants also cite to *Camco, Inc. v. Baker*, 113 Nev. 512 (1997), wherein the Nevada Supreme Court was tasked with determining whether to enforce a non-compete clause that sought to preclude a former employee for two years from working within a fifty mile radius of any existing employer store, any employer store that was under construction, or any location that was a "target of a corporate plan for expansion." *Camco*, 113 Nev. at 514. The Nevada Supreme Court ruled only that the provision seeking to bar the employee from working within 50 miles of any location that was a target of corporate expansion was unreasonable and unenforceable. *Camco*, 113 Nev. at 520. The Court did not find that the two year temporal limitation was unreasonable, nor did it find that 50 mile radius surrounding existing locations or locations under construction was unreasonable. *Id.*

Lastly, Defendants cite to *Golden Rd. Motor Inn, Inc. v. Islam*, 376 P.3d 151 (2016), where Atlantis Casino Resort Spa sought to enforce a non-compete clause barring its former employee from working in any position for any gaming establishment within a 150 mile radius of Atlantis. *Golden Road*, 376 P.3d at 153. The Nevada Supreme Court found this restriction to be unreasonable only because it barred the former employee from taking any job in any field at a gaming property. *Id.* The Nevada Supreme Court noted that such a restriction was not reasonably related to protecting Atlantis' interests and thus was enforceable. *Id.* Similar to *Jones* and *Camco*,

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withdraw their medical privileges at certain facilities. This argument has no bearing on this matter at this time because Fielden Hansen is not requesting such relief as part of the preliminary injunction.

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however, the Nevada Supreme Court did not find that the 150 mile radius geographic restriction was unreasonable. *Id.*

Here, the geographic restriction in the Non-Competition Clause is much more narrowly tailored and reasonable than those in *Jones*, *Camco*, and *Golden Road*.[5] Rather than prohibit Defendants from working at any medical center within a 50, 100, or 150 mile radius of any Non-Competition Facility, all of which would have been reasonable restrictions based on Defendants' case law, Fielden Hanson instead made the Non-Competition Clause significantly less restrictive by solely preventing Defendants from working at the actual facilities they serviced for Fielden Hanson. Thus, instead of imposing a geographic restriction of all of Clark County, or a radius restriction that could have encompassed even more than Clark County, Fielden Hanson instead took the most limited approach it could to protect its goodwill and business interests. As a result of Fielden Hanson's efforts, the Non-Competition Clause permits Defendants to work at a wide variety of medical centers in Clark County, Nevada, including even those that are adjacent to facilities where they worked for Fielden Hanson.

Furthermore, the Non-Competition Clause is made even more reasonable by the fact that it permits Defendants to continue practicing in their chosen field of anesthesiology. Unlike the restriction in *Golden Road* that banned all employment regardless of its relationship to the work performed for the employer or the restriction upheld in *Hansen* prohibiting a former employee from working in a specific medical field, the restriction here goes one step further in terms of reasonableness and does not even preclude Defendants from practicing in their chosen field of anesthesiology. As a result, not only can Defendants continue to work in Clark County, but they also can continue to earn a living in their chosen line of work. Thus, the Non-Competition Clause is a reasonable provision that should be enforced by this Court.

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...

[5] As evidenced by *Camco*, the two year temporal restriction in the Non-Competition Clause is reasonable and it has not been challenged by Defendants.

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3. Defendants' Contention that the Non-Competition Clause Should Have Focused on Physicians Rather than Facilities Further Demonstrates the Reasonableness of the Non-Competition Clause

Defendants also try to portray the Non-Competition Clause as unreasonable because it focuses on facilities as opposed to physicians. In doing so, Defendants once again confirm the reasonableness of the Non-Competition Clause and further illustrate that Fielden Hanson crafted a very specific, narrowly tailored non-compete provision that should be enforced by this Court. Had the Non-Competition Clause prevented Defendants from working with any physician they worked with during their time at Fielden Hanson, it would have resulted in an even more restrictive provision because it could create a geographic boundary that extends well past Clark County and potentially even into other states. Rather than risking this extremely broad and constantly changing geographic restriction, Fielden Hansen instead formulated the Non-Competition Clause in a manner that only precluded Defendants from working at 26 known and unchanging facilities. Thus, by focusing solely on the facilities where Defendants worked for Fielden Hansen, the Non-Competition Clause provides a less restrictive, reasonable method of protecting Fielden Hansen's legitimate business interests while enabling Defendants to remain working in Clark County in the field of anesthesiology.[6]

C. The Court Must Blueline the Non-Competition Clause if it Nevertheless Concludes that the Non-Competition Clause Is Unreasonable

If the Court concludes that the current terms of the Non-Competition Clause are not reasonable, then it must enforce a bluelined version of the Non-Competition Clause that it deems reasonable. Despite Defendants' hollow protests, it is undeniable that the Nevada Legislature clearly expressed its desire to overturn *Golden Road* and preclude courts from relying on its faulty reasoning in analyzing any non-compete clauses in future cases. In the legislative session immediately following the issuance of *Golden Road*, the Nevada Legislature amended NRS 613.195(5) to read as follows:

[6] The Non-Competition Clause as drafted does not actually bar Defendants from working with any physician because Defendants can work with any physician so long as they do so somewhere other than the Non-Competition Facilities. Thus, to the extent Defendants are correct that physicians are responsible for employing anesthesiologists, the Non-Competition Clause is not precluding them from working because it is not tied to particular physicians.

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> If an employer brings an action to enforce a noncompetition covenant and the court finds the covenant is supported by valuable consideration but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable, impose a greater restraint than is necessary for the protection of the employer for whose benefit the restraint is imposed and impose undue hardship on the employee, *the court shall revise the covenant to the extent necessary and enforce the covenant as revised.* Such revisions must cause the limitations contained in the covenant as to time, geographical area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than is necessary for the protection of the employer for whose benefit the restraint is imposed.

NRS 613.195(5) (emphasis added). This revision of Nevada's non-compete statute was made in direct response to the *Golden Road* decision and intended to apply to all cases going forward, regardless of when the parties executed their non-compete agreement. *See* Senate Committee on Commerce, Labor and Energy May 24, 2017 Minutes at p. 15 ("a specific lawsuit came forth in which an entire noncompete agreement was thrown out because on portion of it was excessive. Section 1, subsection 5 would allow a court to keep the good parts of a noncompete agreement and toss out or renegotiate the excessive parts"); *see also* Legislative Counsel's Digest (noting that AB 276 changes existing law regarding non-compete clauses and requires courts to revise unreasonable restrictions to the extent necessary and enforce the covenant as revised).

Furthermore, NRS 613.195(5) directly contradicts the Nevada Supreme Court's basis for its decision in *Golden Road* and undercuts that decision's precedential value. In *Golden Road*, the Nevada Supreme Court based its decision on its belief that "[u]nder Nevada law, such an unreasonable provision renders the noncompete agreement wholly unenforceable." *Golden Road*, 376 P.3d at 156. The Nevada Supreme Court further justified its decision by noting that courts cannot modify or vary the terms of unambiguous contracts and "[u]nder Nevada law, this rule has no exception for overbroad noncompete agreements." *Id.* This reasoning, which formed the basis for the *Golden Road* decision, no longer passes muster because Nevada law clearly and unambiguously now requires district courts to modify or vary overbroad or unreasonable provisions of non-compete agreements. NRS 613.195(5).

Similarly, the Nevada Supreme Court's other basis for refusing to blueline the non-compete agreement in *Golden Road*—that it would not comport with the parties' contractual intent—is

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similarly unavailing in this case. *Golden Road*, 376 P.3d at 157. The parties here specifically addressed this concern in the Employment Agreement, wherein the parties agreed:

> If any provision of 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.

Ex. 1-A to Motion at ¶ 2.10. Therefore, neither of the Nevada Supreme Court's bases for its *Golden Road* decision withstand scrutiny in this case and NRS 613.195(5) must be applied to the Non-Competition Clause.

For these same reasons, Defendants' argument that application of NRS 613 to this case would implicate due process concerns must fall upon deaf ears. The cornerstones of due process are notice and an opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Here, both of these elements are readily satisfied. At the time they entered into the Non-Competition Clause, Defendants were put on notice that they were agreeing to allow a court to blueline any offending terms of the Non-Competition Clause. Ex. 1-A to Motion at ¶ 2.8.3. Defendants had the opportunity to review and reject the Non-Competition Clause, but instead voluntarily assented to it, including the provision permitting a court to blueline and modify the Non-Competition Clause.[7] Therefore, they cannot come before this Court arguing that application of a statute mirroring terms they agreed to in 2016 somehow violates their due process rights.

[7] Defendants have now confirmed that they had alternative options to practice in the field of anesthesiology in Clark County, Nevada at the time they entered into the Non-Competition Clause if they did not want to execute it. Defendants make it abundantly clear that they are performing anesthesia at facilities across Clark County for Red Rock Anesthesia Consultants, LLC ("Red Rock"). Red Rock was established in March 2016—approximately nine months prior to the date Defendants executed the Non-Competition Clause—and therefore provided an alternative employment option for Defendants had they not wanted to execute the Non-Competition Clause and work for Fielden Hanson. *See* Ex. 1-A. Despite this option, Defendants willingly and voluntarily executed the Non-Competition Clause that they admitted was an essential element of the Employment Agreements and that absent such clause Fielden Hanson would not have entered into the Employment Agreements. Ex. 1-A to Motion at ¶ 2.10; *see also* Opposition at 5:14-15 ("They ultimately chose to execute the Agreement").

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Thus, Defendants were afforded proper notice and opportunity regarding the possibility of a court bluelining the Non-Competition Clause and the Court should blueline the Non-Competition Clause to the extent it finds any provision unreasonable and enforce the terms of the modified Non-Competition Clause through a preliminary injunction in accordance with the Legislature and the parties' intent. *Id.*; *see also* NRS 613.195(5).

D. Failing to Apply NRS 613 Would Lead to an Improper Absurd Result

The Court also must reject Defendants' attempt to limit the applicability of NRS 613 to this case because Defendants' argument would lead to an impermissible absurd outcome. The Nevada Supreme Court has routinely held that statutes must be applied in a manner that avoids "absurd or unreasonable results." *See Anthony Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997) ("statutory language should not be read to produce absurd or unreasonable results."); *see also Las Vegas Police Protective Association Metro, Inc. v. District Court*, 122 Nev. 230, 130 P.3d 182 (2006) (citing *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)) (a court should not apply a statute in a manner that would "violate[] the spirit of the act" or produce "absurd or unreasonable results"); *State v. Glusman*, 98 Nev. 412, 425, 651 P.2d 639, 648 (1982) ("The words of a statute should be construed, if reasonably possible, so as to accommodate the statutory purpose"); ; *Desert Valley Water Co. v. State*, 104 Nev. 718, 720, 766 P.2d 886, 887 (1988) ("When interpreting a statute, we resolve any doubt as to legislative intent in favor of what is reasonable, as against what is unreasonable").

Here, Defendants' attempt to preclude the application of NRS 613 would produce a bizarre and unintended result that would contravene the clear intention of the Legislature and the parties. The parties here specifically contracted to permit a court to blueline any offending provisions of the Non-Competition Clause. Ex. 1-A to Motion at 2.8.3. Thus, at the time the parties entered into the Employment Agreements, they both agreed and expected that a court would blueline the Non-Competition Clause to the extent any portion of it was deemed unreasonable. The parties' expectations were then codified in NRS 613 as being in accordance with Nevada's law and long-standing public policy. *See* NRS 613.195(5). Defendants therefore are not only asking this Court

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to ignore the parties' contract, but also current Nevada law. Such a request is absurd because if the Court accepts Defendants' argument, neither the law nor the parties' contractual expectations will be followed. This absurd result easily can be avoided by applying NRS 613, which the Legislature intended to apply to all cases arising after its enactment.

E. The Balance of Hardships Tips Significantly in Favor of Fielden Hanson and Justifies Only Requiring a Minimal Bond

Defendants make the unsupported claim that Fielden Hanson will not suffer any significant harm without injunctive relief, while they will face "disastrous harm" if injunctive relief is granted because they will be prevented from "taking any anesthesiology cases for any provider at nearly every hospital in Las Vegas." This argument is specious. First, as noted above, Defendants stipulated that their violation of the Non-Competition Clause would cause Fielden Hansen significant irreparable harm. Ex. 1-A to Motion at 2.8.3. As a result, they are barred from arguing that Fielden Hanson will not suffer any harm absent injunction relief. *Vitalink Pharmacy Servs., Inc. v. Grancare, Inc.*, 1997 WL 458494, at *9 (Del. Ch. Aug. 7, 1997) (holding that a contractual stipulation that breach of the non-compete clause would cause "substantial and irreparable harm" "alone suffices to establish the element of irreparable harm, and [defendant] cannot be heard to contend otherwise.").

Second, the evidence adduced thus far already provides sufficient proof that Fielden Hansen is suffering irreparable harm. The declaration of Dr. Isaacs explained that Fielden Hanson "has spent years and invested significant resources in developing goodwill in Clark County, Nevada." Ex. 1 to Motion at ¶ 3. Dr. Isaacs further explained that Defendants' actions following the termination of their employment with Fielden Hansen "are diverting business away from Fielden Hansen, interfering with Fielden Hanson's profits, and infringing on Fielden Hanson's goodwill." *Id.* at ¶ 19; *see also Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) ("acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction"); *Accelerated Care Plus Corp. v. Diversicare Mgmt. Servs. Co.*, 2011 WL 3678798, at *5 (D. Nev. Aug. 22, 2011) (citing *JAK Productions, Inc. v. Wiza*, 986 F .2d 1080,

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1084 (7th Cir.1993)) ("Irreparable harm is easily shown when a former business associate uses the knowledge gleaned from a former business to compete against that business in violation of a non-compete.)

Defendants confirmed these facts in their own declarations, wherein they admit that they are diverting business away from Fielden Hanson by working with doctors and groups at Non-Competition Facilities who worked with Fielden Hansen during Defendants' employment with Fielden Hanson. *See* Exs. A and B to Opposition at 24-25, 30.[8] Rather than continuing to work with Fielden Hanson, these doctors and groups are now utilizing Red Rock, Defendants' current employer, for their anesthesia needs. As a result, it is apparent that business and long-term relationships are being diverted away from Fielden Hansen to Red Rock in violation of the Non-Competition Clause.

Third, Defendants overstate and misstate their potential harm in the event injunctive relief is granted. The Non-Competition Clause will not preclude Defendants from performing anesthesiology in Clark County. This basic and incontrovertible fact is corroborated by Defendants' declarations, which quite tellingly are devoid of any assertion that they will suffer any tangible, identifiable harm if they are prevented from working at the specific 26 Non-Competition Facilities during the pendency of this case. The omission of such a statement speaks volumes. Not only does it render the Opposition bereft of any competent evidence demonstrating potential harm to Defendants, but it also reveals that Defendants know there are viable opportunities for them to perform anesthesiology services in this jurisdiction even with an injunction in place. Thus, the balance of hardships weighs heavily in favor of granting an injunction.

For similar reasons, the required bond for the preliminary injunction should be minimal. Although Defendants attempt to articulate that the bond should equate to the full value of their salaries, such an argument only passes muster if Fielden Hanson had precluded Defendants from taking any job anywhere. That is not the case here because Defendants are able to continue

[8] Defendants claim that they believe the doctors and groups they are improperly working with became dissatisfied and elected to stop using Fielden Hanson. Defendants have no evidence to support this guess and their speculation is insufficient to preclude entry of the injunctive relief they agreed to in the Employment Agreement.

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working in Clark County and are able to continue practicing anesthesiology with any physician of their choosing so long as they do so somewhere other than a Non-Competition Facility. As a result, their income stream is not reduced to zero and instead they can continue to earn a viable living during the pendency of the injunction. A minimal bond therefore is appropriate and in line with Defendants' contractual stipulation that injunctive relief should issue absent a bond. Ex. 1-A to Motion at 2.8.3.

F. An Evidentiary Hearing Is Unnecessary Regarding the Deal Between USAP, Fielden Hansen, and Premier Anesthesiology Consultants

In what appears to be a last ditch effort to avoid the contractually agreed-upon injunctive relief, Defendants request that no injunctive relief issue until a full evidentiary hearing and discovery period allow them time to investigate whether the Non-Competition Clause was improperly assigned in a transaction between Fielden Hanson, USAP, and Premier Anesthesiology Consultants. The absurdity of this request is revealed by even a cursory review of the Non-Competition Clause, which unambiguously identifies that it was executed in December 2016 between Fielden Hansen and Defendants. Thus, the fact that Defendants previously worked for Premier Anesthesiology Consultants is irrelevant to the Motion because Premier Anesthesiology Consultants was not the entity who entered into the Non-Competition Clause with Defendants. Instead, it was Fielden Hanson who executed the Non-Competition Clause and was induced to offer employment to the Defendants based upon their promises to adhere to the Non-Competition Clause and stipulation to injunctive relief in the event they breached the Non-Competition Clause. Thus, Defendants' request for discovery and a full evidentiary hearing regarding the transaction between Fielden Hansen, USAP, and Premier Anesthesiology Consultants is irrelevant and cannot serve as a basis for denying preliminary injunctive relief.[9]

...

...

[9] Even if the transaction was relevant in any way and the Court entertained such an argument, the proper course of action would be to issue injunctive relief during the pendency of such discovery and keep it in place until a ruling was made regarding the transaction.

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III.

CONCLUSION

Based on the foregoing, Fielden Hanson respectfully requests that this Court grant the Motion and preliminarily enjoin Defendants from performing anesthesia services at any of the Non-Competition Facilities or soliciting any business from any of the Non-Competition Facilities.

DATED this 4th day of March 2019.

DICKINSON WRIGHT PLLC

MICHAEL N. FEDER
Nevada Bar No. 7332
GABRIEL A. BLUMBERG
Nevada Bar No. 12332
8363 West Sunset Road, Suite 200
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 4th day of March 2019, he/she caused a copy of **PLAINTIFF FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD.'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME,** 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

An Employee of Dickinson Wright PLLC

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

EXHIBIT 1

DECLARATION OF GABRIEL A. BLUMBERG IN SUPPORT OF PLAINTIFF FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD.'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME

I, Gabriel A. Blumberg, do hereby state and declare as follows:

1. I am an attorney with the law firm of Dickinson Wright, PLLC, counsel for FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD. ("Fielden Hanson"). I am duly licensed to practice before all courts in the State of Nevada and I have personal knowledge of all facts addressed herein, and if called upon to testify, could and would do so.

2. I make this declaration in support of Plaintiff's Reply in support of Motion for Preliminary Injunction on Order Shortening Time.

3. Attached hereto as Exhibit 1-A is a true and correct copy of the Nevada Secretary of State entity details for Red Rock Anesthesia Consultants, LLC.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 4th day of March, 2019.

GABRIEL A. BLUMBERG

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EXHIBIT 1-A

RED ROCK ANESTHESIA CONSULTANTS LLC

Business Entity Information

Status:	Active	File Date:	3/9/2016
Type:	Domestic Limited-Liability Company	Entity Number:	E0110532016-8
Qualifying State:	NV	List of Officers Due:	3/31/2020
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20161144402	Business License Exp:	3/31/2020

Additional Information

Central Index Key:	

Registered Agent Information

Name:	EDMOND GIFFORD JR.	Address 1:	10501 W GOWAN RD #210
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89129
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - ANDRES FELIPE SEPULVEDA ESTRADA			
Address 1:	6805 WILLOWCROFT ST	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89149	Country:	
Status:	Active	Email:	
Manager - HASAN SAJJAD KHAWAJA, MD			
Address 1:	10852 FISHERS ISLAND ST	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89141	Country:	
Status:	Active	Email:	
Manager - RANDY NOEL FLORES, DO			
Address 1:	901 VILLE FRANCHE STREET	Address 2:	
City:	LAS VEGAS	State:	NV

Zip Code:	89145	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	20160109516-81	# of Pages:	2
File Date:	3/9/2016	Effective Date:	
(No notes for this action)			

Action Type:	Initial List		
Document Number:	20160109517-92	# of Pages:	1
File Date:	3/9/2016	Effective Date:	
(No notes for this action)			

Action Type:	Amended List		
Document Number:	20160137634-03	# of Pages:	1
File Date:	3/28/2016	Effective Date:	
(No notes for this action)			

Action Type:	Registered Agent Change		
Document Number:	20160142014-11	# of Pages:	1
File Date:	3/29/2016	Effective Date:	
(No notes for this action)			

Action Type:	Amended List		
Document Number:	20160301934-29	# of Pages:	1
File Date:	7/6/2016	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20170136834-25	# of Pages:	1
File Date:	3/30/2017	Effective Date:	
(No notes for this action)			

Action Type:	Registered Agent Change		
Document Number:	20170149772-40	# of Pages:	1
File Date:	4/4/2017	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20180084830-94	# of Pages:	1
File Date:	2/24/2018	Effective Date:	
(No notes for this action)			

Action Type:	Registered Agent Change		
Document Number:	20180205948-89	# of Pages:	1
File Date:	5/4/2018	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		

Document Number:	**20190073253-92**	**# of Pages:**	**1**
File Date:	**2/19/2019**	**Effective Date:**	
(No notes for this action)			

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Business Court Matters **COURT MINUTES** **March 11, 2019**

A-19-789110-B Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)
vs.
Scott Duong, M.D., Defendant(s)

March 11, 2019 09:00 AM **Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Preliminary Injunction on Order Shortening Time**

HEARD BY: Denton, Mark R. COURTROOM: RJC Courtroom 03D

COURT CLERK: Kearney, Madalyn

RECORDER: Gerold, Jennifer

REPORTER:

PARTIES PRESENT:

Gabriel A Blumberg	**Attorney for Plaintiff**
Ryan O'Malley	**Attorney for Defendant**

JOURNAL ENTRIES

Court noted this is not being consolidated with trial on the merits and it will determine if an Evidentiary Hearing is warranted. Following arguments by Mr. Blumberg and Mr. O'Malley, COURT ORDERED, Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Preliminary Injunction on Order Shortening Time UNDER ADVISEMENT.

A-19-789110-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Business Court Matters	**COURT MINUTES**	**March 19, 2019**

A-19-789110-B Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)
vs.
Scott Duong, M.D., Defendant(s)

March 19, 2019 **7:00 AM** **Minute Order**

HEARD BY: Denton, Mark R. **COURTROOM:** Chambers

COURT CLERK: Madalyn Kearney

JOURNAL ENTRIES

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