

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA.

CASE NO.: 50-2009-CA-034380-XXXX-
MB-AN

ROBERT BEBER as Personal
Representative of the Estate of JOAN
BEBER, deceased,

Plaintiff,

vs.

CHARLES E. METZGER, JR., M.D.,
METZGER COMPREHENSIVE CARE,
LLC, a Florida Limited Liability Company,
FLORIDA BACK INSTITUTE, INC., a
Florida Corporation, NATHANIEL A.
LOWEN, M.D., SCOTT W. HOWELL, PA-
C, and MDVIP, INC., a Foreign
Corporation,

Defendants.

METZGER COMPREHENSIVE CARE,
LLC, A Florida Limited Liability Company

Third Party Plaintiff(s),

vs.

ROSANNA HOBSON, R.N.

Third Party Defendant(s).

FIFTH AMENDED COMPLAINT

COMES NOW, the Plaintiff, ROBERT BEBER as Personal Representative of the
Estate of JOAN BEBER, deceased and hereby sues the Defendants, CHARLES E.
METZGER, JR., M.D., METZGER COMPREHENSIVE CARE, LLC, a Florida Limited
Liability Company, FLORIDA BACK INSTITUTE, INC., a Florida Corporation,

NATHANIEL A. LOWEN, M.D., SCOTT W. HOWELL, PA-C, AND MDVIP, INC., a Foreign Corporation, and states as follows:

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

1. This is a survival action arising from many causes of action, including but not limited to, negligence of the Defendants, CHARLES E. METZGER, JR., M.D., METZGER COMPREHENSIVE CARE, LLC, a Florida Limited Liability Company, FLORIDA BACK INSTITUTE, INC., a Florida Corporation, NATHANIEL A. LOWEN, M.D., SCOTT W. HOWELL, PA-C, AND MDVIP, INC., a Foreign Corporation resulting in damages exceeding the jurisdictional limits of this Court.

2. This is an action arising from medical negligence which is being brought pursuant to Chapters §766 and §768, Florida Statutes, and Florida Rules of Civil Procedure 1.650, for damages exceeding Fifteen Thousand (\$15,000.00) Dollars, exclusive of interest and costs.

3. At all times material hereto, Plaintiff, ROBERT BEBER, was a resident of Boca Raton, Palm Beach County, Florida. His date of birth is August 17, 1933.

4. At all times material hereto, JOAN BEBER, was a resident of Boca Raton, Palm Beach County, Florida. On or about September 10, 2012, JOAN BEBER died.

5. At all times material hereto, JOAN BEBER and ROBERT BEBER, were husband and wife.

6. At all times material hereto, ROBERT BEBER has been appointed as Personal Representative of the Estate of JOAN BEBER, deceased. (A copy of the

Letters of Administration and Order Appointing Personal Representative of the Estate will be provided upon receipt as the Estate is in the process of being set up.)

7. At all times material hereto, Defendant, CHARLES E. METZGER, JR., M.D., was a duly licensed internal medicine physician engaged in the practice of medicine in Palm Beach County, Florida.

8. At all times material hereto Defendant, CHARLES E. METZGER, JR., M.D., held himself out to the public as being well-qualified in the field of internal medicine, and further held himself out to the public as possessing the same level of skill and expertise in the field of medicine as any other well-qualified physician practicing internal medicine in Palm Beach County, Florida, or any other similar medical community.

9. At all times material hereto, ROSANNA HOBSON was a Registered Nurse who held herself out to the public as being well-qualified in the field of nursing, and further held herself out to the public as possessing the same level of skill and expertise in the field of nursing as any other well-qualified nurse practicing nursing in Palm Beach County, Florida, or any other similar medical community.

10. At all times material hereto, Defendant, METZGER COMPREHENSIVE CARE, LLC, (hereinafter referred to as "METZGER COMPREHENSIVE") was and is a Florida Limited Liability Company authorized to do business in Palm Beach County, State of Florida.

11. At all times material hereto, Defendant, METZGER COMPREHENSIVE CARE, LLC, was a Florida Limited Liability Company duly licensed, organized and existing under the laws of the State of Florida, and operated as a medical practice providing medical and health care services in Palm Beach County, Florida.

12. At all times material hereto, Defendant, METZGER COMPREHENSIVE CARE, LLC, acted individually and by and through its agents, apparent agents, servants, and/or employees, including the Defendant, CHARLES E. METZGER, JR., M.D., who was acting within the course and scope of his agency, apparent agency and/or employment in furtherance of Defendant, METZGER COMPREHENSIVE CARE, LLC's business pursuits.

13. At all times material hereto, Defendant, METZGER COMPREHENSIVE CARE, LLC, acted individually and by and through its agents, apparent agents, servants, and/or employees, including ROSANNA HOBSON, R.N., who was acting within the course and scope of her agency, apparent agency and/or employment in furtherance of Defendant, METZGER COMPREHENSIVE CARE, LLC's business pursuits.

14. At all times material hereto, Defendant, FLORIDA BACK INSTITUTE, INC. (hereinafter referred to as "FLORIDA BACK") was and is a Florida Corporation authorized to do business in Palm Beach County, State of Florida.

15. At all times material hereto, Defendant, FLORIDA BACK INSTITUTE, INC., was a Florida Corporation duly licensed, organized and existing under the laws of

the State of Florida, and operated as a medical practice providing medical and health care services in Palm Beach County, Florida.

16. At all times material hereto Defendant, FLORIDA BACK INSTITUTE, INC., acted individually and by and through its agents, apparent agents, servants, and/or employees, including the Defendants, NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, who were acting within the course and scope of their agency, apparent agency and/or employment in furtherance of Defendant, FLORIDA BACK INSTITUTE, INC.'s business pursuits.

17. At all times material hereto, Defendant, NATHANIEL A. LOWEN, M.D., was a duly licensed orthopaedic surgeon engaged in the practice of medicine in Palm Beach County, Florida.

18. At all times material hereto, Defendant, NATHANIEL A. LOWEN, M.D., held himself out to the public as being well-qualified in the field of orthopaedic surgery, and further held himself out to the public and possessing the same level of skill and expertise in the field of medicine as any other well-qualified physician practicing orthopaedic surgery in Palm Beach County, Florida, or any other similar medical community.

19. At all times material hereto, Defendant, SCOTT W. HOWELL, PA-C, was a duly licensed physician's assistant engaged in the practice of medicine in Palm Beach County, Florida.

20. At all times material hereto, Defendant, SCOTT W. HOWELL, PA-C, held himself out to the public as being well-qualified in the field of physician's assistant, and further held himself out to the public and possessing the same level of skill and expertise in the field of medicine as any other well-qualified physician's assistant practicing in Palm Beach County, Florida, or any other similar medical community.

21. At all times material hereto, Defendant, MPVIP, INC. (hereinafter referred to as "MDVIP") was and is a Foreign Corporation with its principle place of business in the State of Florida, Palm Beach County.

22. At all times material hereto, Defendant, MDVIP, INC., was a Foreign Corporation duly licensed, organized and existing under the laws of the State of Florida, and operated as a medical practice providing medical and health care services in Palm Beach County, Florida.

23. At all times material hereto Defendant, MPVIP, INC., acted individually and by and through its agents, apparent agents, servants, and/or employees, including the Defendant, CHARLES E. METZGER, JR., M.D., who was acting within the course and scope of his agency, apparent agency and/or employment in furtherance of Defendant, MPVIP, INC.'s business pursuits.

24. On 2007, a twenty two (22) page Participation Agreement was entered into between CHARLES E. METZGER, JR., M.D. and MDVIP, INC. prior to CHARLES E. METZGER, JR., M.D., treating the Plaintiff, JOAN BEBER. (Agreement attached as Exhibit "A"). From 2007 to 2008, MDVIP, INC, held itself out as being associated with

the best hospitals and doctors nationwide. MDVIP, INC agreed to furnish services and items to CHARLES E. METZGER, JR., M.D., and CHARLES E. METZGER, JR., M.D., agreed to perform certain services, including but not limited to furnishing a comprehensive physical examination and personalized health care plan, for MDVIP, INC for a monetary fee. As set forth in the Agreement, there was an agency, apparent agency, and/or joint venture relationship between MDVIP, INC and CHARLES E. METZGER, JR., M.D.

25. In 2007, MDVIP, INC. advertised that CHARLES E. METZGER, JR. was a MDVIP doctor and MDVIP promised to provide exceptional doctors, give exceptional care, and guaranteed exceptional results. MDVIP, INC.'s literature set forth all of their promises to their doctors and patients. In particular, MDVIP, INC. promised that Mrs. Beber's MDVIP's physician, METZGER, and MDVIP itself would actively coordinate her specialty care and make personal calls to specialists to assure that all information was available to the specialists so that the consult is handled in the most effective manner possible. (Plaintiff is not attaching all of MDVIP's promises and advertisements to this complaint as MDVIP does not wish the information to be public record).

26. JOAN AND ROBERT BEBER became members of MDVIP on or about May 3, 2007 by signing a Membership Application and Membership Agreement. The Membership Agreement assured that in exchange for an annual membership fee of \$1500.00, MDVIP would facilitate specialist opinions and refer members/patients for treatment at leading national health centers, amongst other promises.

27. Similarly, CHARLES E. METZGER, JR. promised his patients, including but not limited to JOAN BEBER, that he was an exceptional doctor, would give exceptional care, and guaranteed exceptional results.

28. A pre-suit investigation was performed pursuant to Florida Statute §766.203 and a Notice of Intent to Initiate Litigation against the Defendants, named herein, was given in accordance with the requirements of Florida Statute §766.106. All conditions precedent to Chapter 766 have been performed to bring this action.

FACTS GIVING RISE TO CAUSE OF ACTION

29. From January through March 2008, the Plaintiff, JOAN BEBER, had complaints regarding her left leg and/or foot being cold, painful, numb, and/or tingling. She complained to her treating healthcare providers, Defendants, CHARLES E. METZGER, JR., M.D., METZGER COMPREHENSIVE CARE, LLC, ROSANNA HOBSON, R.N., MDVIP, INC., FLORIDA BACK INSTITUTE, INC., NATHANIEL A. LOWEN, M.D., and SCOTT W. HOWELL, PA-C.

30. All of the aforementioned physicians and/or entities failed to consider a vascular cause and have the Plaintiff, JOAN BEBER, treated appropriately. They failed to timely send the Plaintiff, JOAN BEBER, to an emergency room and failed to timely refer her for a vascular workup.

31. This substandard and negligent care resulted in a delay of appropriate treatment for the Plaintiff, JOAN BEBER.

32. Had the Plaintiff, JOAN BEBER, been evaluated by a vascular surgeon on or before March 6 or March 7, 2008, her left leg would have been salvageable. As a direct result of not being seen in a timely fashion by a vascular surgeon or at the emergency room, the Plaintiff, JOAN BEBER, lost her left leg above the knee.

33. Furthermore, as a result of the Defendants' negligence, JOAN BEBER died on or about September 10, 2012 from myelofibrosis and leukemia.

34. Defendant, MDVIP, INC, held itself out as a network fraternity of some of the nation's finest physicians. Defendant, MDVIP, INC. claimed to be associated with premier academic centers in the country and had a program wherein it was supposed to help patients like Mrs. Beber get in to see physicians at certain institutions. Yet, when Robert Beber told Dr. Metzger that he wanted his wife to go to Jackson Memorial Hospital or Mount Sinai, Dr. Metzger responded that he didn't have privileges at either of those hospitals, and that Plaintiff, JOAN BEBER had to go to Boca Raton Community Hospital.

35. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendants' negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare

providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

36. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

**COUNT I – NEGLIGENCE CLAIM AGAINST
DEFENDANT, CHARLES E. METZGER, JR., M.D.**

37. Plaintiffs, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 8, 23 through 36 above, as though fully set forth herein.

38. Beginning on or about March 4, 2008, CHARLES E. METZGER, JR., M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide non-negligent medical care and treatment in accordance with the prevailing professional standards of care for similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, the Defendant, CHARLES E. METZGER, JR., M.D., did or failed to

do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failure of CHARLES EDWARD METZGER, JR., M.D. to diagnose or even consider vascular compromise on or before March 4, 2008, despite JOAN BEBER's complaints of continued pain and numbness in her left leg;
- b) Failure of CHARLES EDWARD METZGER, JR., M.D. to insist that JOAN BEBER come into his office for an evaluation on March 6, 2008 when her husband phoned and spoke to Rosanna Hobson.
- c) Failure of CHARLES EDWARD METZGER, JR., M.D. on March 4, 2008 and March 6, 2008, to send JOAN BEBER for an immediate vascular evaluation and/or to the emergency room for her vascular status to be evaluated;
- d) Failure to call to speak to NATHANIEL LOWEN, MD. and/or SCOTT HOWELL about his patient; and
- e) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

39. Had the Plaintiff, JOAN BEBER, been properly and timely evaluated and treated by CHARLES E. METZGER, JR., M.D., and had he not performed the negligent acts described above, the Plaintiff, JOAN BEBER, would not have lost her leg.

40. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendants' negligence, and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment,

disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

41. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, CHARLES E. METZGER, JR., M.D., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT II – NEGLIGENCE CLAIM AGAINST DEFENDANT,
METZGER COMPREHENSIVE CARE, LLC AS TO METZGER**

42. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and

every allegation as set forth in Paragraphs 1 through 6, 10 through 12, and 23 through 36 above, as though fully set forth herein.

43. On or about March 4, 2008, METZGER COMPREHENSIVE CARE, LLC, acknowledged and represented that CHARLES E. METZGER, JR., M.D. would act on behalf of METZGER COMPREHENSIVE CARE, LLC. CHARLES E. METZGER, JR., M.D. relied on METZGER COMPREHENSIVE CARE, LLC, and accepted these duties and acted accordingly. METZGER COMPREHENSIVE CARE, LLC, created the appearance of an apparent agency relationship with CHARLES E. METZGER, JR., M.D. METZGER COMPREHENSIVE CARE, LLC's actions and words caused the Plaintiff to believe that CHARLES E. METZGER, JR., M.D. was an apparent agent of METZGER COMPREHENSIVE CARE, LLC and had authority to act for METZGER COMPREHENSIVE CARE, LLC. The Plaintiff justifiably relied upon that belief in dealing with CHARLES E. METZGER, JR., M.D. as an apparent agent of METZGER COMPREHENSIVE CARE, LLC. METZGER COMPREHENSIVE CARE, LLC, controlled the actions and/or had the right to control CHARLES E. METZGER, M.D. by controlling his salary, work scope, work hours and/or work conditions.

44. Beginning on or about March 4, 2008, METZGER COMPREHENSIVE CARE, LLC, individually, and by and through its apparent agents and/or employees, including but not limited to CHARLES E. METZGER, JR., M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical and nursing care and treatment in accordance with the prevailing professional standards of care for physicians, nurses,

and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, METZGER COMPREHENSIVE CARE, LLC, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failure of CHARLES EDWARD METZGER, JR., M.D. to diagnose vascular compromise on March 4, 2008, despite JOAN BEBER's complaints of continued pain and numbness in her left leg;
- b) Failure of CHARLES EDWARD METZGER, JR., M.D. on March 4, 2008 and March 6, 2008, to send JOAN BEBER for an immediate vascular evaluation and/or to the emergency room for her vascular status to be evaluated;
- c) Failure of CHARLES EDWARD METZGER, JR., M.D. to insist that JOAN BEBER come into his office for an evaluation on March 6, 2008 when her husband phoned and spoke to Rosanna Hobson;
- d) Failure to call to speak to NATHANIEL LOWEN, MD. and/or SCOTT HOWELL about their patient; and
- e) Failure to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers and nurses.

45. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care,

attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

46. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, METZGER COMPREHENSIVE CARE, LLC, for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT III – NEGLIGENCE CLAIM AGAINST DEFENDANT,
METZGER COMPREHENSIVE CARE, LLC AS TO ROSANNA HOBSON, R.N.**

47. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 9 through 11, 13, and 28 through 36 above, as though fully set forth herein.

48. On or about March 4, 2008, METZGER COMPREHENSIVE CARE, LLC, acknowledged and represented that ROSANNA HOBSON, R.N. would act on behalf of METZGER COMPREHENSIVE CARE, LLC. ROSANNA HOBSON, R.N. relied on METZGER COMPREHENSIVE CARE, LLC, and accepted these duties and acted accordingly. METZGER COMPREHENSIVE CARE, LLC, created the appearance of an apparent agency relationship with its nurse, ROSANNA HOBSON, R.N. METZGER COMPREHENSIVE CARE, LLC's actions and words caused or allowed the Plaintiff to believe that ROSANNA HOBSON, R.N. was an apparent agent of METZGER COMPREHENSIVE CARE, LLC and had authority to act for METZGER COMPREHENSIVE CARE, LLC. The Plaintiff justifiably relied upon that belief in dealing with ROSANNA HOBSON, R.N. as an apparent agent of METZGER COMPREHENSIVE CARE, LLC. METZGER COMPREHENSIVE CARE, LLC, controlled the actions and/or had the right to control the actions of the nurses, including but not limited to ROSANNA HOBSON, R.N. by controlling her salary, work scope, work hours and/or work conditions.

49. Beginning on or about March 4, 2008, METZGER COMPREHENSIVE CARE, LLC, individually, and by and through its apparent agents and/or employees, including but not limited to ROSANNA HOBSON, R.N. who owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for nurses and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken,

METZGER COMPREHENSIVE CARE, LLC, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failed to recognize the change in the medical condition of Mrs. Beber on February 11, 2008 when Mrs. Beber called to report left leg pain and numbness. Nurse Hobson failed to fully assess the situation, failed to communicate up her chain of command to Dr. Metzger, and failed to make a full assessment to allow the appropriate care, collaboration and referrals for JOAN BEBER's care;
- b) Failed to practice within the scope of practice of a Registered Nurse by making a medical diagnosis and referral to the Florida Back Institute, which resulted in a delay in the care and treatment of Joan's medical condition;
- c) Failed on March 3, 2008 to appropriately triage and investigate the reasons why Mrs. Beber had continued and increased pain since her treatments with the Florida Back Institute, to offer her an office visit or to suggest immediate follow up with the Back Institute. As a result, this caused insufficient data to be relayed to Dr. Metzger and a delay in diagnosis and treatment. These were deviations from the standard of care;
- d) Failed to recognize the severity of Joan's medical condition when Mr. Beber described Joan's leg as "dead and paralyzed" on March 6, 2008. Nurse Hobson failed to recognize the urgency of communicating with Dr. Metzger about Joan's medical condition and to insist that Joan go for immediate evaluation at the Emergency Department. These were deviations from the standards of care;
- e) Failed to communicate all pertinent medical information to Charles Metzger, Jr., M.D. regarding Mrs. Beber; and
- f) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare nurses.

50. The aforementioned substandard care resulted in a break in the continuity of care, and a delay in appropriate treatment of Plaintiff, JOAN BEBER's medical condition.

51. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

52. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, METZGER COMPREHENSIVE CARE, LLC, for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT IV – NEGLIGENCE CLAIM AGAINST DEFENDANT,
FLORIDA BACK INSTITUTE, INC. FOR APPARENT AGENCY**

53. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 14 through 20, and 28 through 36 above, as though fully set forth herein.

54. On or about February 13, 2008, FLORIDA BACK INSTITUTE, INC., acknowledged and represented that the doctors and physician assistants, including but not limited to NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, acted on behalf of FLORIDA BACK INSTITUTE, INC. NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, relied on FLORIDA BACK INSTITUTE, INC. and accepted these duties and acted accordingly. FLORIDA BACK INSTITUTE, INC., created the appearance of an apparent agency relationship with its physician and physician assistants, NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C. FLORIDA BACK INSTITUTE, INC.'s actions and words caused or allowed the public, including but not limited to the Plaintiff, to believe that NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, were apparent agents of FLORIDA BACK INSTITUTE, INC., and had authority to act for FLORIDA BACK INSTITUTE, INC. The Plaintiff justifiably relied

upon that belief in dealing with NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, as apparent agents of FLORIDA BACK INSTITUTE, INC. FLORIDA BACK INSTITUTE, INC. controlled the actions and/or had the right to control the actions of the physicians and physician assistants, including but not limited to FLORIDA BACK INSTITUTE, INC., by controlling their salary, work scope, work hours and/or work conditions.

55. Beginning on or about February 13, 2008, FLORIDA BACK INSTITUTE, INC., individually, and by and through its apparent agents and/or employees, including but not limited to NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for physicians and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, FLORIDA BACK INSTITUTE, INC., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failed to consider a vascular problem when, on 2/13/08, JOAN BEBER complained that pain in her left leg awakened her at night;
- b) Failed to consider other possible etiologies for JOAN BEBER's left leg pain, in light of radiographic finding of spinal stenosis that was not severe;
- c) Failed to appropriately diagnose a vascular problem on 3/5/08, when JOAN BEBER's left foot was described as cold or cooler than the right foot;

- d) Failed to emergently refer JOAN BEBER to a vascular surgeon or to the emergency room on 3/5/08, upon noting that her left foot was cooler than her right foot; and
- e) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

56. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

57. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained

by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, FLORIDA BACK INSTITUTE, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT V – NEGLIGENCE CLAIM AGAINST DEFENDANT,
FLORIDA BACK INSTITUTE, INC. FOR AGENCY**

58. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 14 through 20, and 28 through 36 above, as though fully set forth herein.

59. On or about February 13, 2008, FLORIDA BACK INSTITUTE, INC. had the right of control over doctors and physician assistants, including but not limited to NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C. The methods by which NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, performed work were controlled by FLORIDA BACK INSTITUTE, INC. FLORIDA BACK INSTITUTE, INC., controlled the details of the work performed by NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, and both performed such work under the direction of their employer, FLORIDA BACK INSTITUTE, INC. FLORIDA BACK INSTITUTE, INC. supplied the instrumentalities, tools, and the place of work for NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C and determined the method of payment for

NATHANIEL A. LOWEN, M.D. and/or SCOTT W. HOWELL, PA-C. As such, this employment relationship between FLORIDA BACK INSTITUTE, INC., NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C was an agency relationship and NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, were agents of FLORIDA BACK INSTITUTE, INC.

60. Beginning on or about February 13, 2008, FLORIDA BACK INSTITUTE, INC., individually, and by and through its agents and/or employees, including but not limited to NATHANIEL A. LOWEN, M.D. and SCOTT W. HOWELL, PA-C, owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for physicians and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, FLORIDA BACK INSTITUTE, INC., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failed to consider a vascular problem when, on 2/13/08, JOAN BEBER complained that pain in her left leg awakened her at night;
- b) Failed to consider other possible etiologies for JOAN BEBER's left leg pain, in light of radiographic finding of spinal stenosis that was not severe;
- c) Failed to appropriately diagnose a vascular problem on 3/5/08, when JOAN BEBER's left foot was described as cold or cooler than the right foot;

- d) Failed to emergently refer JOAN BEBER to a vascular surgeon or to the emergency room on 3/5/08, upon noting that her left foot was cooler than her right foot; and
- e) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

61. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

62. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained

by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, FLORIDA BACK INSTITUTE, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT VI – NEGLIGENCE CLAIM AGAINST
DEFENDANT, NATHANIEL A. LOWEN, M.D.**

63. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 16 through 18, and 28 through 36 above, as though fully set forth herein.

64. Beginning on or about February 13, 2008, NATHANIEL A. LOWEN, M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, the Defendant, NATHANIEL A. LOWEN, M.D., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failed to consider a vascular problem when, on 2/13/08, JOAN BEBER complained that pain in her left leg awakened her at night;

- b) Failed to consider other possible etiologies for JOAN BEBER's left leg pain, in light of radiographic finding of spinal stenosis that was not severe;
- c) Failed to appropriately diagnose a vascular problem on 3/5/08, when JOAN BEBER's left foot was described as cold or cooler than the right foot;
- d) Failed to emergently refer JOAN BEBER to a vascular surgeon or to the emergency room on 3/5/08, upon noting that her left foot was cooler than her right foot; and
- e) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

65. Had the Plaintiff, JOAN BEBER, been properly and timely evaluated and treated by NATHANIEL A. LOWEN, M.D., had he not performed the negligent acts described above, the Plaintiff, JOAN BEBER, would not have lost her leg.

66. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

67. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, NATHANIEL A. LOWEN, M.D., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

COUNT VII – NEGLIGENCE CLAIM AGAINST
DEFENDANT, SCOTT W. HOWELL, PA-C

68. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 16, 19, 20, and 28 through 36 above, as though fully set forth herein.

69. Beginning on or about February 13, 2008, SCOTT W. HOWELL, PA-C, owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for similar

health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, the Defendant, SCOTT W. HOWELL, PA-C, did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failed to consider a vascular problem when, on 2/13/08, JOAN BEBER complained that pain in her left leg awakened her at night;
- b) Failed to consider other possible etiologies for JOAN BEBER's left leg pain, in light of radiographic finding of spinal stenosis that was not severe;
- c) Failed to appropriately diagnose a vascular problem on 3/5/08, when JOAN BEBER's left foot was described as cold or cooler than the right foot;
- d) Failed to emergently refer JOAN BEBER to a vascular surgeon or to the emergency room on 3/5/08, upon noting that her left foot was cooler than her right foot; and
- e) Failed to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

70. Had the Plaintiff, JOAN BEBER, been properly and timely evaluated and treated by SCOTT W. HOWELL, PA-C, had he not performed the negligent acts described above, the Plaintiff, JOAN BEBER, would not have lost her leg.

71. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to

disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

72. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, SCOTT W. HOWELL, PA-C, for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT VIII – NEGLIGENCE CLAIM AGAINST
DEFENDANT, MDVIP, INC. FOR APPARENT AGENCY**

73. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 21 through 36 above, as though fully set forth herein.

74. On or about March 4, 2008, MDVIP, INC., acknowledged and represented that CHARLES E. METZGER, JR., M.D., would act on behalf of MDVIP, INC. CHARLES E. METZGER, JR., M.D. relied on MDVIP, INC., and accepted these duties and acted accordingly. MDVIP, INC., created the appearance of an apparent agency relationship with its physician, CHARLES E. METZGER, JR., M.D. MDVIP, INC.'s actions and words caused or allowed the public, including but not limited to the Plaintiff, to believe that CHARLES E. METZGER, JR., M.D., was an apparent agent of MDVIP, INC. and had authority to act for MDVIP, INC. The Plaintiff justifiably relied upon that belief in dealing with CHARLES E. METZGER, JR., M.D., as an apparent agent of MDVIP, INC. MDVIP, INC. controlled the actions and/or had the right to control the actions of CHARLES E. METZGER, JR., M.D., by controlling his salary, work scope, work hours and/or work conditions.

75. Beginning on or about March 4, 2008, MDVIP, INC., by and through its apparent agents and/or employees, including CHARLES E. METZGER, JR., M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for

physicians and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, MDVIP, INC., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failure of CHARLES EDWARD METZGER, JR., M.D. to diagnose vascular compromise on March 4, 2008, despite JOAN BEBER's complaints of continued pain and numbness in her left leg;
- b) Failure of CHARLES EDWARD METZGER, JR., M.D. to insist that JOAN BEBER come into his office for an evaluation on March 6, 2008 when her husband phoned and spoke to Rosanna Hobson;
- c) Failure to call to speak to NATHANIEL LOWEN, MD. and/or SCOTT HOWELL about their common patient;
- d) Failure of CHARLES EDWARD METZGER, JR., M.D. on March 4, 2008 and March 6, 2008, to send JOAN BEBER for an immediate vascular evaluation and/or to the emergency room for her vascular status to be evaluated; and
- e) Failure to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

76. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare

providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

77. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT IX – NEGLIGENCE CLAIM AGAINST
DEFENDANT, MDVIP, INC. FOR AGENCY**

78. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, and 21 through 36 above, as though fully set forth herein.

79. On or about March 4, 2008, MDVIP, INC. had the right to control CHARLES E. METZGER, JR., M.D. in how CHARLES E. METZGER, JR., M.D. practiced medicine and treated the Plaintiff, JOAN BEBER. As set forth in the Participation Agreement which is attached as Exhibit "A", MDVIP, INC., directed the methods of performing the work for CHARLES E. METZGER, JR., M.D. Therefore, CHARLES E. METZGER, JR., M.D. methods were subject to MDVIP, INC.'s right of control. In exchange for such right to control, CHARLES E. METZGER, JR., M.D., was paid a monetary fee for the work performed for MDVIP, INC.

80. Beginning on or about March 4, 2008, MDVIP, INC., by and through its agents and/or employees, including CHARLES E. METZGER, JR., M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide non-negligent medical care and treatment in accordance with the prevailing professional standards of care for physicians and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, MDVIP, INC., did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failure of CHARLES EDWARD METZGER, JR., M.D. to diagnose vascular compromise on March 4, 2008, despite JOAN BEBER's complaints of continued pain and numbness in her left leg;
- b) Failure of CHARLES EDWARD METZGER, JR., M.D. to insist that JOAN BEBER come into his office for an evaluation on March 6, 2008 when her husband phoned and spoke to Rosanna Hobson;
- c) Failure to call to speak to NATHANIEL LOWEN, MD. and/or SCOTT HOWELL about their common patient;

- d) Failure of CHARLES EDWARD METZGER, JR., M.D. on March 4, 2008 and March 6, 2008, to send JOAN BEBER for an immediate vascular evaluation and/or to the emergency room for her vascular status to be evaluated; and
- e) Failure to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

81. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

82. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained

by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

**COUNT X – NEGLIGENCE CLAIM AGAINST
DEFENDANT, MDVIP, INC. FOR JOINT VENTURE**

83. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, and 21 through 36 above, as though fully set forth herein.

84. At all times material hereto, including but not limited to March 4, 2008, Defendants, MDVIP, INC. and CHARLES E. METZGER, JR., M.D., were engaged in a joint venture. There was a community of interest in the performance of a common purpose in treating patients such as Plaintiff, JOAN BEBER. There was also joint control or right of control between Defendants, MDVIP, INC. and CHARLES E. METZGER, JR., M.D. Furthermore, Defendants, MDVIP, INC. and CHARLES E. METZGER, JR., M.D. shared a joint proprietary interest in the treatment of patients and had a right to share in the profits and a duty to share in any losses.

85. Beginning on or about March 4, 2008, Defendant, MDVIP, INC., individually and by and through its joint venturers, including Defendant, CHARLES E.

METZGER, JR., M.D., owed a duty to the Plaintiff, JOAN BEBER, to provide proper medical care and treatment in accordance with the prevailing professional standards of care for physicians and/or similar health care providers in light of all the relevant circumstances. Notwithstanding the duty undertaken, Defendant, MDVIP, INC. did or failed to do one or more of the following acts, any or all of which were departures from the acceptable professional standards of care in Palm Beach County, Florida, or any similar medical community:

- a) Failure of CHARLES EDWARD METZGER, JR., M.D. to diagnose vascular compromise on March 4, 2008, despite JOAN BEBER's complaints of continued pain and numbness in her left leg;
- b) Failure of CHARLES EDWARD METZGER, JR., M.D. to insist that JOAN BEBER come into his office for an evaluation on March 6, 2008 when her husband phoned and spoke to Rosanna Hobson;
- c) Failure to call to speak to NATHANIEL LOWEN, MD. and/or SCOTT HOWELL about their common patient;
- d) Failure of CHARLES EDWARD METZGER, JR., M.D. on March 4, 2008 and March 6, 2008, to send JOAN BEBER for an immediate vascular evaluation and/or to the emergency room for her vascular status to be evaluated; and
- e) Failure to provide that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar healthcare providers.

86. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendants' negligence and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment,

disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

87. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, and further demands trial by jury on all issues so triable.

COUNT XI-CLAIM AGAINST DEFENDANT, MDVIP, INC.
FOR PROMISSORY ESTOPPEL

88. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference Paragraphs 1 through 6, and 21 through 36 above as though fully set forth herein.

89. Defendant, MDVIP, INC. made representations of material facts to Plaintiff, JOAN BEBER, i.e. that it would provide her with an exceptional doctor who would give her exceptional care and guaranteed exceptional results. Specifically, Defendant, MDVIP, INC. promised to provide and guaranteed "exceptional doctors, exceptional care, and exceptional results." Defendant, MDVIP, INC. reasonably expected patients such as Mrs. Beber to join Defendant, MDVIP, INC. Mrs. Beber reasonably relied on the representations made by Defendant, MDVIP, INC. and changed her position accordingly. This had a detrimental effect on Mrs. Beber as she received inadequate negligent care which was far less than exceptional. Yet Defendant, MDVIP, INC. now claims in its pleadings filed in this case that it only had a duty to render reasonable care, not exceptional care. Therefore, Defendant, MDVIP, INC.'s statements were false statements concerning a material fact. Defendant, MDVIP, INC. knew that their statements were false when they made the statements, yet despite that, Defendant, MDVIP, INC. made these statements with the intent to induce people, like Mrs. Beber, to act on the statements by becoming a Defendant, MDVIP, INC. member and paying \$1500 to do so. As a result, Mrs. Beber suffered a serious permanent injury in reliance on Defendant, MDVIP, INC.'s representations.

90. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to provide an exceptional doctor or provide exceptional care and failure to timely treat Plaintiff, JOAN BEBER, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

91. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligence and failure to provide an exceptional doctor or provide exceptional care, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, attorney's fees, and further demands trial by jury on all issues so triable.

**COUNT XII-CLAIM AGAINST DEFENDANT, MDVIP, INC. FOR
NEGLIGENT/MISLEADING ADVERTISING**

92. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, and 21 through 36 above as though fully set forth herein.

93. This is a claim made pursuant to Florida Statute §817.41.

94. Defendant MDVIP made and disseminated to the public in oral, written and printed form statements about MDVIP and the care and services rendered by it which it knew, or through the exercise of reasonable care or investigation, should have known, to be untrue or misleading, and which were so made or disseminated with the intent or purpose, either directly or indirectly, of selling services in order to induce the public, including but not limited to Mrs. Beber, to enter into obligations relating to such services.

95. Defendant, MDVIP, INC. promised to provide and guaranteed "exceptional doctors, exceptional care, and exceptional results" to Plaintiff, JOAN BEBER. Yet Defendant, MDVIP, INC. now claims in its pleadings filed in this case that it only had a duty to render reasonable care, not exceptional care. Therefore, Defendant, MDVIP,

INC.'s statements were false statements concerning a material fact. Defendant, MDVIP, INC. knew that their statements were false when they made the statements, yet despite that, Defendant, MDVIP, INC. made these statements with the intent to induce people, like Mrs. Beber, to act on the statements by becoming a Defendant, MDVIP, INC. member and paying \$1500 to do so. Furthermore, MDVIP, INC. guaranteed to provide Plaintiff, JOAN BEBER that she would be seen by the finest national specialists with advanced treatment. As a result of her reliance, Mrs. Beber suffered a serious permanent injury in reliance on Defendant, MDVIP, INC.'s representations.

96. The statements regarding the exceptional quality of care, exceptional doctors, and exceptional results were false and were known to be false by Defendant, MDVIP when made to be false, but were made in any event to entice individuals, including Plaintiff, JOAN BEBER, into becoming patient members of its organization.

97. These statements include those made in documents provided to potential patient members, which are known to and in the possession of Defendant, MDVIP. Plaintiff, JOAN BEBER relied on the misrepresentations and the negligent and misleading advertising, which ultimately led to Plaintiff, JOAN BEBER's permanent injuries.

98. Plaintiff has retained the undersigned law firm to prosecute this claim and are obligated to pay them a reasonable fee. Pursuant to Florida Statute §817.41, Plaintiff are entitled to recover reasonable attorney's fees, costs, and punitive damages.

99. As a direct and proximate result of and in reliance on the false, fraudulent and misleading statements of Defendant, MDVIP, Plaintiff, JOAN BEBER utilized the services of Defendant, MDVIP, INC and became a patient member.

100. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's negligent advertising, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

101. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's negligent advertising, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, attorney's fees, and further demands trial by jury on all issues so triable.

**COUNT XIII -CLAIM AGAINST DEFENDANT, MDVIP, INC. FOR
FRAUDULENT MISREPRESENTATION**

102. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, and 21 through 36 as though fully set forth herein.

103. Defendant, MDVIP, INC. promised to provide and guaranteed "exceptional doctors, exceptional care, and exceptional results." Yet Defendant, MDVIP, INC. now claims in its pleadings filed in this case that it only had a duty to render reasonable care, not exceptional care. Therefore, Defendant, MDVIP, INC.'s statements were false statements concerning a material fact. Defendant, MDVIP, INC. knew that their statements were false when they made the statements, yet despite that, Defendant, MDVIP, INC. made these statements with the intent to induce people, like Mrs. Beber, to act on the statements by becoming a Defendant, MDVIP, INC. member and paying \$1500 to do so. Furthermore, MDVIP, INC. guaranteed to provide Plaintiff, JOAN BEBER that she would be seen by the finest national specialists with advanced treatment. As a result of her reliance, Mrs. Beber suffered a serious permanent injury in reliance on Defendant, MDVIP, INC.'s representations.

104. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's fraudulent misrepresentation, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

105. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's fraudulent misrepresentation, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, attorney's fees, and further demands trial by jury on all issues so triable.

COUNT XIV-CLAIM AGAINST DEFENDANT, MDVIP, INC.
FOR BREACH OF CONTRACT

106. Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1 through 6, 21 through 36 above, as though fully set forth herein.

107. Defendants, CHARLES E. METZGER, M.D. and MDVIP, INC., and Plaintiff, JOAN BEBER entered into a contract. (Attached as Exhibit "B" is the contract). For \$1500/year, Plaintiff, JOAN BEBER was guaranteed to get same day or next day appointments, no waiting, doctor arranged appointments with specialists, comprehensive physicals, preventive health care and lifestyle planning, "exceptional care", the "highest level of care", etc. (other guarantees are set forth in MDVIP, INC. documents produced in this litigation but deemed by MDVIP, INC. to be confidential; therefore, they are not attached to this Second Amended Complaint).

108. In the contract, the Defendants, CHARLES E. METZGER, JR., M.D. and MDVIP, INC. promised to refer its members to MDVIP, INC.'s medical centers of excellence and breached that portion of the contract with Plaintiff, JOAN BEBER by failing to do so.

109. Plaintiff, JOAN BEBER's survival claim: As a direct and proximate result of the Defendant's breach of contract, the Defendants caused serious permanent injury to Plaintiff, JOAN BEBER, in addition to disability, physical pain and suffering, mental pain and suffering, impairment, disfigurement, inconvenience, aggravation of a pre-

existing condition, and loss of capacity to enjoy life. She had also incurred medical, hospitalization, nursing care, attendant care, rehabilitation therapy, adaptive, and other expenses with healthcare providers in obtaining treatment for her physical and mental injuries, in the past and until the time of death.

110. Plaintiff, ROBERT BEBER's survival claim: As a direct and proximate result of the Defendant's breach of contract, the Plaintiff, ROBERT BEBER, has been deprived of the consortium of his wife, the Plaintiff, JOAN BEBER, including but not limited to, the loss of fellowship, companionship, society, attentions, services, affection, guidance, comfort and household services, and said losses are permanent in nature. Additionally, the Plaintiff, ROBERT BEBER, claims the reasonable value or expense of hospitalization, medical, nursing care and treatment necessarily or reasonably obtained by the Plaintiff, ROBERT BEBER, for his wife, the Plaintiff, JOAN BEBER, in the past and until the time of her death.

WHEREFORE, Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, demands judgment against the Defendant, MDVIP, INC., for damages exceeding \$15,000.00, exclusive of interest and costs, attorney's fees, civil penalties of not more than \$15,000 for each violation per F.S. 501.2077(2), and further demands trial by jury on all issues so triable.

COMPLIANCE WITH FLORIDA STATUTE §766.106

As reflected in Paragraph 28, a pre-suit investigation was performed pursuant to Florida Statute §766.203 and a Notice of Intent to Initiate Litigation against the

Defendants, in accordance with the requirements of Florida Statute §766.106. All conditions precedent under Chapter 766 have been performed to bring this action.

DEMANDS FOR JURY TRIAL

Plaintiff, ROBERT BEBER as Personal Representative of the Estate of JOAN BEBER, deceased, hereby demands trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

Pursuant to Florida Statute §766.203, the undersigned attorneys of record do hereby certify that a reasonable investigation has been conducted as to the matters alleged herein, and it has been determined that there are grounds for a good faith belief that there has been negligence in the care and treatment of Plaintiff, JOAN BEBER, and that grounds exist for the filing of this action against the Defendants named herein.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by E-serve to all counsel on the attached service list, this 30th day of May, 2013



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PARTICIPATION AGREEMENT

BY AND BETWEEN

MDVIP, INC.

AND

CHARLES E. METZGER, JR., M.D.

DATED AS OF

EXHIBIT "A"

PARTICIPATION AGREEMENT

This Participation Agreement ("Agreement") is entered into by and between MDVIP, INC., a Delaware corporation with its principal place of business at 6001 Broken Sound Parkway NW, Suite 100, Boca Raton, Florida 33487 ("MDVIP"), and CHARLES E. METZGER, JR., M.D. having an address at 1001 NW 13th Street, Suite 101, Boca Raton, Florida 33486 ("Physician"), and is dated _____.

PRELIMINARY STATEMENTS

WHEREAS, MDVIP has established a program ("Program") available to individual members ("Members"), pursuant to which such Members may elect to obtain preventive services and amenities from participating physicians who agree to make certain commitments to the Members ("Affiliated Physicians");

WHEREAS, Physician is duly licensed to practice medicine in the State of Florida and to furnish the services set forth in Article 3 below; and

WHEREAS, Physician desires to become an Affiliated Physician of MDVIP and MDVIP desires for Physician to become an Affiliated Physician of MDVIP, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby forever acknowledged, it is understood and agreed to by the parties as follows:

1. MDVIP Obligations and Services. MDVIP agrees to furnish to Physician the services and items listed on Exhibit 1 to this Agreement, incorporated herein by reference (collectively the "Services").

2. Remittance for Services. For furnishing a comprehensive physical examination including a typed or computer generated report and personalized health care plan (the "Physical") to Members, MDVIP shall remit to Physician the amounts listed on Exhibit 2 to this Agreement, incorporated herein by reference. Physician shall receive such amounts in the manner provided for in Exhibit 2.

3. Physician Obligations and Services.

3.1. During all times this Agreement is in effect, Physician shall (i) provide Members with the Physical, which shall include, at a minimum, the services selected by the Physician as set forth in Exhibit 3.1; (ii) facilitate the preparation of annual physical CDs for Members; (iii) respond promptly to calls from Members; (iv) be accessible to Members by cellular phone or personal pager 24 hours per day, 7 days per week; (v) be accessible to Members by e-mail and

Witnessed/Legal: FLORIDA METZGER, CHARLES JR. (LEGAL) METZGER, CHARLES JR. (LEGAL) Participation Agreement 121206, 12/12/05

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fauxmille; (vi) maintain qualified medical staff in Physician's office; (vii) schedule appointments for Members by the next business day; (viii) arrange for 24-hour on-call coverage when Physician is on vacation or is otherwise reasonably unavailable; (ix) maintain regular office hours and be reasonably available Monday through Friday during the approximately sixteen (16) week implementation period; (x) use and implementation of MDVIP's electronic medical record ("MDVIP's EMR") or an EMR that meets the functionality requirements set forth in Exhibit 1 and, (xi) use all reasonable efforts necessary to assist MDVIP in implementing the Program during the term of this Agreement.

3.2. During all times this Agreement is in effect, and as a condition of being an Affiliated Physician, Physician shall furnish to Members, at no cost to MDVIP or the Members, the amenities listed in Exhibit 3.2 to this Agreement, incorporated by reference.

3.3. During all times this Agreement is in effect, Physician agrees to maintain a medical practice solely devoted to Members and to limit the number of patients in Physician's medical practice to no more than six hundred (600) Members. Physician may engage in other activities to the extent such activities do not adversely impact Physician's obligations under this Agreement.

3.4. Physician shall be responsible for billing and collecting from Members and/or Members' insurers for medical services he or she renders to Members. Physician acknowledges and agrees that MDVIP does not furnish medical services to Members either directly or indirectly. Physician further acknowledges that the annual fee payable by Members to MDVIP ("Participation Fee") is not insurance or a substitute for insurance, and that the Physical is not a service covered by Medicare. Physician agrees that he or she shall not receive compensation in any form from Member, or any other third party, for the Physical, other than as set forth in this Agreement, or for any amenities set forth in Article 3 herein. Physician acknowledges that MDVIP is not Physician's billing agent and MDVIP shall have no responsibility for billing and collecting for medical services rendered by Physician to Members.

3.5. Physician shall maintain throughout the term of this Agreement professional and comprehensive liability insurance covering Physician and Physician's personnel in amounts that conform to industry standards. Physician shall immediately notify MDVIP of any claim made under, or termination of, or any restriction in, such insurance coverage. Physician acknowledges that MDVIP may seek to secure, at its own expense, a life, disability, accident or other insurance policy insuring Physician with such benefits payable to MDVIP. Physician shall reasonably assist MDVIP in procuring such insurance.

3.6. Physician shall provide a computer server for his or her medical practice which, at a minimum consists of: a Pentium IV processor (2.4 GHz or greater) with 256 Megabytes of memory; a computer monitor at least 17 inches wide; operates on Windows 2000 Professional Edition/XP/ME (Service Pack 4); equipped with high speed internet access; 20GB Hard Disk Space and a deskjet printer. MDVIP may require reasonable future computer hardware and/or operating system upgrades that will allow Physician's computer system to support the MDVIP Program. The expense associated with such upgrades will be borne solely by Physician.

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3.7 If Physician elects to implement MDVIP's EMR, Physician shall provide, for use with MDVIP's EMR: Intel Pentium M Processor 740 (1.73 GHz, 2MB L2 cache, 533 MHz FSB) or greater; a Tablet PC with one Gigabyte of memory; a 10.4" XGA TFT indoor/outdoor (Reflective FL) display; a docking station with a DVD/CD-RW combo drive; an internal modem; 80 GB Hard Drive; Intel PRO/Wireless 2200 BG Network Connection (802.11 b/g) with Bluetooth wireless PAN V2; high capacity battery (9-cell 7200 mAh); USB optical mouse with scroll; wireless keyboard; a remote user license for the MDVIP EMR; Microsoft Windows XP Tablet PC Edition 2005 with Microsoft Office OneNote 2003 and Microsoft Office Small Business Edition 2003. Additionally, Physician shall provide a scanner with the following functionality: up to 25 ppm simplex/50 ppm duplex; 50 sheet auto document feeder; Ultra SCSI and USB 2.0 interfaces; 600 dpi optical resolution; 8.5 x 14 inch scan area via document feeder; and Windows 98/2000/NT/Me/XP compatibility. MDVIP may require reasonable future computer and/or system upgrades that will allow Physician's computer system to support the MDVIP EMR. The expense associated with such upgrades will be borne solely by Physician.

4. Term; Termination.

4.1 The initial term of this Agreement shall commence on the date set forth on the first page of this Agreement and shall end on the fifth anniversary of the opening of Physician's MDVIP affiliated practice. This Agreement shall automatically renew for successive twelve (12) month periods, unless either party hereto notifies the other, in writing, sixty (60) days prior to the scheduled expiration of the initial term or any renewal term, of its election not to renew.

4.2 Notwithstanding the foregoing, MDVIP may terminate this Agreement immediately upon written notice to Physician in the event (i) MDVIP reasonably determines that Physician has materially violated any of the provisions of Article 3 of this Agreement; (ii) any of the representations and warranties made in Article 17 of this Agreement cease to be true; or (iii) MDVIP reasonably determines that immediate termination of this Agreement is in MDVIP's best interests due to Physician's abuse of alcohol or other drugs or controlled substances or if Physician is charged with a crime involving theft, fraud or moral turpitude. Physician shall have twenty-one (21) calendar days after delivery of notice of breach from MDVIP to remedy the breach and to provide evidence of cure to MDVIP.

4.3 Termination of this Agreement shall not release or discharge Physician or MDVIP from any obligation, debt or liability which shall have previously accrued and/or remain to be performed under this Agreement on or after the date of termination, including, without limitation, as set forth in Articles 4, 5, 8, 9 and 10 of this Agreement.

4.4 Upon termination of this Agreement for any reason, Physician shall, upon the request of MDVIP, continue to furnish to Members the services set forth in Article 3 and Exhibit 3.2 of this Agreement until such time as each such Member's annual membership in the Program expires. During such time, Physician and MDVIP agree to comply with the terms of this Agreement. Physician agrees to cooperate with MDVIP and assist Members in transitioning to other physicians. Remittance to Physician for the provision of the Physical to Members will continue as set forth in Exhibit 2 during such post-termination period. When Physician ceases to

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furnish services to Members in accordance with this Agreement, Physician shall return to MDVIP all of the items listed in Exhibit I hereto. This section shall survive the termination or expiration of this Agreement.

4.5 MDVIP represents that, to the best of its knowledge after seeking and relying upon the advice of competent legal counsel, this Agreement and Physician's participation in the Program contemplated hereunder complies with existing state and federal regulations and/or laws. Although this Agreement is intended to comply with existing state and federal regulations and/or laws, MDVIP cannot guarantee that enforcement authorities would agree that this Agreement, or any aspect of the Program, complies with such regulations and laws. The parties acknowledge that existing regulations and laws may change and that the courts or state or federal agencies with appropriate jurisdiction may change their interpretation of existing law. Upon the enactment or amendment of any state or federal law or regulation, or upon the issuance of any judicial or interpretive ruling of any existing state or federal law or regulation, that renders this Agreement illegal or materially changes the obligations of the parties, as determined in the reasonable opinion of the attorney of the party asserting that there has been a change in law, the parties shall use their best efforts during a thirty (30) day period thereafter to mutually agree to such amendments to the Agreement as to permit its valid and legal continuation. If after such thirty (30) day period, the parties are unable to agree to amend the Agreement, this Agreement shall automatically terminate.

4.6 Either party may elect to terminate this Agreement if less than 100 patients have selected Physician six weeks after the date of the first MDVIP mailing to patients. If either party terminates this Agreement pursuant to this Article, MDVIP will assist Physician in contacting his patients, through patient mailings and outbound telephone campaigns, to inform patients of Physician's intent to remain in a traditional, non-concierge practice.

5. HIPAA Compliance. The parties agree to comply with and make such amendments to this Agreement as may be required and mutually agreed to by the parties to come into compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, and the regulations promulgated thereunder (the "HIPAA Regulations"), as in effect or as may hereafter be amended from time to time, and to take such actions as may be necessary to meet the requirements of the HIPAA Regulations to the extent applicable to the transactions contemplated by this Agreement not later than the time period required for implementation by the HIPAA Regulations. The parties agree to be bound by the terms of the Business Associate Agreement attached hereto as Exhibit 5.

6. Use of MDVIP Logo. Physician may use the MDVIP logo ("Logo") and name with the prior written consent of MDVIP, and then in such form as agreed to by MDVIP in writing in advance. Such consent shall not be unreasonably withheld. The privilege of using the Logo and MDVIP's name in a format approved by MDVIP shall continue only for so long as this Agreement is in effect. Upon termination of this Agreement, Physician shall immediately cease utilizing the Logo and MDVIP's name.

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7. MDVIP's Use of Physician's Name. MDVIP will obtain Physician's written consent prior to the listing and display of Physician's name, address, telephone number and portrait of Physician or his or her medical practice in rosters of Affiliated Physicians, advertisements promoting MDVIP, and other promotional materials relating to MDVIP and the Program. Such consent shall not be unreasonably withheld.

8. Confidentiality. Except for protected health information, which shall be governed by Article 5, the parties agree that the parties' confidential information shall be treated in accordance with the following provisions:

8.1 Access to Confidential Information

Each party acknowledges and agrees that they may be given access to or become acquainted with certain confidential and proprietary information of the other party, including, without limitation, patient and Member communications, fee schedules, operating manuals, employment agreements, independent contractor agreements, reports or memoranda regarding the other party's operations, software, symbols, trademarks, service marks, designs, management information systems, utilization procedures and protocols, forms, utilization review and quality assurance mechanisms and data, agreements with managed care organizations and purchasers of services, educational programs related to the other party's activities, any information related to the other party's financial affairs, business and marketing plans and strategies, and any other information that the other party considers to be a trade secret or confidential information ("Confidential Information").

8.2 Disclosure to Third Parties

Each party acknowledges that such information constitutes valuable, special and unique property of the other party. Each party further acknowledges and agrees that they will not, at any time during or after the term of this Agreement, in any fashion, form, or manner, either directly or indirectly, divulge, disclose or communicate to any person, firm or corporation, in any manner whatsoever, the terms and conditions of this Agreement or any information of any kind, nature or description, including, without limitation, the Confidential Information described in the preceding sentence, concerning any matters affecting or relating to the business of the other party. Each party shall at all times hold in the strictest confidence, and will not, without the other party's prior written consent, use any copyrighted, proprietary, secret or other Confidential Information. Each party shall use best efforts and all security measures employed for the protection of its own Confidential Information to prevent such disclosure, except that Confidential Information may be disclosed to each party's personnel who have a need to know such information and are informed of the confidential nature of such Confidential Information and agree to be bound by the terms hereof. The Confidential Information shall at all times remain the property of Physician and MDVIP, respectively. Each party shall cease any and all use of the Confidential Information and shall return any Confidential Information in its possession to the other party immediately upon the expiration or termination of this Agreement.

8.3 Disclosures Required by Law

Notwithstanding anything herein to the contrary, this Agreement shall not be deemed to restrict any party and its personnel from complying with a government or court order or decree or a request from any regulatory authority having jurisdiction to disclose any Confidential Information; provided, however, that in such event, the disclosing party and its personnel shall provide non-disclosing party with prompt written notice so that non-disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or non-disclosing party waives compliance with the provisions of this Agreement, disclosing party and its personnel shall furnish only that portion of the Confidential Information which is legally required and the other party shall exercise his or her best efforts to obtain reliable assurance that confidential treatment shall be accorded the Confidential Information. Each party shall be responsible for any breach of this Agreement by its agents, employees, assistants or personnel.

8.4 Return of Confidential Information and Duty to Notify

Upon the written request of either party, the other party shall immediately return to the requesting party all of its Confidential Information (including all copies thereof) and shall destroy any copies, extracts, or other reproductions, in whole or in part, of any such Confidential Information, with such destruction confirmed to the other party in writing. Any oral Confidential Information or the substance of the information contained in any returned written Confidential Information shall continue to be subject to the terms of this Agreement. Each party agrees not to use, or assist or permit others to use, Confidential Information to attempt to circumvent or compete or otherwise interfere with the other party's present or future business opportunities. In the event that either party learns of an unauthorized disclosure of Confidential Information, whether intended or otherwise, or if either party is improperly contacted by or receives an improper proposal from any person requesting Confidential Information, each party shall immediately provide written notice fully setting forth the improper disclosure, contact or proposal to the other party.

9. Covenant Not To Solicit. Physician agrees that during the term of this Agreement and for a period of two (2) years following its expiration or termination, Physician shall not solicit, encourage or advise any employee or agent of MDVIP to terminate employment with MDVIP for any reason whatsoever, or interfere with any contract between MDVIP and any other party. Physician further agrees at all times during and following the term of this Agreement to refrain from making derogatory or disparaging remarks concerning MDVIP, its officers, its directors, its employees or their professional competence, orally or in writing, directly or indirectly.

10. Non-Competition Covenant. Physician agrees that from the date set forth on the first page of this Agreement through the fifth anniversary of the opening of Physician's MDVIP affiliated practice, or for a period of two years if this Agreement is terminated prior to its natural expiration, Physician shall not, directly or indirectly, within a ten (10) mile radius of each office or location where Physician practiced during the term of this Agreement, each office or location of MDVIP, and each office or location of an MDVIP Affiliated Physician, compete with MDVIP

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within such geographic radius. Physician shall be released from the provisions of Article 10 if MDVIP is found, pursuant to a final non-appealable judgment of a court of competent jurisdiction to have materially breached this Agreement. As used in this Article 10, the term "compete" includes, without limitation, the rendering of amenities and services substantially similar to those offered by MDVIP to its Members and affiliated physicians, creating, establishing or participating in any program substantially similar to MDVIP directly or indirectly through Physician's employees, agents, assistants or independent contractors, either alone or as a partner, joint venturer, officer, director, employee, independent contractor, consultant, advisor, investor, lender or stockholder of any company, firm, partnership, business organization, person or other entity, in any capacity to any person or on behalf of any person or entity. This Article 10 is in no way intended to restrict Physician's right to render professional medical services, including providing medical care in a traditional primary care practice.

11. Right of Review. Physician hereby grants to MDVIP the right to review any and all of Physician's records, upon reasonable notice, to ensure Physician's compliance with the terms of this Agreement.

12. Compliance with Medical Standards and Law. Physician and MDVIP shall comply with all federal, state, county and municipal laws, rules, ordinances and regulations applicable to the provision of Services hereunder. Physician shall perform all professional services in strict accordance with currently acceptable medical standards and ethics contained in applicable law or ordinance or established by the rules and regulations of any federal, state or local agency, department, commission, association (including the American Medical Association), or other pertinent governing or advisory body having authority to set standards for health care facilities or physicians. Physician agrees to provide MDVIP with monthly written reports regarding Physician's provision of Physicals and hospitalization data for the preceding month and also provide information necessary to conduct Health Plan Employer Data and Information Set ("HEDIS") studies throughout the term of this Agreement.

13. Notice to MDVIP. Physician agrees to notify MDVIP within 24 hours of receipt of any administrative, regulatory, legal or other claim or inquiry arising in regard to Physician's practice that may impact, or otherwise relate to, this Agreement.

14. Attorney Review. Physician acknowledges that he has reviewed this Agreement, and any addenda thereto, with counsel selected by Physician.

15. Injunctive Relief; Attorneys' Fees. Physician recognizes and agrees that a violation of any of the provisions contained in Articles 6, 8, 9 and 10 will cause material irreparable damage to MDVIP, the exact amount of which may be impossible to ascertain, and that, for such reason, among others, MDVIP shall be entitled to an injunction in order to restrain any further violation of such provisions. Such right to an injunction shall be in addition to, and not in limitation of, any other rights and remedies MDVIP may have against Physician, including, but not limited to, the recovery of damages. The durational provisions of Articles 6, 8, 9 and 10 shall be tolled for any period during which Physician violates any provision of Articles 6, 8, 9 and 10. Moreover, if any legal action is brought for the enforcement of Articles 6, 8, 9 and 10, or because of an

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alleged dispute, breach or default in connection with any or all of such sections, or any other provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all reasonable expenses, at both the trial and appellate levels, in addition to any other relief to which such party may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, and all other charges billed by the attorney to the prevailing party.

16. Survival. The terms and conditions of Articles 4, 5, 6, 8, 9 and 10 shall survive this Agreement's expiration or termination.

17. Physician Representations and Warranties; Notifications. Physician represents and warrants that (i) Physician is licensed in Florida to practice medicine without restriction or limitation; and (ii) Physician is in good standing membership, including admitting privileges, on the medical staff of at least one hospital of Physician's choice. Physician agrees to maintain such licensure and privileges for the duration of this Agreement, and shall immediately notify MDVIP as set forth in Article 27, but in no event later than within twenty-four (24) hours if any representation or warranty in this section ceases to be true.

18. Independent Contractors. Physician acknowledges that MDVIP shall not have or exercise control or direction over the method by which Physician or Physician's personnel perform any work or render or perform any services or functions. MDVIP shall have no responsibility in relation to Physician or Physician's personnel to comply with federal, state and city withholding requirements pertaining to taxes, workers' compensation, social security, unemployment compensation, disability and other insurance requirements and obligations imposed on an employer of personnel and shall not withhold monies from the payments made to Physician with respect to same. MDVIP shall not cover Physician or Physician's personnel under any pension or other fringe benefit offered to MDVIP's employees. MDVIP shall have no responsibility for incidents of employment or other actions or inaction by Physician or Physician's personnel. Physician shall hold harmless and provide MDVIP with a defense against any and all claims that MDVIP is responsible for the payment or filing of any of the foregoing payments, withholdings, and contributions, including, but not limited to, Social Security taxes and employer income tax withholding obligations on behalf of Physician or Physician's personnel. This indemnity shall survive the termination of this Agreement. Physician acknowledges that Physician and MDVIP are independent contractors, and nothing in this Agreement shall be construed to make Physician and MDVIP partners or joint venturers, or to make Physician, or Physician's employees or independent contractors, employees of MDVIP.

19. Assignment Prohibited. Physician shall not assign this Agreement without MDVIP's written consent. MDVIP shall have the right to assign this Agreement as it determines in its sole and absolute discretion.

20. Severability. The invalidity of any one or more of the words, phrases, sentences, clauses, sections, subdivisions, or subparagraphs contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part thereof, all of which are inserted conditionally based upon their legal validity. In the event that one or more of the words,

Witnessed by Leg. Officer/DOR/DH/Notary, Curtis McCLEAN Notary, Charles J. Fenn Notary/Notary Approved 121306Jcc256

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phrases, sentences, clauses, sections, subdivisions, or subparagraphs are determined to be unenforceable or otherwise invalid and if such invalidity shall be caused by the length of any period of time or the size of any area set forth in any part hereof, such period of time or such area, or both, shall be considered to be reduced to a period or area which would cure such invalidity.

21. Physician Acknowledgement. PHYSICIAN ACKNOWLEDGES THAT MDVIP MAKES NO EXPRESS OR IMPLIED GUARANTEES, REPRESENTATIONS OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PROGRAM, THE SOFTWARE (DESCRIBED IN EXHIBIT 1 ATTACHED HERETO) OR THE SERVICES CONTEMPLATED IN THIS AGREEMENT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. PHYSICIAN FURTHER ACKNOWLEDGES THAT MEMBERS EXERCISE SOLE DISCRETION IN SELECTING PHYSICIANS AND MDVIP MAKES NO ASSURANCE OF MEMBERS SELECTING PHYSICIAN.

22. Multiple Counterparts. This Agreement may be signed in multiple counterparts, all of which together shall be deemed one and the same instrument.

23. Patient Referral. The compensation paid by MDVIP to Physician hereunder is intended solely as compensation to Physician for furnishing Members with the Physical, and such payment is to the best knowledge of the parties, consistent with the fair market value of such services. Each party expressly represents, warrants and covenants that no part of the payments made pursuant to this Agreement shall at any time be paid directly or indirectly by such party as an inducement or remuneration for the referral of a patient. Neither party shall take any action in violation of Section 1128B of the Social Security Act, as amended, and codified at 42 U.S.C. § 1320a-7b, the Stark Law, codified at 42 U.S.C. § 1395nn, or other applicable federal or state law. The foregoing covenants constitute a material inducement for each party to enter into this Agreement.

24. Amendment. No amendment, waiver or modification of any provision of this Agreement shall be valid unless in writing and duly executed by both parties.

25. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

26. Waiver. Any waiver by any party of any breach of any provision of this Agreement shall not be considered as, or constitute a continuing waiver or waiver of any other breach of any provision of this Agreement.

27. Notice. Any communication required or permitted to be sent under this Agreement shall be in writing and sent via facsimile in addition to either overnight delivery by a nationally recognized courier or via certified mail, return receipt requested, to the addresses set forth herein. Any change in address shall be communicated to the other party in accordance with the provisions of this Article.

Witnessed Legal: FLORENCE, Charles J.; CLARENCE, Charles J. Date: 12/15/2016, 12:03:00

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DRAFT FOR DISCUSSION PURPOSES ONLY 12/12/06

28. Captions. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions of this Agreement.

29. Submission to Jurisdiction: Venue. Each of the parties irrevocably and unconditionally: (i) agree that any suit, action, or other legal proceeding arising out of, or relating to, this Agreement shall be brought in the courts of record of the State of Florida in Palm Beach County or the courts of the District Court for the Southern District of Florida or any other jurisdiction determined by MDVIP; (ii) consent to the jurisdiction of each such court in any such suit, action, or proceeding; (iii) waive any objection which it may have to the laying of venue of any such suit, action, or proceeding in any such courts; and (iv) agree that service of any court paper may be affected on such party by any manner as may be provided under applicable laws or court rules of said State.

30. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to Florida's choice of law provisions.

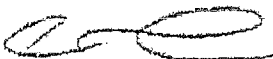
31. Entire Agreement. This Agreement constitutes the entire Agreement between MDVIP and Physician and supersedes all prior discussions, representations, understandings or agreements whether oral or in writing between MDVIP and Physician pertaining to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have agreed to execute this Agreement as of the date first set forth herein.

MDVIP, INC., a Delaware corporation

By: _____
Print Name: _____
Print Title: _____

PHYSICIAN


Print Name: Charles M. Meyer, Jr.

Witnesses: _____

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EXHIBIT 1
MDVIP Services

Implementation Support

- o Comprehensive practice transition planning through the preparation of detailed schedules for all patient communication activities, including mailings, events, advertising, public relations, training and on-site staffing by MDVIP personnel, during the approximately sixteen (16) week implementation period.
- o Design, production and mailing of not less than three (3) mailings of patient brochures and/or letters to all patients of Physician during the implementation period.
- o Inbound/outbound call center activities designed to use all reasonable efforts to contact all patients of Physician during the implementation period to advise and answer questions about the Program, inform about events, and receive calls from patients who are not current patients of Physician.
- o Event planning and execution of not less than two group events during the implementation period.
- o Practice support from on-site MDVIP staff during regular business hours Monday through Friday during the implementation period.
- o Activities designed to develop the membership base of the Program during the implementation period.
- o Staff training as set forth in this Exhibit I.
- o Practice software as set forth in this Exhibit I.

Software

Our Workflow Management Software functionality will include:

- > Patient profile management
- > Patient personal information
- > Patient contact management
- > Staff to-do reminders
- > Physician practice VIP calendar
- > Administrative tools for the practice
- > On-line appointment requests (future enhancement)
- > On-line medication refills (future enhancement)

Our Electronic Medical Record Software functionality will include, at a minimum the following:

- > Remote scanning capabilities
- > Data replication into MDVIP data structures
- > Web-based functionality
- > Remote web-access to medical records
- > Electronic mailing, faxing, and e-mailing of medical records

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- Physician acknowledges that MDVIP is not responsible for the accuracy of the data provided by any third party, including Physician and Physician's personnel. Physician assumes sole responsibility for the supervision, management and control of the use of the software, including, but not limited to, sole responsibility for (1) providing and maintaining all the software that is necessary to operate and maintain the server responsible for Internet connection, including, without limitation, server software, telecommunications software, security software and other software that is necessary to operate and maintain the server, (2) operating and maintaining the server, necessary Internet connections and compatible computers in a secure network environment protected by fire-walls and services that shall protect the confidentiality and integrity of the software stored on the server and prevent unauthorized access, (3) establishing back-up and disaster recovery plans, (4) establishing and maintaining proper environment and utilities for the computer systems on which the Software shall operate, including, without limitation, an uninterrupted power source, (5) selecting an operator qualified to operate the software, (6) inputting accurate data, and (7) the completeness and accuracy of any data inputted or conclusions drawn from the data or information processed by the software. Physician's sole and exclusive remedy with respect to any defective software shall be the right to return such software to MDVIP and MDVIP's sole liability to Physician shall be the replacement of any defective software. This limited warranty does not apply if failure of the software has resulted from accident, abuse, misapplication, tampering, enhancement, alteration or other modification by any person. The limited warranty described above shall apply to any replacement media and upgrades, enhancements, modifications, revisions, or replacements furnished by MDVIP under this Agreement. This Article sets forth Physician's sole remedies for any breach of warranty.

MDVIP will establish an implementation schedule program for a comprehensive practice transition. MDVIP shall provide Physician with brochures, mailings, personal letters, support via the MDVIP call center, patient events, public relations activities, and other support programs that are reasonably necessary to facilitate Physician's conversion to the Program. MDVIP will administer all membership requests, including renewal memberships, and the collection of funds from patients.

MDVIP shall provide Physician and staff with the training reasonably required to assist Physician in his or her conversion to the MDVIP Program. Such training will address substantially all aspects of the Program and utilize experienced personnel. Physician's staff member shall also be trained to properly utilize the MDVIP software. A step-by-step

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implementation program is followed to facilitate the conversion to the MDVIP Program until the Physician has completed the conversion process to the Program. An MDVIP patient advocate will be present at Physician's office during the implementation period, prior to the opening of Physician's MDVIP supported practices. Thereafter, an MDVIP implementation coordinator will be available to provide additional support in regard to implementation and further training.

Regulatory Support and Review

MDVIP will select and provide legal counsel at its sole expense, on behalf of Physician, to represent Physician in regard to administrative and/or legal claims arising solely from the structure of the Program, and having no relation to Physician's provision of healthcare services to Physician's patients. MDVIP will also attempt to monitor legislative activity relevant to the Program. Physician acknowledges that MDVIP makes no express or implied guarantees, representations or warranties as to the success or outcome of such activities.

Technology Support

MDVIP shall provide Physician with phone support during business hours.

Medical Records Compact Discs

MDVIP shall, upon the request of a patient and only after the Physician has provided a patient's annual physical, prepare a summary medical record compact disc for Physician's patients.

Ongoing Activities

- o Ongoing Federal and State regulatory review, as set forth in this Exhibit 1.
- o Ongoing post-opening activities to expand the membership base of the Program, including the maintenance of a waiting list.
- o Ongoing Membership newsletters.
- o Ongoing Physician newsletters.
- o Member Services:
 - o Ongoing billing and collection of Participation Fees, including a monthly reconciliation.
 - o Maintenance of membership records and annual renewals.
- o Ongoing quality control reviews - telephonic and/or written satisfaction surveys occurring not less than annually, with written presentation of results to Physician.
- o Annual personal health record CD for each patient.
- o Ongoing insurance review and support, including notification to and discussions with relevant insurers, as agreed to by Physician.
- o Ongoing efforts to support the tax-favored treatment of the membership fee, including interaction with employers and human resource departments.
- o Ongoing call center efforts to address patient and prospective patient matters, and support activities approved by MDVIP and Physician.

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EXHIBIT 2

In consideration of Physician providing each MDVIP Member of Physician's medical practice with the Physical within one (1) year of a patient becoming a Member, MDVIP shall remit to Physician [REDACTED] per such Member, less any credit card processing charges associated with said [REDACTED].

Such payment shall be payable to Physician ratably in twenty-four (24) equal bi-monthly installments after a patient becomes a Member and after each renewal of a patient's Membership. The first payment will be made by the tenth (10th) day after the month in which Physician's affiliated practice opens; the second payment will be made by the twenty-fifth (25th) day of that month and all subsequent payments will be due to Physician by the tenth (10th) day and the twenty-fifth (25th) day of each month thereafter. For example, if one hundred (100) Members enroll in MDVIP and select Physician as their Affiliated Physician between July 1, 2006 and July 31, 2006, and pay their respective Participation Fees via check, MDVIP shall remit to Physician by August 10, 2006, [REDACTED] and [REDACTED] on August 25, 2006, which is calculated as follows: [REDACTED] Member multiplied by 100 Members) divided by twenty-four (24).

EXHIBIT 3.1

**Comprehensive Annual Physical Examination
Elements**

- ☐ Complete Review of Systems
- ☐ Formation and/or Review of Problem List
- ☐ Formation and/or Review of Allergy and Medication List
- ☐ Review of Vaccination and Procedure History
- ☐ Formation and/or Review of Family History
- ☐ Formation and/or Review of Social History
- ☐ Perform Comprehensive Physical Examination
- ☐ Perform/Interpret Fitness/Activity Status (e.g., Duke Activity Status Index)
- ☐ Perform/Interpret Cognitive Status (e.g., Mini Mental State Exam (MMSE))
- ☐ Perform/Interpret Psychological Screening (i.e. Burns Depression Index)
- ☐ Perform/Interpret Epworth Sleepiness Index
- ☐ Perform/Interpret Nutritional Evaluation
- ☐ Perform/Interpret Pulmonary Function Testing (e.g., Spirometry)
- ☐ Perform/Interpret Pure Tone Audiogram
- ☐ Perform/Interpret Visual Acuity Screening
- ☐ Perform/Interpret Color-blindness, Acuity, Strabismus Test (e.g., Titmus Eye Exam)
- ☐ Perform/Interpret Electrocardiogram (EKG)
- ☐ Laboratory testing including:
 - ☐ Comprehensive Metabolic Panel
 - ☐ he C-Reactive Protein (hs-CRP)
 - ☐ Lipid panel
 - ☐ Urinalysis
 - ☐ Hemocysteine
 - ☐ Thyroid Stimulating Hormone Assay (TSH)
 - ☐ Complete Blood Count w/ differential and platelet count (CBC)
 - ☐ Prostatic Specific Antigen (PSA -male only) (Non-Medicare Patient)
 - ☐ Serum Iron (Medicare Patient & Iron Binding Capacity (Medicare Patient)
 - or
 - ☐ Ferritin (Medicare Patient)
 - ☐ Other Laboratory Tests (please indicate):

☐ Other Diagnostic Tests/Services Performed (please indicate):

(Physician Name)

Date

EXHIBIT 3.2

Widowren/Lapad/FLORIDA/Medicaid, Charles J. Fink Participates Agreement 12/2006.doc/46

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In addition to furnishing the Physical to Members, Physician shall, and shall require his or her personnel, to use reasonable efforts to make the following commitments as a condition of being an Affiliated Physician:

Physician agrees that Members shall not be required to wait more than fifteen minutes to see Physician in the office during scheduled appointments.

Physician shall promptly coordinate necessary referrals with specialty physician practices and Physician's medical assistant will coordinate convenient appointment times for Members.

Physician shall facilitate prescription refills.

Physician shall provide Members with coffee, soda, magazines, videos and other comfort items in waiting rooms.

Physician shall facilitate insurance claims filing for Members.

Physician shall provide those medical services that shall aid Members that are traveling, including, but not limited to, reviewing Member's travel itinerary, advising Members of the need for appropriate vaccinations, and providing emergency medical resources and access to necessary clinical information.

EXHIBIT 5
BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") by and between Physician and MDVIP, Inc. ("Business Associate") is effective as of the Effective Date, as defined below.

RECITALS

A. Business Associate provides Services to Physician pursuant to the Agreement. Under the Agreement, Physician discloses certain information ("Information") to Business Associate so that Business Associate can perform, on Physician's behalf, certain functions or activities generally relating to the treatment, payment and / or health care operations of Physician, some of which Information constitutes Protected Health Information ("PHI") as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA").

B. The purpose of this Addendum is to satisfy the standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time, that Business Associate provide Physician, as a covered entity under HIPAA, with "satisfactory assurances" that Business Associate will deal with PHI that it receives or creates pursuant to the Agreement in a manner that is compliant with Physician's responsibilities under HIPAA.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms have the following definitions:

(a) *Business Associate.* "Business Associate" shall mean Business Associate, functioning as a business associate of Physician pursuant to the Agreement and as such term is defined under the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103.

(b) *Covered Entity.* "Covered Entity" shall mean Physician, functioning as a covered entity under HIPAA as described in the Agreement and as such term is defined under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

(c) *Data Aggregation.* "Data Aggregation" shall have the same meaning as "data aggregation" in 45 CFR 164.501.

(d) *Designated Record Set.* "Designated Record Set" shall have the same meaning as "designated record set" in 45 CFR 164.501.

(e) *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(f) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and B.

Associate or the Secretary, for purposes of the Secretary determining Physician's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Physician to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Physician information collected in accordance with the Agreement and / or this Addendum, to permit Physician to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528. Physician shall be solely responsible for providing such information to the Individual.

3. Permitted Uses and Disclosures of Protected Health Information by Business Associate. Except as otherwise limited in the Agreement and / or this Addendum, Business Associate may use or disclose Protected Health Information only to perform functions, activities, or Participation for, or on behalf of, Physician as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Physician or the minimum necessary policies and procedures of Physician, as follows:

(a) Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Addendum, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Business Associate may use Protected Health Information to provide Data Aggregation Services to Physician as permitted by 45 CFR 164.504(e)(2)(i)(B) to the extent specifically required under the Agreement.

(d) Business Associate may use Protected Health Information received or created pursuant to the Agreement to create information that is not individually identifiable health information (De-identified Information"). Business Associate shall own all rights in and to the De-Identified Information under copyright and all other applicable laws or legal principles.

4. Obligations of Physician to Inform Business Associate of Privacy Practices and Individual Restrictions.

Physician shall provide Business Associate with the following, which shall be binding upon Business Associate:

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(a) Physician shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected Health Information.

(b) Physician shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect Business Associate's permitted or required uses and disclosures.

(c) Physician shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Physician has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. **Permissible Requests by Physician.** Except as specifically provided in this Addendum, Physician shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Physician.

6. **Term and Termination.**

(a) **Term.** This Addendum shall be effective as of the date set forth (the "Effective Date") and shall terminate when all of the Protected Health Information provided by Physician to Business Associate, or created or received by Business Associate on behalf of Physician, is destroyed or returned to Physician, or if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions of this Section.

(b) **Termination for Cause.** Upon Physician's knowledge of a material breach by Business Associate, Physician shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation in the manner provided in the Agreement for a material breach thereof, or if there is no such provision, in a manner designated by Physician. In either event, Physician may terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified;

(2) Notwithstanding the foregoing Section (b) (1), Physician may immediately terminate the Agreement if Business Associate has breached a material term of this Addendum and Physician determines that cure is not possible;

(3) Notwithstanding the foregoing Section (b) (1) or (2), if Physician determines that neither cure, as specified in Section (b) (1) above, nor termination, as specified in Section (b) (2) above, is feasible, Physician shall report the violation to the Secretary.

(c) **Effect of Termination.**

(1) Except as provided in paragraph (2) of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Physician or created or received by Business Associate on behalf of

Unlawful, except as provided in the HIPAA Privacy Rule, 45 CFR 164.502(a)(6)(ii). For more information, see 45 CFR 164.502(a)(6)(ii).

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Physician. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Except as provided in paragraph (2) below, Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Physician notification of the conditions that make return or destruction infeasible. Following such notification, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Security Standards. The parties acknowledge that the Security Standards will require, as of April 20, 2005 (the "Security Standards Compliance Date"), certain additional satisfactory assurances from Business Associate to Physician.

(a) As of the Security Standards Compliance Date, this Addendum is automatically amended to add the following additional material obligations of Business Associate:

i. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Physician as required by the Security Standards;

ii. Business Associate will ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;

iii. Business Associate will report to Physician any security incident of which it becomes aware;

iv. Business Associate authorizes termination of the Service Agreement, if Physician determines that Business Associate has violated a material term of this Addendum, as modified by this Section 7.

(b) In the event that Physician determines that amendments, clarification of official guidance subsequent to the date hereof with respect to the Security Standards require additional or other amendments beyond those set forth in Section 7 (a), Physician may propose, not later than ninety (90) days prior to the Security Standards Compliance Date, a written amendment to this Addendum containing the additional terms and provisions reasonably necessary to provide the additional assurances required for compliance with the Security Standards ("Proposed Security Amendments"). Business Associate shall have thirty (30) days from the date on which the Proposed Security Amendments are sent to advise Physician in writing of any objections, in which case the parties shall negotiate in good faith for appropriate provisions. If Business Associate does not provide such objections in a timely manner, the Proposed Security Amendments shall also be incorporated herein as of the Security Standards Compliance Date.

(c) Nothing in the provisions of this Section 7 shall relieve Business Associate of any obligation to protect information of or from Physician that it creates or accesses pursuant to the Agreement under other applicable contractual provisions or as otherwise required by Law, regulation or applicable standard industry practices.

Witnessed by Legals, FLORIAN M. Legals, CLAUDE J. LEGAL, Manager, CLAUDE R. LEGAL, Participant, Agreement, 11/20/05, 6/1/06

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8. Miscellaneous.

(a) *Regulatory References.* A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Physician to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section 6 C, 1 and 2 of this Addendum shall survive the termination of the Agreement and Addendum.

(d) *Interpretation.* Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Physician to comply with the Privacy Rule

MDVIP Membership Application

Please Print All Information

Affiliated Physician _____ Date _____

MEMBER NAME ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Dr. _____ Gender ☐ Male ☐ Female

First Name _____ Middle Initial _____

Last Name _____

Street Address _____

City _____ State _____ Zip _____

Phone: Home (____) _____ Office (____) _____ Cell (____) _____

Date of Birth _____ Social Security Number _____

E-mail Address _____

Insurance Carrier & Type (e.g., XYZ Ins./PPO) _____

This program is eligible for reimbursement through section 125 plans, FSAs, HSAs etc.

Do you plan to use any of these to offset your membership fee? yes _____ no _____

If yes:

Employer Name _____

Street Address _____

City _____ State _____ Zip _____

MEMBERSHIP BILLING

You may pay for your membership of \$1,500 with either a check or credit card. Please make your checks payable to MDVIP, Inc.

☐ Annual Payment ☐ Semi-Annual Payment ☐ Quarterly Payment

☐ Check Enclosed ☐ VISA ☐ MasterCard ☐ Discover ☐ American Express

Name As It Appears On Card _____

Card # _____

Expiration Date _____ Billing Zip Code _____

MEMBER SIGNATURE _____

Referred By _____

Standard 1506

MDVIP Membership Agreement

This Membership Agreement (the "Agreement") specifies the terms and conditions under which you, the undersigned member ("Member"), may participate in the MDVIP Program ("Program"). This Agreement will become effective either on the date your MDVIP Affiliated Physician ("Affiliated Physician") commences the Program or the date of your signature of this Agreement, whichever is later (the "Effective Date").

1. MDVIP Program. The Program's annual fee encompasses the following services ("Services"):

- Annual Preventive Care Physical Examination, Including Comprehensive Wellness Planning based on the Examination
- Personal Health Records via CD-ROM and Patient Website

2. Affiliated Physician. You understand and acknowledge that physicians participating in the Program may change from time to time and that from time to time certain Affiliated Physicians may no longer be able to accept new members due to patient volume limits. If your designated Affiliated Physician is no longer available, MDVIP will notify you of such unavailability and will refund your membership fee if you so desire, as explained in paragraph four below.

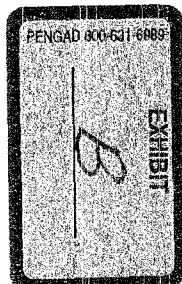
3. Annual Membership Fee. Each Member will pay an annual fee of \$1,500 to MDVIP.

4. Renewals and Termination. The annual membership fee covers a period of one (1) year (the "Term"). Failure to pay the renewal annual membership fee prior to the anniversary of the Effective Date shall result in termination

of your membership in the Program. (For example, if the Effective Date is October 15, 2006, then you must renew on or before October 14, 2007.) You or MDVIP may terminate this Agreement at any time upon 30-days written notice. If you or MDVIP terminate this Agreement for any reason prior to your Annual Preventive Care Physical Examination, you will be entitled to a prorated refund of the annual membership fee. If you have received your Annual Preventive Care Physical Examination, you will not be eligible for a refund. Upon MDVIP's receipt of this Agreement and the annual membership fee, MDVIP shall have the option, in its sole and absolute discretion, not to accept this Agreement and to return your payment to you (e.g., due to limitations in practice size). Unless otherwise terminated, this Agreement shall automatically renew for an additional one-year period upon the expiration of each Term.

5. Medical Care Services Excluded from Annual Membership Fee. The annual membership fee specified herein covers only the defined Services. Neither MDVIP nor your Affiliated Physician or his or her staff will seek reimbursement from any insurer or other third-party payer for the Services. Except for your Annual Preventive Care Physical Examination, you and/or your insurer, as the case may be, will be financially responsible for paying for all healthcare and medical care services received by you from your Affiliated Physician and his or her staff. Your Affiliated Physician's limited practice size also enables your Affiliated Physician to provide conveniences such as same or next day appointments that start on time, unhurried visits, 24/7 availability via personal pager or

Standard 1506



MDVIP Membership Agreement

cell phone, and enhanced coordination of specialist care, at no additional charge to you. Your Affiliated Physician participates in MDVIP's Medical Centers of Excellence program to facilitate specialist opinions from, and refer you for treatment at, leading national health centers.*

6. Co-Payments. The membership fee does not affect the co-payments, co-insurance or deductibles that you are required to pay pursuant to the terms of your insurance coverage. You will continue to be financially responsible for any co-payments, co-insurance or deductible amounts required by your insurer.

7. E-mail Communications; Privacy. If you wish to send secure e-mail communications to, and receive secure e-mail responses from, your Affiliated Physician and/or his or her employees, agents and representatives, you must utilize the secure messaging provided through your personal myMDVIP website. You should be aware that unlike the secure messaging provided through your personal myMDVIP website, traditional e-mail is not a secure medium for sending or receiving potentially sensitive personal health information. You also acknowledge and understand that e-mail in any form is not a good medium for urgent or time-sensitive communications. In the event a communication is time-sensitive, you must communicate with your Affiliated Physician by telephone or in person. You acknowledge and understand that, at the discretion

of your Affiliated Physician, your e-mail may become part of your medical record.

8. Entire Agreement. The undersigned agrees to the terms of this Agreement, all of which are expressed herein. There are no promises or representations except as set forth herein.

9. Notices. Any communication required or permitted to be sent under this Agreement shall be in writing and sent via U.S. mail to the addresses set forth in this Agreement. Any change in address shall be communicated in accordance with the provisions of this section.

10. Billing. Initial payments are processed at the time of enrollment. Subsequent payments are charged on the first day of the month in which payment is due.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to Florida's choice of law provisions.

*Initiatives and program offerings are subject to change.



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Exceptional Doctors. Exceptional Care. Exceptional Results. **MDVIP**