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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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Elizabeth A. Brown  
Clerk of Supreme Court

No.: 79460

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

JOINT APPENDIX  
VOLUME IV

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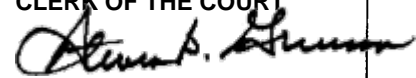
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10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

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

18 Defendants.

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

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION FOR  
RECONSIDERATION**

20 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson"), by and  
21 through its attorneys, the law firm of Dickinson Wright PLLC, hereby files its Opposition to  
22 Defendants' Motion for Reconsideration (the "Motion").

23 This Opposition is based on the following Memorandum of Points and Authorities, the  
24 declaration of W. Bradford Isaacs, M.D. attached hereto as **Exhibit 1** and the exhibits attached  
25 thereto; the papers and pleadings already on file herein, and any oral argument the Court may  
26 entertain on this matter.



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

There is no basis for this Court to reconsider its correct decision to enter a preliminary injunction precluding Defendants from unfairly competing with Fielden Hanson in violation of Defendants' Employment Agreements. Defendants fail to present any new law or facts and offer no basis for concluding that this Court clearly erred by complying with NRS 613.195(5) and bluelining the noncompete clauses in Defendants' Employment Agreements (the "Non-Competition Clauses") to ensure only reasonable restrictions are imposed upon Defendants.

Instead, Defendants repeat their prior argument that NRS 613.195(5) cannot be applied retroactively. Defendants' rehashed argument must be rejected because NRS 613.195(5) was a remedial statute designed to instruct district courts regarding the proper procedure for enforcing noncompete agreements and what remedies are available under those agreements. In enacting NRS 613.195(5), the Legislature clearly signaled its disapproval of *Golden Road* and explicitly identified its desire to have noncompete agreements enforced in Nevada. To further this policy, and avoid the improper effects of *Golden Road*, the Legislature identified a procedure for district courts to implement when faced with an employer's request to enforce a noncompete agreement.

The procedure requires the district court to revise any unreasonable provision of a noncompete agreement to the extent necessary to make it reasonable. This procedure does not affect employees' substantive rights because it does not alter the substantive law requiring noncompete agreements to be reasonable. Rather, it maintains employees' substantive rights by ensuring restrictions are enforced only to the extent they are reasonable, while at the same time guaranteeing employers receive the benefit of their bargained-for noncompete agreements.

As such, NRS 613.195(5) is a remedial and procedural statute, which is exactly the type of statute the Nevada Supreme Court has repeatedly held should be applied retroactively. This Court therefore properly applied NRS 613.195(5) to the Non-Competition Clauses and reconsideration is inappropriate.

1 In addition to their retroactivity argument, Defendants also once again argue that their due  
2 process rights have been violated. They now base this argument on the premise that they entered  
3 into the Non-Competition Clauses believing they were unenforceable and not subject to  
4 modification by the court. This bizarre argument fails for numerous reasons. First, Defendants  
5 have not provided the Court with any evidence to support this claim. Second, even if Defendants  
6 could produce such evidence—which quite tellingly is glaringly absent from any of their multiple  
7 briefs in this case—such a position still fails based on the plain, unambiguous language of the  
8 Employment Agreements, wherein Defendants contractually agreed that a reviewing court shall  
9 reform any unreasonable provision to make it reasonable and enforceable. Having agreed to these  
10 terms in the Employment Agreements, Defendants undoubtedly had proper notice that this Court  
11 could, and would, blue-line the Non-Competition Clauses and enter a preliminary injunction  
12 enforcing the noncompete restrictions.<sup>1</sup> Their due process arguments therefore fail as a matter of  
13 law and cannot serve as a basis for reconsideration.

## 14 II.

### 15 LEGAL ARGUMENT

#### 16 A. Defendants Fail To Satisfy the Requirements for Reconsideration

17 “Only in very rare instances in which new issues of fact or law are raised supporting a  
18 ruling contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v.*  
19 *City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976); *see also* *Masonry & Tile*  
20 *Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
21 489 (1997) (“A district court may reconsider a previously decided issue if substantially different  
22 evidence is subsequently introduced or the decision is clearly erroneous”). “[A] motion for  
23 reconsideration should not be granted, absent highly unusual circumstances.” *Clark v. Bank of*

24  
25  
26 <sup>1</sup> In addition to the explicit provisions requiring a court to blue-line the Non-Competition Clauses if any part were  
27 found unreasonable, the Employment Agreements also contained an explicit provision whereby Defendants consented  
28 to entry of a preliminary injunction to enforce the Non-Competition Clauses. Exs. 1-A and 1-B at Sections 2.8.3,  
2.10.

1 *Am., N.A.*, No. 216CV02228GMNVCF, 2018 WL 2993529, at \*2 (D. Nev. June 14, 2018) (citing  
2 *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)).

3 Here, Defendants fail to identify any unusual circumstances that would warrant  
4 reconsideration. They do not identify any changes in the law since this Court's original decision,  
5 nor do they demonstrate that this Court's previous decision was clearly erroneous. Instead,  
6 Defendants raise legal arguments that mirror those previously made in their Opposition to the  
7 Motion for Preliminary Injunction. *See* Opposition to Motion for Preliminary Injunction, on file  
8 herein, at pp. 14-15 (arguing that NRS 613.195(5) cannot apply retroactively and any retroactive  
9 application would violate their due process rights). A party, however, cannot demonstrate clear  
10 error by disagreeing with the Court's decision and seeking "another bite at the apple through  
11 additional and repetitive argument." *Alexander v. Skolnik*, No. 3:10-CV-0584-LRH-VPC, 2011  
12 WL 4404061, at \*1 (D. Nev. Sept. 21, 2011). Thus, Defendants' retroactivity and due process  
13 arguments do not provide any basis for reconsideration.

14 Perhaps recognizing that they fail to present any new legal arguments or demonstrate that  
15 the Court's ruling was clearly erroneous, Defendants now for the first time allege that they  
16 executed the Employment Agreements believing that the Non-Competition Clauses were wholly  
17 unenforceable and not subject to bluelining. But this factual allegation is supported by no new  
18 evidence.<sup>2</sup> Relief from judgment on the basis of newly discovered evidence is warranted only  
19 when the moving party shows that the evidence is truly-newly discovered and could not have been  
20 discovered through due diligence. *Wells Enterprises v. Wells Bloomfield, LLC*, No. 3:11-CV-  
21 00246-RCJ, 2013 WL 5663182, at \*4 (D. Nev. Oct. 15, 2013) (citing *United States v. Westlands*  
22 *Water Dist.*, 134 F.Supp.2d 1111, 1130 n. 45 (E.D.Cal.2001); *Coastal Transfer Co. v. Toyota*  
23 *Motor Sales, U.S.A.*, 833 F.2d 208, 211 (9th Cir.1987)). "[I]f the evidence was in the possession  
24 of the party before the judgment was rendered, it is not newly discovered." *Lauren v. Nellis*, No.  
25 2:10-CV-01544-KJD-PAL, 2013 WL 621935, at \*2 (D. Nev. Feb. 19, 2013).

26  
27 <sup>2</sup> As explained further in Section II.E, Defendants' factual assertion does not even qualify as evidence, much less new  
28 evidence, given that Defendants failed to introduce any evidence supporting this assertion in the Motion or any of  
their prior Court filings.

1 Here, there is no doubt that if Defendants actually harbored the belief that the Non-  
2 Competition Clauses were void at the time they executed them, then they had that knowledge prior  
3 to filing their Opposition to the Motion for Preliminary Injunction and it is not new evidence. The  
4 mere fact that Defendants failed to make any such factual allegation in their initial filings does not  
5 make it new evidence.

6 Thus, Defendants fail to satisfy their heavy burden of proving reconsideration is merited  
7 and there is no basis for this Court to revisit its prior decision. To the extent the Court does indulge  
8 Defendants' request, however, the arguments outlined below make clear that this Court correctly  
9 applied NRS 613.195(5), adhered to the plain language of the Employment Agreements, and  
10 properly entered a preliminary injunction in this matter.

11 **B. The Court Properly Applied NRS 613.195(5) Retroactively Because it Is a Remedial  
12 and Procedural Statute**

13 Defendants once again argue that NRS 613.195(5) should only apply prospectively because  
14 newly enacted statutes are generally presumed to apply prospectively unless there is clear  
15 legislative intent to the contrary. Motion at p. 11; Opposition to Motion for Preliminary Injunction,  
16 on file herein, at p. 14. This argument, however, suffers from the same two fatal flaws as when it  
17 was initially presented: (1) it fails to take into account the full text of the presumption, which  
18 provides "[t]here is a general presumption in favor of prospective application of statutes unless the  
19 legislature clearly manifests a contrary intent *or unless the intent of the legislature cannot*  
20 *otherwise be satisfied,*" *McKellar v. McKellar*, 110 Nev. 200, 203, 871 P.2d 296, 298 (1994)  
21 (emphasis added) and (2) the presumption in favor of prospective application of statutes "does not  
22 apply to statutes that do not change substantive rights and instead relate solely to remedies and  
23 procedure." *Valdez v. Employers Ins. Co. of Nevada*, 123 Nev. 170, 179–80, 162 P.3d 148, 154–  
24 55 (2007). In cases where the statute relates to remedies and procedure, "a statute will be applied  
25 to any cases pending when it is enacted." *Id.* This principle was stated over a century ago by the  
26 Nevada Supreme Court in *Truckee River General Electric Co. v. Durham*, 38 Nev. 311, 149 P. 61  
27 (1915), and was recently reiterated in *Holdaway-Foster v. Brunell*, 130 Nev. 478, 330 P.3d 471  
28 (2014).

1 In *Brunell*, the Nevada Supreme Court was tasked with determining whether the Full Faith  
2 and Credit for Child Support Orders Act, enacted in 1994, could be applied retroactively to orders  
3 entered in 1989 and 1992. *Brunell*, 130 Nev. at 482. The Nevada Supreme Court began its analysis  
4 by noting the general rule that “courts apply statutes prospectively unless the legislature clearly  
5 manifests an intent for retroactive application or the statute’s purpose cannot otherwise be  
6 satisfied.” *Id.* at 473. It then also noted the principle that “courts should apply statutes  
7 retroactively when the statute affects only remedies and procedure and does not create new  
8 substantive rights.” *Id.*

9 Following the recitation of these general principles, the Court observed that the “Act is  
10 silent as to whether it applies retroactively” and, as such, stated it “must look to the purposes  
11 behind the Act, which we conclude mandate retroactive application.”<sup>3</sup> *Id.* The Court determined  
12 that the Act had three purposes: (1) to facilitate enforcement of orders among states; (2) to  
13 discourage continuing interstate controversies over child support; and (3) to avoid jurisdictional  
14 competition and conflict among state court orders. *Id.* In addressing the first purpose, the Court  
15 concluded that a “strict prospective application would frustrate the Act’s purpose because the very  
16 issues that Congress designed the Act to resolve would persist” regarding orders entered prior to  
17 the Act’s enactment. *Id.* In addressing the second purpose, the Court found that, without  
18 retroactivity, enforcing orders would be made “more difficult because orders entered before the  
19 Act’s effective date would be subject to different procedural rules than those entered after that  
20 date.” *Id.* Lastly, in addressing the third purpose, the Court concluded that the Act was “remedial  
21 in nature because it was designed to assist in collecting past child support arrears.” *Id.* Based on  
22 these conclusions, the Court found that the “Act must be retroactively applied.” *Id.*

23 The reasoning applied by the Nevada Supreme Court in *Brunell* applies equally here to  
24 NRS 613.195(5).

25  
26  
27 <sup>3</sup> This statement by the Nevada Supreme Court in *Brunell* clearly dispels Defendants’ conclusory argument that the  
28 statute must be applied only prospectively because it is silent as to whether it applies retroactively. Motion at p. 11.

1           **1. Failing To Apply NRS 613.195(5) Retroactively Would Create an Absurd**  
2           **Result that Defeats the Statute’s Purpose**

3           A strictly prospective application of NRS 613.195(5) would undoubtedly frustrate the  
4           statute’s purpose of enforcing noncompete agreements. Indeed, if NRS 613.195(5) were not  
5           applied in this case, the exact problem the Legislature sought to fix—Courts wholly nullifying  
6           validly bargained for noncompete agreements due to one unreasonable provision—would persist.  
7           This would produce an unacceptable, absurd result.<sup>4</sup> *See Anthony Lee R. v. State*, 113 Nev. 1406,  
8           1414, 952 P.2d 1, 6 (1997) (“statutory language should not be read to produce absurd or  
9           unreasonable results.”); *see also Las Vegas Police Protective Association Metro, Inc. v. District*  
10          *Court*, 122 Nev. 230, 130 P.3d 182 (2006) (citing *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648,  
11          730 P.2d 438, 441 (1986)) (a court should not apply a statute in a manner that would “violate[] the  
12          spirit of the act” or produce “absurd or unreasonable results”); *State v. Glusman*, 98 Nev. 412, 425,  
13          651 P.2d 639, 648 (1982) (“The words of a statute should be construed, if reasonably possible, so  
14          as to accommodate the statutory purpose”); *Desert Valley Water Co. v. State*, 104 Nev. 718, 720,  
15          766 P.2d 886, 887 (1988) (“When interpreting a statute, we resolve any doubt as to legislative  
16          intent in favor of what is reasonable, as against what is unreasonable”).

17           **2. NRS 613.195(5) Must Be Applied Retroactively To Ensure Uniform**  
18           **Application of the Law**

19          Second, the Nevada Supreme Court’s concern regarding different agreements being  
20          subjected to different procedural rules would be realized if NRS 613.195(5) were not applied  
21          retroactively. For example, an employee who signed a noncompete in December 2016 and  
22          terminated his employment in November 2018 (Defendants) would be subjected to a wholly  
23          different set of procedural mechanisms than an employee who signed a noncompete in December  
24          2017 and terminated his employment in November 2018, despite the fact that both prior employers  
25          could have filed lawsuits seeking enforcement of the respective noncompete agreements in  
26          February 2019. Likewise, the employer in such circumstance would be entitled to entirely

27          <sup>4</sup> As explained in greater detail in Section II.D, the result would be especially absurd here because the parties explicitly  
28          agreed in the Employment Agreements that a court *shall* blue-line any unreasonable provisions of the Non-Competition  
        Clauses. Exs. 1-A and 1-B at Sections 2.8.3, 2.10.

1 different remedies in each case notwithstanding that the substantive rights of the parties—the  
2 employer’s right to enforce its agreement and the employees’ rights not to be subject to  
3 unreasonable restrictions—would be identical. These disparate results are the exact unjust  
4 outcome the *Brunell* Court sought to avoid and explained should favor retroactive application of  
5 statutes concerning procedures and remedies.

6 **3. NRS 613.195(5) Is a Remedial and Procedural Statute**

7 Similar to the statute at issue in *Brunell*, NRS 613.195(5) is remedial in nature and only  
8 affects procedure and remedies. As such, it must be applied retroactively to the Non-Competition  
9 Clauses at issue.

10 **a. NRS 613.195(5) Is a Remedial Statute**

11 “[A] remedial statute is defined ‘as one designed to cure a mischief or remedy a defect in  
12 existing laws, common or statutory, however arising.’” *Nix v. James*, 7 F.2d 590, 592 (9th Cir.  
13 1925); *see also* 73 Am. Jur. 2d Statutes § 7 (citing *Kentucky Ins. Guar. Ass’n v. Jeffers ex rel.*  
14 *Jeffers*, 13 S.W.3d 606 (Ky. 2000)) (“Legislation which has been regarded as ‘remedial’ in its  
15 nature includes statutes which abridge superfluities of former laws, remedying defects therein, or  
16 mischiefs thereof, whether the previous difficulties were statutory or a part of the common law.”).  
17 When construing a remedial statute, a court should “consider the preexisting state of the law and  
18 what ‘mischief’ Congress intended to remedy when it enacted the remedial statute.” *Khatib v. Cty.*  
19 *of Orange*, 639 F.3d 898, 906–07 (9th Cir. 2011). This is because “it is the business of the judges  
20 so to construe the act as to suppress the mischief and advance the remedy.” *Id.*; *see also Alexander*  
21 *v. Archer*, 21 Nev. 22, 24 P. 373, 375 (1890) (“There are two points to be considered in the  
22 construction of all remedial statutes—the mischief and the remedy; and it is the duty of courts so  
23 to construe acts of the legislature as to suppress the mischief and advance the remedy.”).

24 Here, the legislative history of NRS 613.195(5) clearly reveals that the statute was designed  
25 to cure the defects of *Golden Road* by requiring courts to blueline unreasonable provisions in  
26 noncompete agreements. Indeed, the *Golden Road* decision was singled out as incorrect and the  
27 impetus behind NRS 613.195(5). *See* Senate Committee on Commerce, Labor and Energy May  
28

1 24, 2017 Minutes at p. 15 (“a specific lawsuit came forth in which an entire noncompete agreement  
2 was thrown out because one portion of it was excessive. Section 1, subsection 5 would allow a  
3 court to keep the good parts of a noncompete agreement and toss out or renegotiate the excessive  
4 parts”)

5 Defendants try to trivialize this language by noting that the provisions of NRS 613.195(5)  
6 were not included in the original text of AB 276, but this argument is specious as it is irrelevant  
7 when the final language of NRS 613.195(5) was introduced.<sup>5</sup> Motion at pp. 6-7. All that matters  
8 is that NRS 613.195(5) was designed to suppress the “mischief” of wholly voiding otherwise valid  
9 noncompete agreements simply because a single provision of the agreement is deemed  
10 unreasonable.<sup>6</sup> See Senate Committee on Commerce, Labor and Energy May 24, 2017 Minutes at  
11 p. 15. Thus, NRS 613.195(5) undoubtedly is a remedial statute that this Court correctly applied  
12 retroactively.

13 **b. NRS 613.195(5) Is Wholly Concerned with Procedures and Remedies**

14 In addition to being a remedial statute, NRS 613.195(5) also is procedural because it merely  
15 identifies the proper procedure district courts should implement when an employer seeks a remedy  
16 for its prior employee’s breach of a noncompete agreement. This is confirmed by the plain  
17 language of the statute, which begins by noting this subsection only applies “[i]f an employer  
18 brings an action to enforce a noncompetition covenant.” *Id.* This prefatory clause signals that the  
19 section is aimed at informing district courts of the procedure to follow and what remedy to grant  
20 when asked to enforce a noncompete agreement. The remainder of NRS 613.195(5) then lays out  
21 the procedure, which only comes into effect upon a determination that a provision in the  
22  
23

24 \_\_\_\_\_  
25 <sup>5</sup> Defendants seem to treat NRS 613.195(5) as being a few meaningless words injected into a preexisting statute rather  
26 than recognizing that NRS 613.195(5) was a brand new, standalone statute that was created in response to the *Golden*  
27 *Road* decision.

28 <sup>6</sup> Defendants also claim that Misty Grimmer inaccurately represented that courts had been blue penciling noncompete  
agreements for decades. Motion at p. 8. As explained in Section II.C, however, Ms. Grimmer’s statement was accurate  
given the Nevada Supreme Court’s lengthy history of rewriting terms of unreasonable noncompete agreements in the  
context of preliminary injunctions enforcing noncompete agreements.



1 noncompete is unreasonable, providing that “the court *shall* revise the covenant to the extent  
2 necessary and enforce the covenant as revised.”<sup>7</sup> *Id.*

3 What NRS 613.195(5) does not do is change any substantive aspects of the law governing  
4 noncompete agreements. Prior to the enactment of NRS 613.195(5), Nevada law required  
5 restrictions in noncompete agreements to be reasonable. *See, e.g., Hansen v. Edwards*, 83 Nev.  
6 189, 192, 426 P.2d 792, 793 (1967) (“The medical profession is not exempt from a restrictive  
7 covenant provided the covenant meets the tests of reasonableness”); *Jones v. Deeter*, 112 Nev.  
8 291, 296, 913 P.2d 1272, 1275 (1996) (“The amount of time the covenant lasts, the territory it  
9 covers, and the hardship imposed upon the person restricted are factors for the court to consider in  
10 determining whether such a covenant is reasonable”); *Ellis v. McDaniel*, 95 Nev. 455, 458–59,  
11 596 P.2d 222, 224 (1979) (“There is no inflexible formula for deciding the ubiquitous question of  
12 reasonableness”). Following the enactment of NRS 613.195(5), courts are still directed to  
13 determine whether or not restrictions in a noncompete agreement are reasonable. *See, e.g., Shores*  
14 *v. Glob. Experience Specialists, Inc.*, 134 Nev. Adv. Op. 61, 422 P.3d 1238, 1241 (2018) (“In order  
15 to establish that a party is likely to succeed in enforcing a noncompete agreement for the purpose  
16 of a preliminary injunction, the court must look to whether the terms of the noncompete agreement  
17 are likely to be found reasonable at trial . . . . We consider (1) the duration of the restriction, (2)  
18 the geographical scope of the restriction, and (3) the hardship that will be faced by the restricted  
19 party in determining whether a noncompete agreement is reasonable.”)

20 Thus, at all times a former employee has had the right not to be subjected to an  
21 unreasonable restriction in a noncompete clause. That is the substantive right Defendants were  
22 entitled to and that right remains unchanged by NRS 613.195(5) and this Court’s decision. NRS  
23 613.195(5) simply outlines a procedure which district courts must follow to ensure that Nevada’s  
24  
25

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26 <sup>7</sup> NRS 613.195(5) also requires that the noncompete agreement be supported by consideration. This is a requirement  
27 of all contracts, including noncompete agreements, and therefore does not alter or change the substantive rights of the  
28 parties. Furthermore, Defendants have conceded that there was sufficient consideration for the Non-Competition  
Clauses in this matter.

1 goal of enforcing noncompete agreements is implemented and identifies the remedy that a plaintiff  
2 is entitled to when its right to have a contract enforced is breached.

3 **C. The Nevada Supreme Court Has Engaged in Bluelining**

4 The Nevada Supreme Court's prior decisions concerning preliminary injunctions enforcing  
5 noncompete agreements further evidences the likelihood of it affirming this Court's correct  
6 decision that NRS 613.195(5) should be applied retroactively. For example, in *Hansen v.*  
7 *Edwards*, 83 Nev. 189, 426 P.2d 792 (1967),<sup>8</sup> a doctor appealed the district court's entry of  
8 preliminary injunctive relief precluding him from practicing in the field of surgical chiropody  
9 within a radius of 100 miles of Reno for an indefinite period. *Hansen*, 83 Nev. at 191. The Nevada  
10 Supreme Court found both the geographic and temporal restrictions of the noncompete covenant  
11 to be unreasonable. *Id.* at 193. Rather than vacate the preliminary injunction and deem the  
12 noncompete agreement entirely void, the Nevada Supreme Court instead modified the preliminary  
13 injunction such that it barred the former employee from practicing within the city limits of Reno  
14 for a period of one year. *Id.*

15 Similarly, in *Ellis v. McDaniel*, 95 Nev. 455, 596 P.2d 222 (1979), a specialist in orthopedic  
16 surgery appealed a preliminary injunction enforcing a noncompete agreement that precluded him  
17 from practicing medicine within five miles of the city limits of Elko for a period of two years.  
18 *Ellis*, 95 Nev. at 456-57. The Nevada Supreme Court determined that the geographic and temporal  
19 restrictions were reasonable, but the attempt to prohibit the former employee from practicing  
20 orthopedic surgery was unreasonable because the former employer did not engage in orthopedic  
21 surgery. *Id.* at 459. Thus, the Nevada Supreme Court modified the preliminary injunction to  
22 enforce the noncompete with a small carve-out for the specialty of orthopedic surgery. *Id.* Again,  
23 rather than vacate the preliminary injunction and deem the entire noncompete agreement void  
24 because of the offending provision, the Nevada Supreme Court instead modified the terms of the  
25 preliminary injunction and enforced a modified version of the noncompete agreement. *Id.*

26  
27 <sup>8</sup> Notably, this is one of the cases Defendants cite for the proposition that blue penciling has been prohibited in Nevada  
28 for over forty years. Motion at p. 8. As evidenced herein, this case demonstrates the exact opposite and shows that  
the Nevada Supreme Court has been willing to modify the terms of noncompete agreements for over forty years.

1 Less than one year ago, the Nevada Supreme Court reaffirmed its past precedent and noted  
2 that it still was able “to modify preliminary injunctions enforcing noncompete agreements after  
3 finding the agreements to be unreasonable.” *Shores v. Global Experience Specialists, Inc.*, 422  
4 P.3d 1238, n.2, 134 Nev. Adv. Op. 61 (2018) (citing *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev.  
5 Adv. Op. 49, 376 P.3d 151, 156 (2016)).<sup>9</sup>

6 Thus, the Nevada Supreme Court has repeatedly indicated its willingness to enforce  
7 noncompete agreements by modifying the scope of a preliminary injunction and the terms of the  
8 underlying noncompete agreements, and would likely affirm this Court’s correct decision to apply  
9 NRS 613.195(5) retroactively to maintain its precedent and support the Legislature’s intent to  
10 enforce noncompete agreements.

11 **D. The Parties Legitimately Contracted Around *Golden Road***

12 Even if NRS 613.195(5) did not apply retroactively—an untenable position as outlined  
13 above and in the initial briefing—reconsideration still would be unwarranted because the parties  
14 specifically contracted around the default rule of *Golden Road* to allow this Court to blueline the  
15 Non-Competition Clauses. The parties explicitly and unambiguously agreed and requested:

16 If any provision of subdivision of this Agreement, including, but not limited to, the  
17 time or limitations specified in or any other aspect of the restraints imposed under  
18 Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be  
19 unreasonable or otherwise unenforceable, any such portion shall nevertheless be  
20 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.

21 Exs. 1-A and 1-B at Section 2.10.

22 Defendants attempt to sidestep this unambiguous contractual language by asserting that  
23 parties cannot contract in violation of public policy, but this argument must fail here where the  
24 contractual terms are identical to Nevada’s public policy as set forth in NRS 613.195(5), and courts  
25 have consistently affirmed parties’ contractual provisions altering and avoiding default rules. *See*,

26  
27 <sup>9</sup> Even the *Golden Road* Court noted that an order improperly granting a preliminary injunction can be modified to  
28 render the terms of a noncompete agreement reasonable. *See Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op.  
49, 376 P.3d 151, 156 (2016).

1 *e.g., Benchmark Ins. Co. v. Sparks*, 127 Nev. 407, 412, 254 P.3d 617, 621 (2011); *Farmers Ins.*  
2 *Group v. Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994). In fact, courts have routinely held  
3 that parties can validly contract around default procedural rules. *See Holcomb Condo.*  
4 *Homeowners' Ass'n, Inc. v. Stewart Venture*, 300 P.3d 124, 128 (Nev. 2013); *Volt Information*  
5 *Sciences v. Board of Trustees*, 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989); *Goldman,*  
6 *Sachs & Co. v. City of Reno*, 747 F.3d 733, 741 (9th Cir. 2014); *LightGuard Sys., Inc. v. Spot*  
7 *Devices, Inc.*, 281 F.R.D. 593, 607 (D. Nev. 2012). Thus, the parties could, and did, validly  
8 contract around the procedural rules identified in *Golden Road* thereby allowing this Court to  
9 blueline the Non-Competition Clauses.

10 Furthermore, Defendants' arguments concerning public policy ignore the very language  
11 from *Golden Road* that they cite. In an attempt to highlight that the *Golden Road* "ruling was  
12 based on an application of Nevada's law of public policy," Defendants provide a block quote from  
13 *Golden Road* wherein the Nevada Supreme Court explained that its reluctance to blueline was  
14 premised on its concern about "the possibility of trampling the parties' contractual intent." *Golden*  
15 *Road*, 376 P.3d at 158. But here, the parties specifically agreed and intended that the Court would  
16 blueline the Non-Competition Clauses if it found any portion unreasonable. *See Exs. 1-A and 1-*  
17 *B at Section 2.10.* As a result, Section 2.10 does not violate public policy, but rather signals that  
18 the parties validly contracted around the default rule of *Golden Road*.

19 **E. The Court Must Reject Defendants' Arguments Concerning Their Secret and**  
20 **Unsupported Belief that the Non-Competition Clauses Were Wholly Unenforceable**  
**and Not Subject to Bluelining<sup>10</sup>**

21 In a desperate attempt to avoid the plain language of the Non-Competition Clauses and  
22 NRS 613.195(5)'s proper, retroactive application, Defendants repeatedly argue that their due  
23 process rights have been violated by the Court's correct decision to adhere to NRS 613.195(5) and  
24 despite their own express consent to bluelining. Defendants premise this argument solely on the  
25

26 <sup>10</sup> Defendants repeatedly ask this Court to rely on undocumented, implicit beliefs they supposedly held at the time of  
27 contracting. These covert beliefs, however, must be deemed irrelevant because the Employment Agreements contain  
28 an integration clause prohibiting Defendants from relying on anything not explicitly contained in the Employment  
Agreements. Exs. 1-A and 1-B at Section 11.11.

1 unsupported assertion that they executed the Employment Agreements believing that the Non-  
2 Competition Clauses were wholly unenforceable and not subject to bluelining. Motion at pp. 3, 8,  
3 9, 10. This outlandish argument must be rejected not only because it lacks any credibility, but also  
4 because it would be counter to public policy and the balancing of interests to withdraw a  
5 preliminary injunction at the request of Defendants who are asserting that they fraudulently  
6 induced Fielden Hansen into executing the governing Employment Agreements. *See* Exs. 1-A and  
7 1-B at Section 2.10 (“It is understood by and between the parties hereto that the covenants set forth  
8 in Sections 2.8 and 2.9 of this Agreement are essential elements of this Agreement, and that, but  
9 for the agreement of Physician to comply with such covenants, the Practice would not have agreed  
10 to enter into this Agreement.”).

11 Notably, despite having every opportunity to submit evidence in support of such a position,  
12 Defendants offer this Court nothing to support their unbelievable premise.<sup>11</sup> Tellingly, neither of  
13 the Defendants submitted a declaration, either in the original briefing or in support of the Motion,  
14 stating that they signed the Employment Agreements knowing that the Non-Competition Clauses  
15 were wholly unenforceable. As a result, the Court cannot accept Defendants’ unsupported factual  
16 claim. *See* EDCR 2.21.

17 Furthermore, it is impossible to violate Defendants’ alleged due process rights in this  
18 matter because they had notice regarding the Employment Agreements’ express provision  
19 requiring the Court to blueline provisions such as the Non-Competition Clauses if it found any  
20 part unreasonable. The cornerstones of due process are notice and an opportunity to respond.  
21 *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Here, both of these elements are  
22 readily satisfied. At the time they entered into the Employment Agreements, Defendants were put  
23 on notice that they were agreeing to allow a court to blueline any offending terms of the  
24

25  
26 <sup>11</sup> Defendants also offer no support for their baseless claim that the parties had “mutual expectations” that the Non-  
27 Competition Clauses were wholly unenforceable and not subject to bluelining. Motion at p. 8. As demonstrated by  
28 the plain language of the Employment Agreements and the declaration of W. Bradford Isaacs, Fielden Hanson believed  
that the Non-Competition Clauses were reasonable and enforceable and, even if they were not, a court would be  
required to blueline them to render them reasonable and enforceable. *See* Exhibit 1 at ¶ 4.

1 Employment Agreements, including the Non-Competition Clauses. The Employment Agreements  
2 were unmistakably clear, providing:

3 If any provision of subdivision of this Agreement, including, but not limited to, the  
4 time or limitations specified in or any other aspect of the restraints imposed under  
5 Sections 2.8 and 2.9 is found by a court of competent jurisdiction to be  
6 unreasonable or otherwise unenforceable, any such portion shall nevertheless be  
7 enforceable to the extent such court shall deem reasonable, and, in such event, it is  
8 the parties' intention, desire and request that the court reform such portion in order  
9 to make it enforceable. In the event of such judicial reformation, the parties agree  
10 to be bound by Sections 2.8 and 2.9 as reformed in the same manner and to the  
11 same extent as if they had agreed to such reformed Sections in the first instance.

12 Exs. 1-A and 1-B at Section 2.10. Defendants had the opportunity to review and reject the Non-  
13 Competition Clauses, but instead voluntarily assented to them, including the provisions permitting  
14 a court to blue-line and modify the Non-Competition Clauses. *See* Opposition to Motion for  
15 Preliminary Injunction, on file herein, at p. 5 (noting that Defendants "chose to execute the  
16 Agreement"). Thus, Defendants' due process argument must be rejected and cannot serve as a  
17 basis for reconsideration.

### 18 III.

### 19 CONCLUSION

20 Based on the foregoing, Fielden Hansen respectfully requests that this Court deny the  
21 Motion in its entirety.

22 DATED this 7<sup>th</sup> day of May, 2019.

23 **DICKINSON WRIGHT PLLC**

24 

25 MICHAEL N. FEDER

26 Nevada Bar No. 7332

27 GABRIEL A. BLUMBERG

28 Nevada Bar No. 12332

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 7th day of May, 2019, she caused a copy of **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** 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 T. O'Malley, Esq.  
**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
Email: mal@h2law.com  
Email: rto@h2law.com  
*Attorneys for Defendants*

/s/ Callie M. Bind  
An Employee of Dickinson Wright PLLC

# EXHIBIT 1



**DECLARATION OF W. BRADFORD ISAACS, M.D. IN SUPPORT OF PLAINTIFF  
FIELDEN HANSON ISAACS MIYADA ROBISON YEH, LTD.'S OPPOSITION TO  
MOTION FOR RECONSIDERATION**

I, W. Bradford Isaacs, M.D., do hereby state and declare as follows:

1. I am the President of Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson"), and make this Declaration in support of Fielden Hanson's Opposition to Motion for Reconsideration.


2. I have personal knowledge of the matters set forth herein and know them to be true except for matters set forth herein on information and belief, and as to those matters, I believe them to be true. If called upon to testify, I could and would do so.

3. Scott Duong and Annie Duong began working for Fielden Hanson in December 2016. As a bargained-for part of their employment, Scott Duong and Annie Duong each signed an Employment Agreement inclusive of non-compete and non-solicitation provisions, as well as Fielden Hanson's Clinical Code of Conduct. A true and correct copy of Scott Duong's Employment Agreement is attached hereto as Exhibit 1-A. A true and correct copy of Annie Duong's Employment Agreement is attached hereto as Exhibit 1-B.

4. At the time Fielden Hanson entered into the Employment Agreements, and at all times thereafter, Fielden Hanson believed the non-compete and non-solicitation clauses contained in the Employment Agreements were reasonable and enforceable. Additionally, in the event that any court determined that any provision in the non-compete or non-solicitation clauses was unreasonable or unenforceable, it was Fielden Hanson's belief and intention that, in accordance with Section 2.10 of the Employment Agreements, such court would revise the non-compete and/or non-solicitation clauses in order to render them reasonable and enforceable.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6 day of May, 2019.

  
W. BRADFORD ISAACS, M.D.

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# EXHIBIT 1-A

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 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Scott Vinh Duong, M.D. ("Physician").

WITNESSETH:

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

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

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

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

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

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

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

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

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

1. Engagement.

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

2. Covenants of Physician.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

#### Exceptions.

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

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

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

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

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

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

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

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

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

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

### 3. Covenants of the Practice.

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

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

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

4. Professional Fees.

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

5. Financial Arrangement.

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

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

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

6. Term and Termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Status of Physician as Employee.

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

8. Status of Physician.

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

9. Suspension.

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



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

10. Professional Liability Insurance.

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

11. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 A. Workman  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PHYSICIAN:

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

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Schedule 6.2.2

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

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

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

Exhibit A

USAP NEVADA COMPENSATION PLAN

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

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

Subject to established company guidelines and policies, Physician-Partner Compensation shall be paid at least monthly on estimated or "draw" basis to individual Physician-Partners and Partner-Track Physicians in each Nevada Division as set forth in the Compensation Plan for each Nevada Division attached hereto as Appendix A, subject to the Clinical Governance Board and USAP and the quarterly allocation reconciliation process described below. Each Physician-Partner and Partner-Track Physician will also be entitled to receive a quarterly payment payable as soon as reasonably practicable but in no event later than the thirtieth (30<sup>th</sup>) 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.

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Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A  
to Exhibit A

## Exhibit B

### Clinician Code of Conduct

#### Introduction

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

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

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

#### Standards of Conduct

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

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

Exhibit B

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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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# EXHIBIT 1-B

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 2<sup>nd</sup> day of December, 2016, and is effective as of the "Effective Date" as defined in Section 11.13 below, by and between FIELDEN, HANSON, ISAACS, MIYADA, ROBISON, YEH, LTD. (d/b/a Anesthesiology Consultants, Inc.), a Nevada professional corporation (the "Practice"), and Annie Lynn Penaco Duong, M.D. ("Physician").

WITNESSETH:

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

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

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

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

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

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

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

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

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

1. Engagement.

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

2. Covenants of Physician.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

#### Exceptions.

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

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

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

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

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

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

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

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

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

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

### 3. Covenants of the Practice.

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

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

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

4. Professional Fees.

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

5. Financial Arrangement.

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

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

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

6. Term and Termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

7. Status of Physician as Employee.

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

8. Status of Physician.

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

9. Suspension.

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

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

10. Professional Liability Insurance.

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

11. Miscellaneous.

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

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

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

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

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

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

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

The Practice:	Anesthesiology Consultants, Inc. P.O. Box 401805 Las Vegas, NV 89140-1805 Attention: President
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Physician:	Annie Lynn Penaco Duong, M.D. 11350 Blemont Lake Dr., Unit 101 Las Vegas, NV 89135
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or to such other address, and to the attention of such other person or officer as either party may designate, with copies thereof to the respective counsel thereof, all at the address which a party may designate by like written notice.

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

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

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

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

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

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

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

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

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

PRACTICE:

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

By: *Jason M. Workman*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PHYSICIAN:

*Annie Lynn 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<sup>th</sup>) day of the calendar month following the end of each quarter (which payment shall subtract the draws previously received during the quarter). Notwithstanding the foregoing, in no event shall the estimate or draw in any quarterly period exceed a pro-rated portion of 85% of the physician's projected taxable income for such period, subject to the Clinical Governance Board.

The quarterly payment shall be calculated as follows:

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



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

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

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

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

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

Appendix A  
to Exhibit A

(Applicable Nevada Division Compensation Plan)

Appendix A  
to Exhibit A

## Exhibit B

### Clinician Code of Conduct

#### Introduction

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

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

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

#### Standards of Conduct

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

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

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

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

#### Reporting Violations and Discipline

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

#### Amendment

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

*Steven D. Grierson*

BCO

DISTRICT COURT

CLARK COUNTY, NEVADA

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff(s),

vs.

SCOTT VINH DUONG, M.D., et al.,

Defendant(s).

CASE NO. A-19-789110-B  
DEPT. NO. XIII

**BUSINESS COURT ORDER**

This BUSINESS COURT ORDER ("Order") is entered to reduce the costs of litigation, to assist the parties in resolving their disputes if possible, and, if not, to reduce the costs and difficulties of discovery and trial. This Order may be amended or modified by the Court upon good cause shown, and is made subject to any Orders that have heretofore been entered herein. This case is exempt from arbitration.

IT IS HEREBY ORDERED:

**I. MANDATORY RULE 16 CONFERENCE**

A. A mandatory Rule 16 conference with the Court and counsel/parties in proper person will be held on May 28, 2019 at 3:15 p.m.

B. The purpose of this conference is to expedite settlement or other appropriate disposition of the case. Counsel/parties in proper person must be prepared to discuss the following:

(1) status of 16.1 settlement discussions and a review of possible court assistance;

RECEIVED  
MAY 08 2019

CLERK OF THE COURT

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

00682

- 1  
2 (2) alternative dispute resolution appropriate to this case;  
3 (3) simplification of issues;  
4 (4) a summary of discovery conducted to date and the nature and timing of all  
5 remaining discovery;  
6  
7 (5) an estimate of the volume of documents and/or electronic information  
8 likely to be the subject of discovery in the case from parties and nonparties and whether there  
9 are technological means, including, but not limited to, production of electronic images rather  
10 than paper documents and any associated protocol, that may render document discovery more  
11 manageable at an acceptable cost;  
12  
13 (6) identification of any and all document retention/destruction policies  
14 including electronic data;  
15  
16 (7) whether the appointment of a special master or receiver is necessary and/or  
17 may aid in the prompt disposition of this action;  
18  
19 (8) any special case management procedures appropriate to this case;  
20 (9) trial setting; and  
21 (10) other matters as may aid in the prompt disposition of this action.

22 C. Trial or lead counsel for all parties are required to attend the conference unless  
23 excused by the Court.

24 D. Parties desiring a settlement conference shall so notify the court at the setting.

25 E. Following the conference, the Court will issue a combined Order pursuant to  
26 NRCP 16(e) and EDCR 2.55(b) and 2.60.

F. The Plaintiff is responsible for serving a copy of this Order upon counsel for all parties who have not formally appeared in this case as of the date of the filing of this order.

## II. PRETRIAL MOTIONS

A. Any requests for injunctive relief must be made with notice to the opposing party unless extraordinary circumstances exist. Any agreement to consolidate the trial on the merits with the preliminary injunction hearing pursuant to NRCP 65(a)(2) shall be reflected in a stipulation submitted to the Court for its consideration or spread on the minutes and approved by the Court at the outset of the hearing.

B. With the exception of motions in limine (see below), any motions which should be addressed prior to trial – including, without limitation, motions for summary judgment – shall be served, filed and scheduled for hearing as set forth in the applicable Scheduling Order or other Order. Except upon a showing of unforeseen extraordinary circumstances, the Court will not shorten time for the hearing of any such motions.

C. Motions in limine shall be served, filed and scheduled as set forth in the Trial Order or other applicable order. Except upon a showing of unforeseen extraordinary circumstances, the Court will not shorten time for the hearing of any such motions.

### III. DISCOVERY

A. Discovery disputes in this matter will be handled by the District Court Judge rather than the Discovery Commissioner.

B. A continuance of trial does not extend the deadline for completing discovery.

A request for an extension of the discovery deadline, if needed, must be separately addressed

1 either by stipulation submitted to the Court for its consideration or motion.

2 C. A party objecting to a written discovery request must, in the original objection,  
3 specifically detail the reasons that support the objection, and include affidavits or other  
4 evidence for any factual assertions upon which an objection is based.  
5

6 D. Documents produced in compliance with NRCP 16.1 or in a response to a  
7 written discovery request, must be consecutively Bates stamped or numbered and  
8 accompanied by an index with a reasonably specific description of the documents.

9 E. Any party, whether in compliance with NRCP 16.1 or in a response to a written  
10 discovery request not producing all documents in its possession, custody or control, shall:

11 (1) identify any documents withheld with sufficient particularity to support  
12 a Motion to Compel; and  
13

14 (2) state the basis for refusing to produce the documents(s).

15 F. If photographs are produced in compliance with NRCP 16.1 or in a response to  
16 a written discovery request, the parties are instructed to include one (1) set of color prints  
17 (Color laser copies of sufficient clarity are acceptable), accompanied by a front page index,  
18 location depicted in the photograph (with reasonable specificity) and the date the photograph  
19 was taken. If color laser copies are deposited, any party wishing to view the original  
20 photographs shall make a request to do so with the other party.  
21

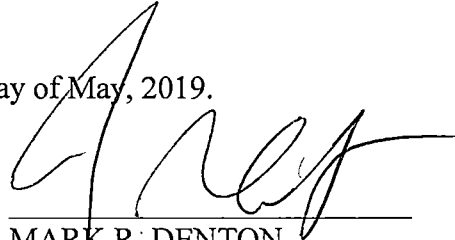
22 When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of record  
23 shall notify the District Court Judge within twenty-four (24) hours of the settlement and shall  
24 advise the Court of the identity of the party or parties who will prepare and present the judgment,  
25 dismissal, or stipulation of dismissal, which shall be presented within twenty (20) days of the  
26



1 notification of settlement.

2 Failure to comply with any provision of this Order may result in the imposition of  
3 sanctions.

4 DATED this 7<sup>th</sup> day of May, 2019.



6  
7 MARK R. DENTON  
8 DISTRICT JUDGE

9 **CERTIFICATE**

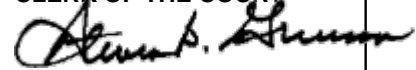
10 I hereby certify that on or about the date filed, this document was e-served or a  
11 copy of this document was placed in the attorney's folder in the Clerk's Office or mailed to:

12  
13 DICKINSON WRIGHT  
14 Attn: Michael N. Feder, Esq.

15  
16 HOWARD & HOWARD  
17 Attn: Ryan T. O'Malley, Esq.



17 LORRAINE TASHIRO  
18 Judicial Executive Assistant  
19 Dept. No. XIII



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

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

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

13 **Plaintiff,**

14 **vs.**

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

19 **Defendants.**

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

**PLAINTIFF'S OPPOSITION TO  
MOTION TO ALTER/AMEND  
JUDGMENT**

**Date of Hearing: June 10, 2019**  
**Time of Hearing: 9:00 a.m.**

20 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson") by and  
21 through its attorneys, the law firm of Dickinson Wright PLLC, hereby files its Opposition to  
22 Defendants' Motion to Alter/Amend Judgment. This Opposition is based on the following  
23 Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any  
24 oral argument the Court may entertain on this matter.

25 ...

26 ...

27 ...

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Defendants seek to avoid one of the Court's fundamental conclusions of law and injunctive  
5 remedies by claiming the Court unintentionally used the term "facilities" when it meant to use the  
6 term "physicians."<sup>1</sup> Defendants offer no evidence to support this untenable request and it must be  
7 rejected as a matter of law because it defies well-established principles of construction that  
8 preclude the requested relief.

9 The Court's minute order and Judgment—both of which already narrowed the scope of the  
10 governing non-compete agreements through bluelining—clearly provide that Defendants are  
11 enjoined from servicing both particular facilities and physicians. Had the Court only intended to  
12 limit Defendants' ability to work with certain physicians, as Defendants now suggest, the Court  
13 would have done so. Instead, it purposefully used the term facilities.

14 Thus, Defendants do not offer this Court any basis for granting them relief under NRCP  
15 59(e) and their Motion must be denied.

16 **II.**

17 **LEGAL ARGUMENT**

18 **A. Defendants Do Not Satisfy the Legal Standard for Amending a Judgment**

19 "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of  
20 law or fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest  
21 injustice,' or a 'change in controlling law.'" *AA Primo Builders, LLC v. Washington*, 126 Nev.  
22 578, 582, 245 P.3d 1190, 1193 (2010) (citing *Coury v. Robison*, 115 Nev. 84, 976 P.2d 518 (1999)).  
23 "The standard is high for a district court to grant a Rule 59(e) motion to alter or amend a judgment."

24  
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26 

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<sup>1</sup> Defendants use the words surgeon and physician interchangeably throughout their Motion, but exclusively use the  
27 term physician in their proposed revision to the Judgment. As such, Fielden Hanson uses the word physician to  
28 maintain consistency with the Court's Judgment, but its use should be given the broadest interpretation to include  
surgeons.

1 *Shoen v. Maddi's Fresian Ranch, LLC*, 419 P.3d 700, 2018 WL 2373919, \*1 (Nev. 2018)  
2 (unpublished).

3 Here, Defendants are unable to satisfy their burden of demonstrating NRCP 59(e) relief is  
4 appropriate. Indeed, Defendants do not identify any manifest error, any newly discovered  
5 evidence, any change in controlling law, or any manifest injustice that would occur absent this  
6 Court amending the judgment. Instead, Defendants simply argue that the Court should revise the  
7 Judgment because they continue to disagree with the Court's conclusions. This is not a valid basis  
8 for obtaining relief under NRCP 59(e) and therefore the Motion must be denied as a matter of law.

9 **B. The Judgment Accurately Precludes Defendants from Servicing "Facilities"**

10 Even if NRCP 59(e) provided a valid avenue for Defendants to seek relief, such relief is  
11 still unwarranted here because Defendants are inappropriately asking the Court to ignore core  
12 principles of construction and the plain language of the Court's Judgment. It is a basic tenet that  
13 written documents are construed "to give meaning to all of their parts and language" and avoid an  
14 interpretation "which would render any part thereof redundant or meaningless." *Bd. of Cty.*  
15 *Comm'rs of Clark Cty. v. CMC of Nevada, Inc.*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983) (citing  
16 *State ex rel. List v. AAA Auto Leasing*, 93 Nev. 483, 568 P.2d 1230 (1977); *Nevada State Personnel*  
17 *Division v. Hashins*, 90 Nev. 425, 529 P.2d 795 (1974)). The use of different words demonstrates  
18 an intent "to convey a different meaning for those words." *S.E.C. v. McCarthy*, 322 F.3d 650, 656  
19 (9th Cir. 2003) (citing *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17  
20 (1983)). Indeed, the decision to use different words "is a decision that is imbued with legal  
21 significance and should not be presumed to be random or devoid of meaning." *Id.* (citing *NLRB*  
22 *v. Food Fair Stores, Inc.*, 307 F.2d 3, 10 (3rd Cir.1962)). Courts are especially loathe to interpret  
23 separate words as having the same meaning "where the redundant interpretation also strains  
24 common sense." *Commodity Futures Trading Comm'n v. White Pine Tr. Corp.*, 574 F.3d 1219,  
25 1225 (9th Cir. 2009).

26 Here, the Court's minute order clearly distinguishes the term "facilities" from "physicians,"  
27 indicating that the Court intended to impose two separate restrictions. In its minute order, the  
28

1 Court stated that the injunctive relief granted is “to include declination of coverage requests from  
2 any *facilities* having an on-going relationship with USAP/Fielden Hanson.” *See* Ex. A (emphasis  
3 added). In the very next sentence, the Court indicated its awareness that the term “facilities” is not  
4 interchangeable with “physicians” by further enjoining Defendants “from inducing *facilities and*  
5 *physicians* to divert their business away from Plaintiff.” *Id.* (emphasis added). Defendants’  
6 Motion seeks to transform this sentence into precluding Defendants from inducing “physicians  
7 and physicians” from diverting business away from Plaintiff. Such an interpretation strains  
8 common sense and contravenes basic principles of law.

9 The term “facilities” must be given its meaning, which according to Merriam-Webster’s  
10 dictionary is “something (such as a hospital) that is built, installed, or established to serve a  
11 particular purpose.” *See* <https://www.merriam-webster.com/dictionary/facility>. Defendants seem  
12 to echo this definition in their proposed modification to the Judgment, wherein they define facility  
13 as “any particular hospital, surgery center, or other healthcare facility.” Motion at 7:9-11. The  
14 meaning of facilities therefore differs dramatically from the definition of a physician—a person  
15 skilled in the art of healing—and the Court should not amend its Judgment to render the term  
16 facilities meaningless, especially in this case where the non-compete agreements at issue  
17 specifically use the term facilities as opposed to the term physicians.

18 Furthermore, Defendants’ argument wholly ignores Section 8(d) and subparagraph D of  
19 the Order, which state: “Defendants are required to decline to (sic) any coverage request received  
20 from any physician or physician group that has an ongoing relationship with Fielden Hanson.”<sup>2</sup> If  
21 Defendants’ Motion is granted, the new Judgment would contain identical prohibitions in Sections  
22 8(d) and 8(e) as well as subparagraphs D and E of the Order. In doing so, the Court would be  
23 excising language directly from its minute order and replacing it with duplicative language that  
24  
25

---

26 <sup>2</sup> Defendants also request that the Court modify the Judgment to ensure it only limits Defendants from accepting work  
27 from physicians they know, or have reason to know, have any ongoing relationship with Fielden Hanson. Even though  
28 it is not required under the Employment Agreements and the Duongs already know which physicians and physician  
groups are at issue, Fielden Hansen is amenable to providing Defendants’ counsel with a list of physicians and  
physician groups to avoid any confusion.

1 already exists in the Order. There is no reason to make such an amendment, especially here where  
2 it is contrary to the Court's ruling.

3 Based on these factors, the Court must reject Defendants' baseless request to amend the  
4 Order.<sup>3</sup>


5 **III.**

6 **CONCLUSION**

7 Based on the foregoing, Fielden Hansen respectfully requests that the Court deny the  
8 Motion.

9 DATED this 21<sup>st</sup> day of May, 2019.

10 **DICKINSON WRIGHT PLLC**

11   
12 MICHAEL N. FEDER  
13 Nevada Bar No. 7332  
14 GABRIEL A. BLUMBERG  
15 Nevada Bar No. 12332  
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17 Las Vegas, Nevada 89113-2210  
18 Tel: (702) 550-4400  
19 *Attorneys for Plaintiff*

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23  
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26  
27 <sup>3</sup> In their Motion, Defendants admit that even if the Judgment is not amended they still are left with a viable alternative  
28 to continue working with certain physicians by "book[ing] their surgeries at a venue other than" the facilities that  
maintain an ongoing relationship with Fielden Hanson. Motion at 6:18-22.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 21<sup>st</sup> day of May, 2019, she caused a copy of **PLAINTIFF'S OPPOSITION TO MOTION TO ALTER/AMEND JUDGMENT** 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 T. O'Malley, Esq.  
**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
Email: mal@h2law.com  
Email: rto@h2law.com  
*Attorneys for Defendants*

/s/   
An Employee of Dickinson Wright PLLC



**RPLY**

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Ryan T. O'Malley (#12461)  
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E-Mail: mal@h2law.com; rto@h2law.com  
*Attorneys for Defendants*

**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**

**REPLY IN SUPPORT OF MOTION FOR  
RECONSIDERATION**

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 reply in support of their Motion for Reconsideration.

...

...

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

4 DATED this 21<sup>st</sup> day of May, 2019.

5  
6 HOWARD & HOWARD ATTORNEYS PLLC

7 By: /s/Ryan O'Malley  
8 Martin A. Little (#7067)  
9 Ryan T. O'Malley (#12461)  
10 3800 Howard Hughes Parkway, #1000  
11 Las Vegas, Nevada 89169  
12 *Attorneys for Defendants*  
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## **POINTS AND AUTHORITIES**

### **I.** **INTRODUCTION**

Plaintiff's contention that NRS 613.195(5) is merely procedural is undercut by a simple truth: Applying the statute directly modifies the *substantive* terms of the contract at issue in this case. That is the entire point of the parties' dispute on this issue—applying NRS 613.195(5) requires the court to modify the substance of the parties' agreement to yield an enforceable contract, whereas not applying the statute requires the Court to consider the enforceability of the terms as they are written. The Court's application of NRS 613.195(5) to the contract at issue here necessarily creates terms that differ from those to which the parties agreed, and (to the extent that the statute requires blue-lining and severability) it creates new terms that were illegal at the time that the contract was executed. The statute is not "remedial" because this dispute does not present a mere question of remedies; rather, it presents a question of the terms under which the Duongs are bound, or indeed whether they are bound at all.

In short, a statute that requires judicial redrafting of the terms of a contract is not "procedural" simply because it calls for a court to perform those substantive modifications. A statute that modifies the substance of an agreement is substantive, and it must be treated as such for purposes of evaluating retroactivity. NRS 613.195(5), if applied, substantively changes the terms of an agreement executed before its enactment; therefore, it does not apply retroactively.

### **II.** **ARGUMENT**

#### **A. The Duongs Satisfy the Requirements for Reconsideration**

The issue of retroactivity was briefed by the parties,<sup>1</sup> but it was not addressed in the Court's Order. This is understandable; the Court's attention was likely focused on the reasonableness of the terms at issue and what modifications that would be necessary to render

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<sup>1</sup> See Opp. to Mot. for Preliminary injunction at 14–15; *accord* Opp. to Motion for Reconsideration at 4:7–8.

those terms enforceable, all of which are complex problems. But the retroactivity of NRS 613.195(5) is a crucial preliminary issue, and Nevada law clearly holds that a statute does not apply retroactively unless the legislature manifests an intent that it do so. Retroactive application of NRS 613.195(5) retroactively changes the substance parties' agreement in the absence of any mandate by the legislature. The Court's initial ruling was therefore erroneous, and reconsideration is proper.

A district court may reconsider a previously decided issue if the decision was clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (affirming district court's reconsideration of prior erroneous decision). The trial court has "considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Sanders v. McLaren-Macomb*, 916 N.W.2d 305, 311 (Mich. App. 2018), *appeal denied*, 502 Mich. 940 (2018). *See also State Farm Mut. Auto. Ins. Co. v. Trujillo*, 117 N.E.3d 298, 305 (Ill. App. Ct. 2018) ("A ruling on a motion to reconsider is within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion.").

Here, the Court's initial ruling was erroneous because it mistakenly applied NRS 613.195(5) retroactively. It is therefore appropriate for the Court to reconsider that ruling. *Masonry & Tile Contractors*, 113 Nev. At 731, 941 P.2d at 489. At the very least, it is appropriate for the Court to clarify its findings on retroactivity to allow for a clear record on appeal. *Romero v. Allstate Ins. Co.*, 1 F. Supp. 3d 319, 421 (E.D. Pa. 2014) ("A motion for reconsideration . . . may be used to clarify an existing order.").

**B. NRS 613.195(5) is Substantive, Not Procedural or Remedial**

The sole purpose of NRS 613.195(5) is to modify the substance of a contract where doing so is necessary to save an otherwise unenforceable noncompete agreement. This is wholly distinguishable from a situation in which an enactment modifies only the judicial procedure for obtaining relief under a vested right, as was the case in *Holdaway-Foster v.*

*Brunell*, 130 Nev. 478, 330 P.3d 471 (2014) (holding that statute merely “provid[ing] an avenue to enforce an existing obligation” may apply retroactively).

***1. NRS 613.195(5) Modifies the Substance of Existing Contracts***

The entire purpose of NRS 613.195(5) is to change the substance of a noncompete agreement in order to render that provision enforceable under Nevada law; it has nothing to do with the procedure of enforcing such an agreement or the remedies available. “A procedural law concerns the manner and order of conducting suits or the mode of proceeding to enforce legal rights, whereas a substantive law is one that establishes the rights and duties of a party.” *See, e.g., Prospective or Retroactive Interpretation*, 2 SUTHERLAND STATUTORY CONSTRUCTION § 41:4 (7th ed.) (collecting cases); *accord State v. Barren*, 128 Nev. 337, 279 P.3d 182 (2012). NRS 613.195(5) is substantive because it requires a court to tailor the rights and duties of the parties to a non-competition agreement. The text of the enactment reads as follows:

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. [Emphasis added.]

It is therefore nonsensical to argue that NRS 613.195(5) “do[es] not change substantive rights and instead relate[s] solely to remedies and procedure.” *See* Opp. to Mot. for Reconsideration at 5:20–23 (quoting *Valdez v. Employers Ins. Co. of Nev.*, 123 Nev. 170, 179–80, 162 P.3d 148, 154–55). Changing the parties’ substantive rights under a non-competition agreement is the entire *point* of the enactment.

On the other hand, NRS 613.195(5) does not change the “manner and order of conducting suits or the mode of proceeding to enforce legal rights” under a non-competition agreement, which defines a “procedural” enactment. *See Prospective or Retroactive*

1 *Interpretation*, 2 SUTHERLAND STATUTORY CONSTRUCTION § 41:4 (7th ed.) (defining  
2 “procedural” enactments); *accord Gardner v. Gardner*, 916 P.2d 43, 46 (Kan. 1996)  
3 (“Procedure has been described as the machinery for carrying on the suit, including pleading,  
4 process, evidence, and practice, and the mode or proceeding by which a legal right is enforced,  
5 that which regulates the formal steps in an action.”). All that NRS 613.195(5) changes is the  
6 substance of the agreements themselves; the actual procedures for enforcement and the  
7 remedies available are the same as they have always been. *See generally* NRS 613.195(5).

8 Plaintiff’s argument that NRS 613.195(5) “does not . . . change any substantive aspects  
9 of the law governing noncompete agreements” is untrue and misses the point entirely. At the  
10 very least, NRS 613.195(5) changed the holding in *Golden Road v. Islam* and its antecedents to  
11 the extent that those precedents held blue-lining to be against Nevada’s public policy. But even  
12 if the abrogation of those authorities were written off as a mere “procedural” change in the law,  
13 NRS 613.195(5) purports to change the *substance of the contracts themselves* in order to make  
14 them enforceable under the remainder of Nevada law. A statute compelling a court to change  
15 the *substance* of a contract for the express purpose of binding the parties under those modified  
16 terms is a *substantive* change in the law, no matter how strenuously Plaintiff argues otherwise.

## 17 **2. *Holdaway-Foster v. Brunell* Does Not Apply to this Case**

18 Plaintiff’s reliance on *Holdaway-Foster v. Brunell* is misplaced because the statute at  
19 issue in that case was purely procedural/remedial and in no way implicated the substantive  
20 rights and obligations of the parties. 130 Nev. 478, 330 P.3d 471 (2014). *Brunell* involved the  
21 application of the federal<sup>2</sup> Full Faith and Credit for Child Support Orders Act (“FFCCSOA”),  
22 28 U.S.C.A. § 1738B, which requires state courts to enforce child support orders of other states  
23 according to their terms and limits the authority of a state court to modify child support orders  
24 issued by other states. *Id.*, 130 Nev. At 479–80; 330 P.3d at 472. The defendant in *Brunell*  
25 was subject to a valid Nevada child support order which became effective prior to the

26 <sup>2</sup> It is worth noting that the *Brunell* court was interpreting a federal enactment, which raises  
27 Supremacy Clause issues not present in this case. *See Brunell*, 130 Nev. At 481, 330 P.3d at 473.

enactment of the FFCCSOA, and was subsequently modified by a Hawaii court in contravention of the Act. The plaintiff filed a motion for a controlling order determination in a Nevada court, and the defendant argued that the FFCCSOA could not be applied retroactively to him. The Nevada Supreme Court rejected this argument, noting that the act is “remedial in nature because it was designed to assist in collecting past child support arrears,” and that it “did not create a new right, rather it provided an avenue to enforce an existing obligation.” *Brunell*, 130 Nev. At 482, 330 P.3d at 474 (citing *Ga. Dep’t of Human Res. v. Deason*, 238 Ga.App. 853, 520 S.E.2d 712, 720 (1999)). In short, the viability of the support claim at issue in *Brunell* was not at issue; all that was at issue was the appropriate jurisdiction for crafting and enforcing an order, which is a truly procedural matter. *See id.*; accord *Barren*, 128 Nev. at 342, 279 P.3d at 185 (“[S]tatutes conferring or ousting jurisdiction that speak to the power of the court rather than to the rights or obligations of the parties generally do not raise concerns about retroactivity.”).

Whereas the statute to be applied retroactively in *Brunell* settled only the procedural issue of the proper jurisdiction to enforce a valid child support order, the statute at issue in this case makes or breaks the validity of the claim itself. All parties in *Brunell* acknowledged that the support order at issue was enforceable; the only question was which court had control over the adjudication of that order. Here, if NRS 613.195(5) does not apply retroactively, then the non-compete at issue is wholly unenforceable. *See Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 159–60 (2016). If it does apply retroactively, then it is enforceable under some modified set of terms that the parties did not contemplate when they had initially entered into the agreement. NRS 613.195(5). And the question of whether and to what extent the Duongs are bound would be based entirely on an event that occurred after they had executed the agreements at issue. *See Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 820, 313 P.3d 849, 854 (2013) (“Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct

1 accordingly; settled expectations should not be lightly disrupted.”) (quoting *Landgraf v. USI*  
2 *Film Products*, 511 U.S. 244, 266, 114 S. Ct. 1483, 1497 (1994)).

3 In short, the statute in *Brunell* raised the question of where one goes to adjudicate a  
4 substantively valid claim. The statute at issue here raises the question of whether a  
5 substantively valid claim exists in the first place, as well as the nature and extent of the parties’  
6 rights and obligations should a claim exist. This neatly illustrates the difference between  
7 procedure and substance, and why NRS 613.195(5) is not a procedural statute.

8 **C. Applying the Statute Prospectively does not Produce an “Absurd Result”**

9 Plaintiff’s argument that “[a] strictly prospective application of NRS 613.195(5) would  
10 undoubtedly frustrate the statute’s purpose of enforcing noncompete agreements” is a rather  
11 glib argument in favor of the retrospective application of *any* statute. A legislative body  
12 presumably has some purpose in mind when it enacts a statute. To whatever extent due process  
13 prohibits retroactive application of that statute, the legislature’s purpose motivating its  
14 enactment is frustrated. But, as the United States Supreme Court has clearly explained, this is  
15 not a sufficient reason to assume retroactivity:

16 It will frequently be true, as petitioner and *amici* forcefully argue here, that  
17 ***retroactive application of a new statute would vindicate its purpose more fully.***  
18 ***That consideration, however, is not sufficient to rebut the presumption against***  
19 ***retroactivity.*** Statutes are seldom crafted to pursue a single goal, and  
20 compromises necessary to their enactment may require adopting means other  
21 than those that would most effectively pursue the main goal. A legislator who  
22 supported a prospective statute might reasonably oppose retroactive application  
23 of the same statute[.]

24 [\* \* \*]

25 The presumption against statutory retroactivity is founded upon sound  
26 considerations of general policy and practice, and accords with long held and  
27 widely shared expectations about the usual operation of legislation.

28 *Landgraf*, 114 S. Ct. at 1507–08 (emphasis added). Applying NRS 613.195(5) prospectively  
29 may well “frustrate the statute’s purpose of enforcing noncompete agreements.” But applying  
30 it retrospectively would frustrate “the presumption against retroactive legislation[, which] is  
31 deeply rooted in [federal constitutional] jurisprudence, and embodies a legal doctrine centuries

older than our Republic.” *Id.*, 114 S. Ct. at 1483. This presumption has been described as “[a]mong the most venerable of the [ ] [judicial] default rules,” *Tasios v. Reno*, 204 F.3d 544, 549 (4th Cir. 2000), a “time-honored presumption,” *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 946, 117 S.Ct. 1871, 138 L.Ed.2d 135 (1997), and a “rule of general application.” *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006) (citation and internal quotations omitted). Constitutional jurisprudence favors these principles over the wishes of legislative bodies.

In short, Constitutional law acknowledges that legislative purpose may sometimes be frustrated by prohibiting the retroactivity of statutes. Retroactivity is nevertheless disfavored for the benefit of fairness and due process. These principles should guide the Court here.

#### **D. The Blue-Lining and Severability Provisions are Not Enforceable**

Plaintiff accurately cites the boilerplate provision of the parties’ agreement purportedly “contract[ing] around” the *Golden Road* rule and allowing for blue-lining. Plaintiff does not (and likely cannot) dispute that this provision was illegal at the time at which the agreement was executed. Instead, Plaintiff asserts that “[the Duongs’] argument must fail here where the contractual terms are identical to Nevada’s public policy as set forth in NRS 613.195(5).” This is a complete non-sequitur. When the parties executed the contract at issue here, the state of the law was (and had been for decades) that blue-lining a non-compete agreement was illegal under Nevada’s law of public policy. *Golden Rd.*, 376 P.3d at 158.<sup>3</sup> Plaintiffs surely did not

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<sup>3</sup> See, e.g., *Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947) (holding that blue penciling “would be virtually creating a new contract for the parties, which ... under well-settled rules of construction, the court has no power to do”); *Hansen v. Edwards*, 83 Nev. 189, 191, 426 P.2d 792, 793 (1967) (“An agreement on the part of an employee not to compete with his employer after termination of the employment is in restraint of trade and will not be enforced in accordance with its terms unless the same are reasonable.”); *Jones v. Deeter*, 112 Nev. 291, 296, 913 P.2d 1272, 1275 (1996) (holding that an unreasonable provision renders the noncompete agreement wholly unenforceable); *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2001) (“It has long been the policy in Nevada that absent some countervailing reason, contracts will be construed from the written language and enforced as written.” (internal quotation omitted)); *All Star Bonding v. State*, 119 Nev. 47, 51, 62 P.3d



1 intend to bind the Duongs to a provision that was directly contrary to Nevada law, because  
2 doing so would render the entire contract void. *See Clark v. Columbia/HCA Info. Services,*  
3 *Inc.*, 117 Nev. 468, 480, 25 P.3d 215, 224 (2001) (“[T]his court will not enforce contracts that  
4 violate public policy.”). Nor can Plaintiff plausibly contend that it could predict the future, and  
5 that it knew that Nevada’s “real” public policy would be revealed in a legislative enactment six  
6 months down the line.

7 This apparent mystery is easily solved: Fielden Hansen presented the Duongs with a  
8 form-based adhesion contract which included blue-lining and severability terms that were  
9 directly contrary to Nevada law. Nevada law generously ignores those illegal provisions to  
10 rescue the enforceability of the contract remainder of the contract. *Clark County v. Bonanza*  
11 *No. 1*, 96 Nev. 643, 652, 615 P.2d 939, 945 (1980) (“To the extent [a party’s] obligation is  
12 ambiguous, we must construe it to avoid conflict with public policy.”). Fielden Hansen’s  
13 argument, therefore, is essentially as follows: (1) we knowingly entered into a contract that  
14 violated Nevada law at the time it was executed; (2) the provisions that were illegal under  
15 Nevada’s law of public policy were ineffective for the time that they were illegal, and the  
16 contract should therefore not be held to be void against public policy; (3) we should be credited  
17 with the inclusion of those provisions in light of NRS 613.195(5)’s subsequent change in the  
18 law, and the Court should proceed as though the blue-lining and severability provisions were in  
19 the contract from the outset. This is a rather transparent exercise in “having things both ways,”  
20 and the Court should reject it. Either the provisions were indeed part of the contract from the  
21 outset (rendering the entire contract void as against public policy), or they were never part of  
22 the contract at all.

23  
24  
25  
26 1124, 1126 (2003) (“We are not free to modify or vary the terms of an unambiguous  
27 agreement.” All of these cases were cited with approval in *Golden Rd.* See 376 P.3d at 156.

III.  
CONCLUSION

The Duongs' Motion should be granted.

DATED this 21<sup>st</sup> day of May, 2019.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/Ryan O'Malley

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

3800 Howard Hughes Parkway, #1000

Las Vegas, Nevada 89169

*Attorneys for Defendants*

Howard & Howard, Attorneys PLLC  
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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, 10<sup>th</sup> Floor, Las Vegas, Nevada, 89169.

On this day I served the preceding **REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **21<sup>st</sup> day of May**, at Las Vegas, Nevada.

*/s/ Ryan O'Malley*

\_\_\_\_\_  
An Employee of Howard & Howard Attorneys PLLC

4845-1227-4838, v. 1

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 28, 2019**

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A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
vs.  
Scott Duong, M.D., Defendant(s)

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**May 28, 2019      9:00 AM      Motion For  
Reconsideration**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**PARTIES**

**PRESENT:**      Blumberg, Gabriel A      Attorney for Plaintiff  
O'Malley, Ryan      Attorney for Defendants

**JOURNAL ENTRIES**

Following arguments by Mr. O'Malley and Mr. Blumberg, COURT ORDERED, Motion for Reconsideration DENIED. Mr. Blumberg to prepare the order.



**DMJT**  
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*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON 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. XIII**

**DEFENDANTS' DEMAND FOR  
JURY TRIAL**

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1 The undersigned, as attorney, hereby demands a trial by jury on behalf of Defendants,  
2 SCOTT VINH DUONG, M.D., ANNIE LYNN PENACO DUONG, M.D. and DUONG  
3 ANESTHESIA, PLLC

4  
5 DATED this 4<sup>th</sup> day of June, 2019.  
6

7 **HOWARD & HOWARD ATTORNEYS PLLC**

8  
9 */s/ Ryan T. O'Malley*  
By: \_\_\_\_\_  
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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 that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On the 4<sup>th</sup> day of June, 2019, I served the foregoing **DEFENDANTS' DEMAND FOR JURY TRIAL** 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:

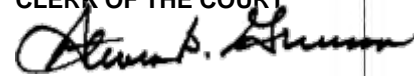
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***Attorneys for Plaintiff***

*/s/ Anya Ruiz*

\_\_\_\_\_  
An Employee of HOWARD & HOWARD ATTORNEYS PLLC

4812-2742-6712, v. 1



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13 *Attorneys for Plaintiff*

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

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

13 Plaintiff,

14 vs.

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

19 Defendants.

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

**ORDER DENYING DEFENDANTS'  
MOTION FOR RECONSIDERATION**

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

26 ...

27 ...




1 IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is DENIED for  
2 the reasons set forth by the Court on the record at the hearing.

3 DATED this 4<sup>th</sup> day of June, 2019.

4  
5   
HONORABLE MARK R. DENTON  
6  
7 


8 Respectfully submitted by:

9 **DICKINSON WRIGHT PLLC**

10   
11 Michael N. Feder  
12 Nevada Bar No. 7332  
13 Gabriel A. Blumberg  
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17 *Attorneys for Plaintiff*

Approved as to form and content by:

**HOWARD & HOWARD ATTORNEYS PLLC**

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19 Martin A. Little  
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22 Nevada Bar No. 12461  
23 3800 Howard Hughes Parkway, Ste. 1000  
24 Las Vegas, NV 89169  
25 *Attorneys for Defendants*  
26  
27  
28

1 IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is DENIED for  
2 the reasons set forth by the Court on the record at the hearing.

3 DATED this 29 day of May, 2019.

4 See previous sheet  
5 HONORABLE MARK R. DENTON  
6

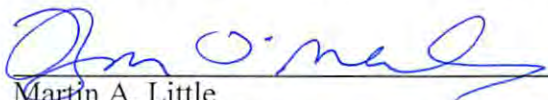
7 Respectfully submitted by:

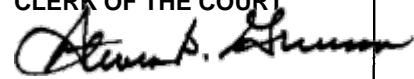
8 **DICKINSON WRIGHT PLLC**  
9

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Approved as to form and content by:

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14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

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

18 **Plaintiff,**

19 **vs.**

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

24 **Defendants.**

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

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS' MOTION  
FOR RECONSIDERATION**

25 PLEASE TAKE NOTICE that on the 6<sup>th</sup> day of June 2018, the Order Denying Defendants'  
26 Motion for Reconsideration was entered by the Court. A copy of said Order is attached hereto and  
27 by reference incorporated herein.

28 DATED this 7<sup>th</sup> day of June 2019.

**DICKINSON WRIGHT PLLC**



**MICHAEL N. FEDER (NV Bar No. 7332)**  
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*Attorneys for Plaintiff*

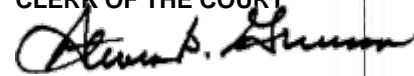
**CERTIFICATE OF SERVICE**

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 7<sup>th</sup> day of June 2019, he caused a copy of **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION**, 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](mailto:mal@h2law.com)  
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*Attorney Defendants*

  
An Employee of Dickinson Wright PLLC

# EXHIBIT A



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

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

13 Plaintiff,

14 vs.

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

18 Defendants.

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

**ORDER DENYING DEFENDANTS'  
MOTION FOR RECONSIDERATION**

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

26 ...

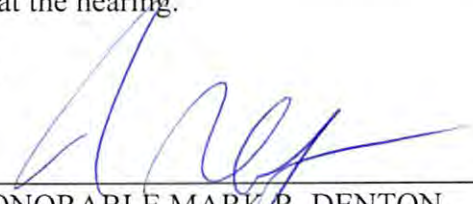

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IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is DENIED for the reasons set forth by the Court on the record at the hearing.

DATED this 4<sup>th</sup> day of June May, 2019.

  
HONORABLE MARK R. DENTON  


Respectfully submitted by:

**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  
*Attorneys for Plaintiff*

Approved as to form and content by:

**HOWARD & HOWARD ATTORNEYS PLLC**



Martin A. Little  
Nevada Bar No. 7067  
Ryan T. O'Malley  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Ste. 1000  
Las Vegas, NV 89169  
*Attorneys for Defendants*

1 IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration is DENIED for  
2 the reasons set forth by the Court on the record at the hearing.

3 DATED this 29 day of May, 2019.

4 See previous sheet  
5 HONORABLE MARK R. DENTON  
6

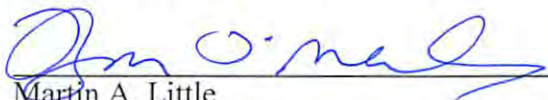
7 Respectfully submitted by:

8 **DICKINSON WRIGHT PLLC**  
9

10 \_\_\_\_\_  
11 Michael N. Feder  
12 Nevada Bar No. 7332  
13 Gabriel A. Blumberg  
14 Nevada Bar No. 12332  
15 8363 West Sunset Road, Suite 200  
16 Las Vegas, Nevada 89113  
17 *Attorneys for Plaintiff*

Approved as to form and content by:

**HOWARD & HOWARD ATTORNEYS PLLC**

18   
19 Martin A. Little  
20 Nevada Bar No. 7067  
21 Ryan T. O'Malley  
22 Nevada Bar No. 12461  
23 3800 Howard Hughes Parkway, Ste. 1000  
24 Las Vegas, NV 89169  
25 *Attorneys for Defendants*  
26  
27  
28



*Steven D. Grierson*

OJPC

DISTRICT COURT

CLARK COUNTY, NEVADA

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff(s),

vs.

SCOTT VINH DUONG, M.D., et al.,

Defendant(s).

CASE NO. A-19-789110-B  
DEPT. NO. XIII

**ORDER RE RULE 16 CONFERENCE, SETTING CIVIL JURY TRIAL,  
PRE-TRIAL, CALENDAR CALL, AND DEADLINES FOR MOTIONS;  
DISCOVERY SCHEDULING ORDER**

THIS MATTER having come before the Court in chambers on May 28, 2019 pursuant to the Business Court Order previously entered herein and NRCP 16, and the Court having discussed with counsel, as appropriate, the subjects referred to in NRCP 16(c);

NOW, THEREFORE, the Court hereby issues this Order pursuant to NRCP 16(b) reciting the action taken at such conference and scheduling trial and incidental dates and discovery and motion deadlines:

A. PRELIMINARY.

1. Counsel/parties in proper person are to file a Joint Case Conference Report or Individual Case Conference Reports, as the case may be, addressing the items which are the subject of NRCP 16.1(c) (2)(A), (D), (E), (I) and (K) on or before June 14, 2019.

2. A status check re: filing of Case Conference Report(s) is hereby set on June 20, 2019 at 9:00 a.m. If such Case Conference Report(s) is (are) filed before this date, then the status check will be vacated.

**MARK R. DENTON**  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

00718

1           3.       If and when there is agreement among counsel that the case is ripe for a settlement  
2 conference with a Business Court judge, counsel are to contact the departmental JEA of this  
3 Department for direction in scheduling the same. If there is no such agreement, any effort to  
4 obtain such a settlement conference should be made by motion herein.

5           B.       TRIAL AND INCIDENTAL DATES AND OBLIGATIONS.

6           1.       A **jury trial** of the above-entitled case is set on a four week stack to begin,  
7 **Tuesday, April 7, 2020 at 9:00 a.m.**

8           2.       In accordance with EDCR 2.68, a **pre-trial conference** with the designated  
9 attorneys and/or parties in proper person will be held on **Monday, March 16, 2020 at 3:50 p.m.**  
10 In addition to the matters referred to in such rule, the items to be brought to the calendar call (see  
11 below) with reference to EDCR 2.69 will be discussed.

12           3.       A **calendar call** will be held on **Monday, March 30, 2020 at 2:00 p.m.**

13           4.       All parties (attorneys and parties in proper person) **MUST** comply with **ALL**  
14 **REQUIREMENTS** of EDCR 2.67 prior to the pre-trial conference except that the due date for  
15 the Pre-Trial Memorandum will be established at the pre-trial conference. As to the Pre-trial  
16 Memorandum, counsel should be particularly attentive to their exhibit lists and objections to  
17 exhibits, as exhibits not listed or objections not made will not be admitted/allowed over objection  
18 based on non-compliance with the Rule's requirements. **(Also, it is helpful to the Court when**  
19 **counsel list pertinent pre-trial motions and orders pertaining thereto if it is likely that they**  
20 **will be focused on during trial.)**

21           C.       DISCOVERY AND MOTION DEADLINES.

22           1.       All parties shall complete discovery on or before November 25, 2019. **The**  
23 **Court will hear any discovery motions.** However, in the event it becomes necessary, the

1 Court may request nominations for a stand-by special master for referrals of discovery issues on  
2 a motion-by-motion basis.

3 2. All parties shall file motions to amend pleadings or add parties on or before  
4 August 27, 2019.  
5

6 3. All parties shall make initial expert disclosures pursuant to NRCP 16.1(a)(2) on or  
7 before August 27, 2019.

8 4. All parties shall make rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) on  
9 or before September 26, 2019.

10 5. All parties shall file dispositive motions on or before December 26, 2019.

11 6. Counsel/parties in proper person are also directed to abide by EDCR 2.47.  
12 concerning the time for filing and noticing motions *in limine*. Except upon a showing of  
13 unforeseen extraordinary circumstances, the Court will not shorten time for the hearing of any  
14 such motions.  
15

16 D. MISCELLANEOUS.

17 Failure of the designated trial attorney or any party appearing in proper person to  
18 appear for any scheduled court hearing or conference or to comply with this Order will  
19 result in any of the following: (1) dismissal of the action and/or claims; (2) striking of  
20 answer and entry of default judgment; (3) monetary sanctions; (4) vacation of trial date;  
21 and/or (5) any other appropriate remedy or sanction. EDCR 7.60; 2.68(c).  
22

23 .....


24 .....

25 .....

26 .....

1 Counsel are required to advise the Court immediately when the case settles or is  
2 otherwise resolved prior to trial.

3 DATED this 6<sup>th</sup> day of June, 2019.

4  
5  
6   
7 MARK R. DENTON  
8 DISTRICT JUDGE

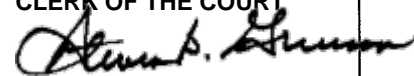
9 **CERTIFICATE**

10 I hereby certify that on or about the date filed, this document was e-served or a  
11 copy of this document was placed in the attorney's folder in the Clerk's Office or mailed to:

12 DICKINSON WRIGHT  
13 Attn: Gabriel A. Blumberg, Esq.

14 HOWARD & HOWARD  
15 Attn: Ryan T. O'Malley, Esq.

16   
17 LORRAINE TASHIRO  
18 Judicial Executive Assistant  
19 Dept. No. XIII  
20  
21  
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24  
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JCCR  
DICKINSON WRIGHT PLLC  
MICHAEL N. FEDER  
Nevada Bar No. 7332  
Email: mfeder@dickinson-wright.com  
GABRIEL A. BLUMBERG  
Nevada Bar No. 12332  
Email: gblumberg@dickinson-wright.com  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89113-2210  
Tel: (702) 550-4400  
Fax: (844) 670-6009  
*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

**JOINT CASE CONFERENCE REPORT**

**JOINT CASE CONFERENCE REPORT**

**I.**

**A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION  
AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(2)(A)]**

A. Description of the action: This is an action seeking damages and injunctive relief relating to Dr. Scott Duong and Dr. Annie Duong's alleged breaches of their respective Employment Agreements with Plaintiff. Plaintiff alleges that after terminating their employment with Plaintiff, Dr. Scott Duong and Dr. Annie Duong, *inter alia*, provided anesthesia or pain

management services for multiple facilities and physicians that they were prohibited from servicing pursuant to the terms of the non-compete and non-solicitation provisions in their respective Employment Agreements.

B. Plaintiff's Claims for relief:

1. Breach of Contract
2. Breach of the Implied Covenant of Good Faith and Fair Dealing
3. Intentional Interference with Business Relationships
4. Intentional Interference with Prospective Economic Advantage
5. Unjust Enrichment

II.

**LIST OF PERSONS IDENTIFIED BY EACH PARTY PURSUANT TO NRCP**

**16.1(a)(1)(A)(i): [16.1(c)(2)(D)]**

Plaintiff:

1. NRCP 30(b)(6) designee(s) for FIELDEN HANSON ISAACS MIYADA  
ROBISON YEH  
c/o Dickinson Wright PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

The NRCP 30(b)(6) designee(s) for Fielden Hanson will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation.

2. Bradford Isaacs, M.D.  
c/o Dickinson Wright PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

Dr. Isaacs will testify as to his of the facts and circumstances at issue in the instant litigation.

3. Scott Duong, M.D.  
HOWARD & HOWARD PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169

Scott Duong, M.D. will testify as to his knowledge of the facts and circumstances at issue in the instant litigation.

4. Annie Duong, M.D.  
HOWARD & HOWARD PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169

Annie Duong, M.D. will testify as to her knowledge of the facts and circumstances at issue in the instant litigation.

5. NRCP 30(b)(6) designee(s) for Duong Anesthesia PLLC  
HOWARD & HOWARD PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169

The NRCP 30(b)(6) designee(s) for Duong Anesthesia PLLC will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation.

6. NRCP 30(b)(6) designee(s) for Red Rock Anesthesia Consultants LLC  
10501 W. Gowan Road #210  
Las Vegas, NV 89129

The NRCP 30(b)(6) designee(s) for Red Rock Anesthesia Consultants LLC will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation.

Fielden Hanson also incorporates any witnesses identified in any other parties disclosures that may have information relating to the claims and defenses asserted in this action.

Defendants:

1. Scott Duong, M.D.  
c/o HOWARD & HOWARD PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169

Scott Duong, M.D. will testify as to his knowledge of the facts and circumstances at issue in the instant litigation.

2. Annie Lynn Penaco Duong, M.D.  
c/o HOWARD & HOWARD PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169

Annie Lynn Penaco Duong, M.D. will testify as to her knowledge of the facts and circumstances at issue in the instant litigation.

3. NRCP 30(b)(6) designee(s) for Red Rock Anesthesia Consultants LLC  
10501 W. Gowan Road #210  
Las Vegas, NV 89129

The NRCP 30(b)(6) designee(s) for Red Rock Anesthesia Consultants LLC will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation.

4. NRCP 30(b)(6) designee(s) for FIELDEN HANSON ISAACS MIYADA ROBISON YEH  
c/o Dickinson Wright PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

The NRCP 30(b)(6) designee(s) for Fielden Hanson will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation.

5. Bradford Isaacs, M.D.  
c/o Dickinson Wright PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

Dr. Isaacs will testify as to his of the facts and circumstances at issue in the instant litigation.

### III.

#### **LIST OF ALL DOCUMENTS WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF: [16.1(c)(2)(E)]**

#### Plaintiff:

1. Scott Duong Employment Agreement
2. Annie Duong Employment Agreement
3. December 13, 2018 Demand Letter to Scott Duong
4. December 13, 2018 Demand Letter to Annie Duong

#### Defendants:

1. Scott Duong Employment Agreement
2. Annie Duong Employment Agreement
3. December 13, 2018 Demand Letter to Scott Duong



4. December 13, 2018 Demand Letter to Annie Duong

IV.

**LIST OF ALL EXPERTS DISCLOSED UNDER RULE 16.1(a)(2): [16.1(c)(2)(I)]**

Plaintiff: No expert disclosed at this time. Plaintiff reserves the right to designate experts at a later date.

Defendants: No expert at this time. Defendants reserve the right to designate experts at a later date.

V.

**STATEMENT IDENTIFYING ANY ISSUES ABOUT TRADE SECRETS OR OTHER CONFIDENTIAL INFORMATION AND WHETHER THE PARTIES HAVE AGREED UPON A CONFIDENTIALITY ORDER OR WHETHER A RULE 26(c) MOTION FOR A PROTECTIVE ORDER WILL BE MADE: [16.1(c)(2)(K)]**


This case involves trade secrets and confidential information. As such, the parties have discussed the need for a confidentiality agreement in this matter and are working on submitting a stipulated confidentiality agreement and protective order.

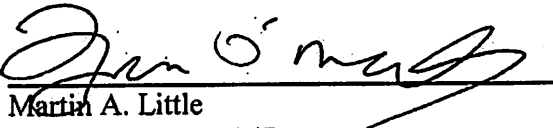
Dated this 14<sup>th</sup> day of June 2019.

Dated this 14 day of June 2019.

DICKINSON WRIGHT PLLC

HOWARD & HOWARD ATTORNEYS PLLC

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

  
Martin A. Little  
Nevada Bar No. 7067  
Ryan T. O'Malley  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
*Attorneys for Defendants*



**DMJT**  
Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
Telephone: (702) 257-1483  
Facsimile: (702) 567-1568  
E-Mail: [mal@h2law.com](mailto:mal@h2law.com); [rto@h2law.com](mailto:rto@h2law.com)  
*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDON 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. XIII**

**DEFENDANTS' DEMAND FOR  
JURY TRIAL**

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1 Demand is hereby made by Defendants, SCOTT VINH DUONG, M.D., ANNIE LYNN  
2 PENACO DUONG, M.D. and DUONG ANESTHESIA, PLLC, by and through their counsel  
3 of record, Martin A. Little, Esq. and Ryan T. O'Malley, Esq. of the law firm HOWARD &  
4 HOWARD ATTORNEYS PLLC, for trial by jury in the above entitled action.

5  
6 DATED this 5<sup>th</sup> day of July, 2019.  
7

8  
9 **HOWARD & HOWARD ATTORNEYS PLLC**

10  
11 By: /s/ Ryan T. O'Malley  
12 Martin A. Little (#7067)  
13 Ryan T. O'Malley (#12461)  
14 3800 Howard Hughes Pkwy, Suite 1000  
15 Las Vegas, Nevada 89169  
16 Telephone No. (702) 257-1483  
17 Facsimile No. (702) 567-1568  
18 *Attorneys for Defendants*  
19  
20  
21  
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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 that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On the 5<sup>th</sup> day of July, 2019, I served the foregoing **DEFENDANTS' DEMAND FOR JURY TRIAL** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve System, which will cause this document to be served upon the following counsel of record:

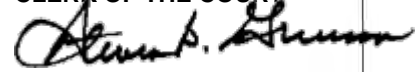
Michael N. Feder, Esq.  
Gabriel A. Blumberg, Esq.  
DICKINSON WRIGHT PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113-2210  
Tel: (702) 550-4400  
Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
[gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)

***Attorneys for Plaintiff***

*/s/ Anya Ruiz*

\_\_\_\_\_  
An Employee of HOWARD & HOWARD ATTORNEYS PLLC

4812-2742-6712, v. 1



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

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

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

13 Plaintiff,

14 vs.

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

18 Defendants.

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

**ORDER DENYING DEFENDANTS'  
MOTION TO ALTER/AMEND  
JUDGMENT**

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

26 ...

27 ...


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

3  
4 Dated this 15<sup>th</sup> day of ~~June~~<sup>July</sup>, 2019.

5   
6  
7 THE HONORABLE MARK R. DENTON


8  
9 Respectfully submitted by:

10  
11 **DICKINSON WRIGHT PLLC**

12   
13 Michael N. Feder  
14 Nevada Bar No. 7332  
15 Gabriel A. Blumberg  
16 Nevada Bar No. 12332  
17 8363 West Sunset Road, Suite 200  
18 Las Vegas, Nevada 8911  
19 *Attorneys for Plaintiff*

Approved as to form and content by:

20  
21 **HOWARD & HOWARD ATTORNEYS PLLC**

22   
23 Martin A. Little  
24 Nevada Bar No. 7067  
25 Ryan T. O'Malley  
26 Nevada Bar No. 12461  
27 3800 Howard Hughes Parkway, Suite 1000  
28 Las Vegas, NV 89169  
*Attorneys for Defendants*

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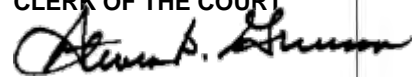
See previous page  
THE HONORABLE MARK R. DENTON

Approved as to form and content by:

**HOWARD & HOWARD ATTORNEYS PLLC**

Martin A. Little  
Nevada Bar No. 7067  
Ryan T. O'Malley  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NY 89169  
*Attorneys for Defendants*





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

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

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

24 Defendants.


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

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

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

27 Dated this 17<sup>th</sup> day of July, 2019.

28 **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 89111  
*Attorneys for Plaintiff*



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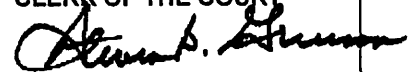
**CERTIFICATE OF SERVICE**

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

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



\_\_\_\_\_  
An Employee of Dickinson Wright PLLC



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

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

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

13 **Plaintiff,**

14 **vs.**

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

18 **Defendants.**

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

**ORDER DENYING DEFENDANTS'**  
**MOTION TO ALTER/AMEND**  
**JUDGMENT**

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

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


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4           Dated this 15<sup>th</sup> day of ~~June~~ July, 2019.

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\_\_\_\_\_  
THE HONORABLE MARK R. DENTON

Respectfully submitted by:

**DICKINSON WRIGHT PLLC**

  
\_\_\_\_\_  
Michael N. Feder  
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Gabriel A. Blumberg  
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8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 89111  
*Attorneys for Plaintiff*

Approved as to form and content by:

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Ryan T. O'Malley  
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*Attorneys for Defendants*

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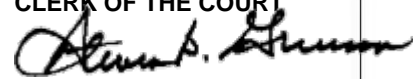
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12 Fax: (844) 670-6009  
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

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

13 Plaintiff,

14 vs.

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

18 Defendants.

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE  
ORDER**

21 Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. ("Fielden Hanson") by and  
22 through its attorneys, the law firm of Dickinson Wright PLLC, and Defendants Scott Vinh Duong,  
23 M.D., Annie Lynn Penaco Duong, M.D., and Duong Anesthesia PLLC, by and through their  
24 attorneys, the law firm of Howard & Howard PLLC, ("Defendants" and together with Fielden  
25 Hanson, the "Parties") hereby stipulate that discourse and discovery activity in the above-  
26 captioned action (the "Action") may involve the production of confidential, proprietary, or private  
27 information for which special protection from public disclosure would be warranted. Accordingly,  
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1 the Parties stipulate to the following Stipulated Confidentiality and Protective Order ("Protective  
2 Order").

3 1. Any party or non-party may designate as confidential (by stamping the relevant  
4 page with the word "**Confidential**" or as otherwise set forth herein) any document or response to  
5 discovery which that party or non-party considers in good faith to contain information involving  
6 confidential personal or business information, subject to protection under the Nevada Rules of  
7 Civil Procedure or Nevada Law (hereinafter referred to as "**Confidential Information**"). Where  
8 a document or response consists of more than one page, the first page and each page of which  
9 confidential information appears shall be so designated.

10 2. Any party may designate as confidential-attorney eyes only (by stamping the  
11 relevant page with the word "**Attorney's Eyes Only**" or as otherwise set forth herein) any  
12 document or response to discovery which contains sensitive, highly confidential, non-public  
13 information, the disclosure of which to the Receiving Parties or non-parties would be likely to  
14 cause competitive or business injury to the Designating Party (herein after referred to as  
15 "**Attorney's Eyes Only Information**"). Where a document or response consists of more than one  
16 page, the first page and each page on which confidential information appears shall be designated.

17 3. A party or non-party may designate information disclosed during a deposition as  
18 **Confidential** or **Attorney's Eyes Only** by so indicating in said response or on the record at the  
19 deposition and requesting the preparation of a separate transcript of such material. Additionally,  
20 a party or non-party may designate in writing, within twenty (20) days after the receipt of said  
21 responses or of the deposition transcript for which the designation is proposed, that specific pages  
22 of the transcript and/or specific responses be treated as **Confidential** or **Attorney's Eyes Only**.  
23 Any other party may object to such proposal, in writing or on the record, and upon such objection,  
24 the parties shall follow the procedure set forth in paragraphs 10 and 11 below. After any  
25 designation made according to the procedure set forth in this paragraph, the designated documents  
26 or information shall be treated according to the designation until the matter is resolved according  
27 to the procedures described in paragraphs 10 and 11 below, and counsel for all parties shall be  
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1 responsible for marking all previously unmarked copies of the designated materials in their  
2 possession or control with the specified designation.

3 4. All **Confidential Information** and **Attorney's Eyes Only Information** produced  
4 or exchanged in the course of this case (other than information that is publicly available) shall only  
5 be used by the party or parties to whom the information is produced solely for the purpose of this  
6 case, unless the parties agree otherwise.

7 5. Except with the prior written consent of the other party, or upon prior order of this  
8 Court obtained upon notice to opposing counsel, **Confidential Information** shall not be disclosed  
9 to any person other than:

- 10 A. Counsel for the respective parties to this litigation, including co-counsel  
11 retained in this litigation;
- 12 B. Employees of such counsel
- 13 C. The parties, including any officer or employee of party, to the extent  
14 deemed necessary by counsel for the prosecution or defense of this  
15 litigation;
- 16 D. Consultants or expert witnesses retained for the prosecution or defense of  
17 this litigation, provided that each such person shall execute a copy of the  
18 Certification annexed to this Order as Exhibit "A" (which shall be retained  
19 by counsel to the party so disclosing the **Confidential Information** and  
20 made available for inspection by opposing counsel during the pendency or  
21 after the termination of the action only upon good cause shown and upon  
22 order of the Court) before being shown or given any **Confidential**  
23 **Information**;
- 24 E. Any authors or recipients of the **Confidential Information**;
- 25 F. The Court, Court personnel, and court reporters; and
- 26 G. Witnesses (other than persons described in paragraph 4(e)). A witness shall  
27 sign the Certification before being shown any **Confidential Information**.
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6. Except with prior written consent of other parties, or upon prior order of this Court obtained upon notice to opposing counsel, **Attorney's Eyes Only Information** shall not be disclosed to any person other than:

- A. Counsel for the parties to this litigation;
- B. Employees of such counsel;
- C. Consultants or expert witnesses retained for the defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order as Exhibit "A" (which shall be retained by counsel to the party so disclosing the **Attorney's Eyes Only Information** and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any **Attorney's Eyes Only Information**;
- D. Any authors or recipients of the **Attorney's Eyes Only Information**
- E. The Court, Court personnel, and court reporters.

7. Any persons receiving **Confidential Information** and/or **Attorney's Eyes Only Information** shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein.

8. Unless otherwise permitted by statute, rule or prior Court order, papers filed with the Court including **Confidential Information** and/or **Attorney's Eyes Only Information** shall be accompanied by a contemporaneous motion for leave to file those documents under seal.

9. A party may designate as **Confidential** or **Attorney's Eyes Only** documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. A document may lose its confidential status if it is made public by the party that marked it as **Confidential** or **Attorney's Eyes Only**.

10. If a party contends that any material is not entitled to confidential treatment, such



1 party may at any time give written notice to the party or non-party who designated the material as  
2 **Confidential or Attorney's Eyes Only**. The party or non-party who designated the material as  
3 **Confidential or Attorney's Eyes Only** shall have twenty-one (21) days from the receipt of such  
4 written notice to apply to the Court for an order designating the material as **Confidential** or  
5 **Attorney's Eyes Only**. The party or non-party seeking the order has the burden of establishing  
6 that the document or information is entitled to protection.

7 11. Notwithstanding any challenge to the designation of material as **Confidential**  
8 **Information** and/or **Attorney's Eyes Only Information**, all documents or information shall be  
9 treated as such and shall be subject to the provision hereof unless and until one of the following  
10 occurs:

- 11 A. The party or non-party claims that the material is **Confidential**  
12 **Information** and/or **Attorney's Eyes Only Information** withdraws such  
13 designation in writing; or  
14 B. The party or non-party who claims that the material is **Confidential**  
15 **Information** and/or **Attorney's Eyes Only Information** fails to apply to  
16 the Court for an order designating the material confidential within the time  
17 period specified above after receipt of a written challenge to such  
18 designation; or  
19 C. The Court rules the material is not confidential.

20 12. All provisions of this Order restricting communication or use of **Confidential**  
21 **Information** and/or **Attorney's Eyes Only Information** shall continue to be binding after the  
22 conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a  
23 party in the possession of **Confidential Information** and/or **Attorney's Eyes Only Information**,  
24 other than that which is contained in a pleading, correspondence, and deposition transcripts, shall  
25 either (a) return such documents or information no later than thirty (30) days after conclusion of  
26 this action to counsel for the party or non-party who provided such information, or (b) destroy  
27 such documents and information within the time period upon consent of the party who provided  
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1 the documents and information and certify in writing within thirty (30) days that the documents  
2 and information have been destroyed.

3 13. In the event additional persons or entities become Parties to this Action, none of  
4 such Parties' counsel or experts shall have access to **Confidential Information** and/or **Attorney's**  
5 **Eyes Only Information** produced by or obtained from any Designating and Receiving Party until  
6 that newly-added Party has executed and filed with the Court its agreement to be fully bound by  
7 this Protective Order.

8 14. Inadvertent failure to designate information as **Confidential** or **Attorney's Eyes**  
9 **Only** shall not constitute a waiver of such claim and may be corrected by prompt supplemental  
10 written notice designating such information as **Confidential** or **Attorney's Eyes Only**. The Party  
11 receiving such supplemental written notice shall thereafter mark and treat materials so designated  
12 as **Confidential** or **Attorney's Eyes Only** as the case may be, and such materials shall be fully  
13 subject to this Protective Order as if they had been initially so designated. A person disclosing  
14 information that is subsequently designated as **Confidential** or **Attorney's Eyes Only** shall in  
15 good faith assist the Designating Party in retrieving such information from all recipients not  
16 entitled to receive such information under the terms of this Protective Order and prevent further  
17 disclosures except as authorized under the terms of this Protective Order.

18 15. Nothing herein shall be deemed to waive any applicable privilege or work product  
19 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
20 protected by privilege or work product protection.

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16. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written notice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

Dated this 8<sup>th</sup> day of August, 2019.

**DICKINSON WRIGHT PLLC**



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*Attorneys for Plaintiff*

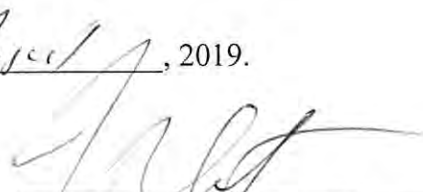
Dated this \_\_\_\_ day of August, 2019.

**HOWARD & HOWARD PLLC**



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RYAN T. O'MALLEY  
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3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, Nevada 89169  
*Attorney for Defendants*

IT IS SO ORDERED this 9<sup>th</sup> day of August, 2019.



DISTRICT COURT JUDGE



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16. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written notice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

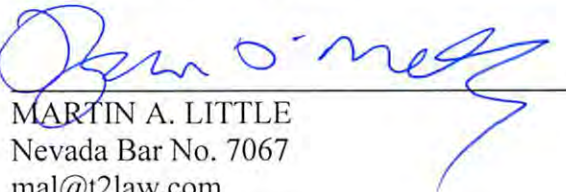
Dated this \_\_\_\_ day of August, 2019.

**DICKINSON WRIGHT PLLC**

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*Attorneys for Plaintiff*

Dated this 8 day of August, 2019.

**HOWARD & HOWARD PLLC**

\_\_\_\_\_  
  
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RYAN T. O'MALLEY  
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Las Vegas, Nevada 89169  
*Attorney for Defendants*

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2019.

See previous page  
DISTRICT COURT JUDGE



1 **NOAS**  
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3 Ryan T. O'Malley (#12461)  
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10 *Attorneys for Defendants*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **FIELDEN HANSON ISAACS MIYADA**  
10 **ROBINSON YEH, LTD.,**

**CASE No. A-19-789110-B**  
**DEPT. No. XI**

11 **Plaintiff,**

12 **vs.**

**NOTICE OF APPEAL**

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

17 **Defendants.**

18 Defendants Scott Vinh Duong, M.D.; Annie Lynn Penaco Duong, M.D.; and Duong  
19 Anesthesia, PLLC appeal to the Supreme Court of Nevada from the Court's Order Denying  
20 Defendants' Motion to Alter or Amend Judgment enter in this action on July 17, 2019.

21 DATED this 16<sup>th</sup> day of August, 2019.

22 **HOWARD & HOWARD ATTORNEYS PLLC**

23 By: /s/Ryan O'Malley

24 Martin A. Little (#7067)

25 Ryan T. O'Malley (#12461)

26 3800 Howard Hughes Parkway, #1000

27 Las Vegas, Nevada 89169

*Attorneys for Defendants*

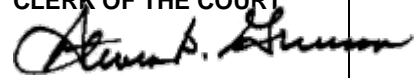
**Howard & Howard, Attorneys PLLC**  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483

On this day I served the preceding **NOTICE OF APPEAL** 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:

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **August 16, 2019**, at Las Vegas, Nevada.

An Employee of Howard & Howard Attorneys PLLC

Page 2 of 2



**ANOA**  
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Ryan T. O'Malley (#12461)  
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*Attorneys for Defendants*

**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**

**AMENDED NOTICE OF APPEAL**

Defendants Scott Vinh Duong, M.D.; Annie Lynn Penaco Duong, M.D.; and Duong Anesthesia, PLLC appeal to the Supreme Court of Nevada from the Court's Order Denying Defendants' Motion to Alter or Amend Judgment enter in this action on July 17, 2019.

DATED this 16<sup>th</sup> day of August, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

By: /s/Ryan O'Malley

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

**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, 10<sup>th</sup> Floor, Las Vegas, Nevada, 89169.

On this day I served the preceding **AMENDED NOTICE OF APPEAL** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

Michael N. Feder (#7332)  
Gabriel A. Blumberg (#12332)  
Dickinson Wright, PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **August 16, 2019**, at Las Vegas, Nevada.

*/s/ Anya Ruiz*

---

An Employee of Howard & Howard Attorneys PLLC

4817-3259-8689, v. 1