

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

BARRY MORGULOFF

*Plaintiff*

v.

BAYLOR HEALTH CARE SYSTEM d/b/a  
BAYLOR REGIONAL MEDICAL CENTER  
AT PLANO, BAYLOR REGIONAL  
MEDICAL CENTER AT PLANO,  
CHRISTOPHER DUNTSCH, M.D., and  
KIMBERLY MORGAN, APN

*Defendants*

CIVIL ACTION NO. \_\_\_\_\_

**DEMAND FOR JURY TRIAL**

**PLAINTIFF'S ORIGINAL COMPLAINT**

Barry Morguloff files this lawsuit against Baylor Health Care System d/b/a Baylor Regional Medical Center at Plano, Baylor Regional Medical Center at Plano, Christopher Duntsch, M.D., and Kimberly Morgan, APN, for what can only be described as one of the most prolific mass torts involving medical malpractice in Texas history. As a result of the tortious conduct of these Defendants, Barry Morguloff has suffered permanent, life altering personal injuries which will plague him for the rest of his life.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter and venue is proper because (1) one or more acts or omissions forming the basis for liability occurred in Dallas County, Texas, (2) Baylor Health Care system d/b/a Baylor Regional Medical Center at Plano and Baylor Regional Medical Center at Plano are corporate entities located in Dallas County, Texas and (3) this lawsuit may affect the outcome of a pending bankruptcy proceeding. *See* 28 U.S.C. § 1334(b).

2. The bankruptcy proceeding mentioned above is Case No. 1:13-bk-20510, *In Re Christopher Daniel Duntsch*, filed in the United States Bankruptcy Court, District of Colorado.

### **PARTIES**

3. Barry Morguloff (“Barry”) is an individual resident of Texas. He resides in Dallas, Texas.

4. Baylor Health Care System d/b/a Baylor Regional Medical Center at Plano is a corporation with its registered office at 2001 Bryan Street, Suite 2300, Dallas, Texas 75201. It may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

5. Baylor Regional Medical Center at Plano is a corporation with its principal and registered offices at 2001 Bryan Street, Suite 2300, Dallas, Texas 75201. It may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

6. Collectively, Baylor Health Care System d/b/a Baylor Regional Medical Center at Plano and Baylor Regional Medical Center at Plano collectively are referred to as “Baylor Medical”.

7. Christopher Duntsch, M.D. (“Duntsch”) is an individual formerly licensed to practice medicine in Texas. As detailed below, his license to practice medicine was suspended by the Texas Medical Board in June of 2013. He may be served with process through his registered agent, Linda L. Maloney, at 2777 N. Stemmons Freeway, Suite 1157, Dallas, Texas 75207.

8. Kimberly Morgan, APN (“Morgan”) is an individual resident of Texas. She can be served with process at 5111 Cimarron Circle, Allen, Texas 75002, or wherever she may be found. At all times material to this lawsuit, she was Duntsch’s surgical assistant and Advanced Practice Nurse.

### **PRE-SUIT STATUTORY COMPLIANCE**

9. Barry has served pre-suit notices and authorizations more than sixty days before filing this lawsuit, as required by TEX. CIV. PRAC. & REM. CODE § 74.051.

10. As a result of serving the pre-suit notices and authorizations, the statute of limitations has been tolled as to all defendants for a period of 75 days.

11. All conditions precedent to bringing this action have occurred or been performed.

### **FACTUAL BACKGROUND**

#### ***Who is Christopher Duntsch?***

12. Duntsch is originally from Colorado. He purportedly completed a six-year residency and fellowship in Tennessee in 2010; however, during his residency, he was suspected of cocaine use during his fourth year and sent to an impaired physician program.

13. Specifically, a nurse at the hospital where Duntsch worked witnessed him using cocaine both the night before and in the early morning before going to the hospital to perform surgery. This nurse questioned Duntsch about the cocaine use and operating under the influence; he told her not to worry, as he regularly used cocaine before operating on patients. The nurse called the neurosurgery residency program, who immediately had the human resources department call Duntsch under the pretense they were performing random drug screens.

14. In response, Duntsch claimed he had to go to ICU to care for a patient—but he would be right back. He did not show up at the hospital for three days.

15. When he finally returned, he was sent to an impaired physician program in Tennessee for several months—perhaps as long as a year. Regardless, he ended up completing his residency program and fellowship and was unleashed on the unsuspecting public.

***Baylor Medical Hires Christopher Duntsch.***

16. In the summer of 2011, Baylor Medical entered into a contract and / or joint venture with Minimally Invasive Spine Institute, PA (“MISI”) and Christopher Duntsch to perform spine surgeries at Baylor Medical’s facilities in Plano, Texas.

17. As a part of the venture, Baylor Medical agreed to pay a large sum of money up front--\$600,000.00, to be exact, in order to finance Duntsch to come to Texas so he could perform surgeries for Baylor Medical.

18. Baylor Medical memorialized the agreement on July 1, 2011 by executing a “Physician Practice Start-Up Assistance Agreement”.<sup>1</sup> One of the stated purposes of the agreement was Baylor Medical’s desire to “...induce the Physician to relocate to the Hospital Service Area and to join the Hospital’s Medical Staff...”

19. This “inducement” included Baylor Medical paying Duntsch up to \$15,000.00 for relocation expenses, paying for “operating expenses” not to exceed \$44,000.00 per month for a period of one year, pay Duntsch a salary of \$50,000.00 per month as “guaranteed income” for one year, all on top of the \$600,000.00 “advance” mentioned above.

20. In addition, the contract provided, “[a]s compensation for Physician’s services and in consideration of Physician’s other agreements and covenants as set forth herein”, MISI executed a “Physician’s Service Agreement” with Duntsch, which among other things, coincidentally obligated MISI to pay Duntsch a base salary of \$600,000.00 beginning May 24,

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<sup>1</sup> See **Ex. A** (July 1, 2011 “Physician Practice Start-Up Assistance Agreement”).

2011.<sup>2</sup> It also entitled Duntsch to attractive bonuses, which amounted to 40% of all gross collections by MISI for Duntsch's billings in excess of \$800,000.00.

21. Duntsch and MISI also jointly signed a promissory note to pay Baylor Medical the sum of \$600,000.00 with interest subject to a "forgiveness" provision.<sup>3</sup> Repayment, assuming it was required, was scheduled to begin on the first anniversary of the note, which would have been July 1, 2012. However, Baylor Medical contemplated that Duntsch's success as a surgeon would forgive him from repayment at all. "Forgiveness" of the debt was contracted at the rate of one-third of the loan balance after the first year, one-half of the loan balance after the end of the second year, and the remainder of the loan balance after the end of the 36<sup>th</sup> month after the end of the guarantee period (twelve months from the commencement date of July 1, 2011).

22. In addition to the financial compensation Baylor Medical paid Duntsch to perform surgeries at their facility, Baylor Medical also provided marketing dollars and employed one or more marketing agents to create patients for Duntsch, even encouraging other Baylor Medical physicians to refer patients to Duntsch. As it would later unfold, this continued even after questions about Duntsch's competence and capacity were called into question by other physicians and reported to Baylor Medical.

23. And so it began. Baylor Medical's recruitment of Duntsch was a success. He would ultimately move to Texas as a direct result of Baylor Medical's compensation package. Notwithstanding problems during Duntsch's residency and the fact he had not been in an operating room for about a year and a half (he had been in a lab doing research), Baylor Medical

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<sup>2</sup> See **Ex. B** (May 24, 2011 "Physician Services Agreement").

<sup>3</sup> See **Ex. C** (July 1, 2011 Promissory Note).

would welcome Duntsch to perform spine surgery on unsuspecting patients who had entrusted Duntsch and Baylor Medical with their care.

24. Duntsch ultimately moved to Dallas with his longtime friend and roommate, Jerry Summers. Jerry ran errands, served as a chauffeur, maintained Duntsch's residence, and, on occasion, joined Duntsch in one of his apparent pastimes—illicit drug use. Duntsch would later render him a quadriplegic after a night of cocaine use.

25. Initially, Duntsch and Jerry stayed at the W Hotel, where Duntsch was known to be a regular at the popular Ghost Bar. They then moved their residence to Hotel ZaZa, where Duntsch bragged about their parties and tearing up their hotel room.

***MISI Cuts the Cord.***

26. Soon after Duntsch arrived in Dallas, Dr. Michael Rimlawi, at the time co-owner of MISI, suspected that something was wrong with Duntsch, whether it be impairment from drugs, alcohol, mental illness, or a combination of all three.

27. Duntsch lasted about three months at MISI. During his short tenure, he spent little time in the operating room. MISI representatives observed him to be boastful about his capabilities and critical of the work of other surgeons. His behavior was aloof and sometimes bizarre.

28. Towards the end of his short tenure with MISI, Duntsch performed his first surgery for Baylor Medical in Plano. He performed the surgery on a Thursday, but then left for Las Vegas without making any plans for anyone to care for his patient, only to show up the following Monday. After the patient was in the hospital for one or two postoperative days with no follow-up by Duntsch, Baylor Medical called Dr. Rimlawi and told him the patient wanted to be discharged and didn't know why they were still there.

29. When Dr. Rimlawi arrived, Baylor Medical representatives told him they had attempted to get in touch with Duntsch to no avail. When Duntsch arrived back in town on Monday, Dr. Rimlawi confronted him, asking him who was supposed to see Duntsch's patients over the weekend. Duntsch would later indicate that he didn't know and he wasn't on call. Duntsch's malevolent and willful ignorance of his patients' well-being would continue during and after his stint with Baylor Medical and MISI.

30. This was the final straw on an already strained relationship with MISI. MISI terminated its relationship with Duntsch a few short days later. MISI claims that Duntsch abandoned his treatment of patients around September 2011, absconded with MISI's property and medical equipment, and, despite its demands, he has refused to return any of it.

31. In addition to the other problems with Duntsch, Dr. Rimlawi and others observed that Duntsch was extraordinarily self-centered. He was considered to be egocentric, and made statements to Baylor Medical claiming he was the best spine surgeon in Dallas and that none of the other spine surgeons in Dallas were competent. Dr. Rimlawi would later warn Baylor Medical about continuing any relationship with Duntsch. Dr. Rimlawi's warnings were summarily ignored. Baylor Medical's obvious concern was how they were going to get repaid the monies they had advanced to Duntsch. They needed him operating early and often.

***Duntsch's Reign of Terror at Baylor Medical.***

32. Baylor Medical welcomed Duntsch with open arms, due to the money it had paid and, in part, due to the enormous profits it hoped to reap in the future, despite Dr. Rimlawi's warnings and, ultimately, warnings from other physicians. Among other things, Baylor Medical entered into a lease agreement with Duntsch to keep his practice located within the Baylor Plano service area. MISI, Duntsch, and Baylor Plano reached a tacit

agreement: If Duntsch kept his practice in the Baylor Plano service area and continued bringing patients to Baylor Medical and operating on them there, Baylor Medical would not enforce the repayment of loans or pursue any legal claims against MISI or Duntsch for violating the agreements previously executed.

33. During the time Duntsch worked for Baylor Medical, he used and abused alcohol as well as illicit and prescription drugs. It is believed that his pattern was to use cocaine for two to four days at a time, all the while operating on unsuspecting victims. Following two to four days of cocaine use, he would “crash” for a day or two. Efforts to contact him during periods of time when he would “crash” were useless. Nevertheless, Baylor Medical never obtained a drug test for Duntsch, did not investigate his unusual behavior, and did not heed the warnings it had received about him.

34. Duntsch was also a known alcoholic and is believed to have been an abuser of prescription drugs. He would frequently drink vodka in the morning, mixing it with juice. He illegally obtained prescription drugs such as Lortab, Xanax, and Oxycontin, for his own use. He was known to use alcohol while working as a spine surgeon. Alcohol, drugs, and drug paraphernalia were found in his office at Baylor Medical’s facilities in Plano after he eventually fled to Colorado following the suspension of his medical license.

35. Baylor Medical eventually requested Duntsch undergo drug testing, promising a prestigious title in return, but he refused, dodging at least five scheduled drug tests. Regardless, Baylor Medical let him continue to work for them and maim and kill unsuspecting patients.

36. Duntsch’s erratic and disorganized behavior continued. In addition, Baylor Medical employees and other staff participating in surgeries with him witnessed a startling lack of surgical skill and understanding of regional anatomy, which resulted in unnecessarily high

blood loss, unnecessarily long procedures, misplacement of surgical hardware in patients, misuse of hardware, and other complications. Physicians observing him described Duntsch as “dangerous” and “the worst surgeon they had ever seen.” Meanwhile, Baylor Medical continued to actively promote Duntsch and encourage other physicians associated with Baylor Medical to refer their patients to him. Duntsch was under pressure to schedule surgeries so Baylor Medical could recover the money it paid him. During this period, it was not unusual for Duntsch to be in the hospital administrator’s office daily, and his unusual and erratic behavior began to wear on the hospital administration.

37. On November 7, 2011, Duntsch was scheduled to perform surgery on a gentleman named Kenneth Fennell at Baylor Medical’s facilities in Plano. The surgery had to be cancelled because Duntsch failed to order the appropriate surgical hardware and instruments.

38. On November 14, 2011, Duntsch managed to get Mr. Fennell to the operating room and to have the instruments that he intended on using. However, the surgery was an ill-conceived approach to Mr. Fennell’s problems and, in essence, was an unnecessary surgery performed on a 68 year-old man that yielded no benefit to him whatsoever and set him up to require further surgery.

39. Duntsch’s motivation for performing unnecessary and ill-conceived surgeries was, in part, due to pressure and expectation from Baylor Medical that he bring in revenue to pay them back for the monies they had advanced him and ideally, to turn enormous profits for them.

40. On December 6, 2011, Duntsch performed surgery on Mary Efurd at the Baylor Medical’s facilities in Plano. This was also an unnecessary and inappropriate surgery which did not address her problems and set her up to require another surgery.

41. On December 30, 2011, Duntsch operated on Robert Passmore at Baylor Medical's facilities in Plano. During the surgery, a surgeon present in the operating room noticed Duntsch was doing things that were unusual and alarming. At one point, the other surgeon grabbed Duntsch's hands/surgical instruments and pleaded with him to stop; telling Duntsch that he was dangerous and he would never operate with Duntsch again. This altercation was witnessed by the entire operating room staff, including Morgan, who assisted Duntsch during the debacle. Morgan failed to notify anyone in Baylor Medical's chain of command of the altercation, as required by nursing standards of care. Mr. Passmore was unfortunately maimed by Duntsch and has suffered severe, permanent personal injuries as a result.

42. Mr. Passmore was the last victim Duntsch operated on before he maimed his next unsuspecting victim, Barry Morguloff.

***Barry Morguloff's Misfortune.***

43. Barry was a 45 year old man with common back problems. Prior to this disaster, he was an active man who enjoyed skiing, biking, and running—he had even trained for a triathlon. He enjoyed spending time playing with his small child. In 2011, he suffered an onset of localized back pain. Barry's primary care physician referred him to Dr. Haynsworth. He administered a series of steroid injections to ease the pain; unfortunately, they provided no relief.

44. Dr. Haynsworth, a Baylor Medical physician who was encouraged to refer patients to Duntsch, then referred Barry to Duntsch. Barry and his wife met Duntsch for an initial consultation at Baylor Medical's Plano facilities in December 2011. After performing a physical examination and reviewing some of radiographic images, Duntsch confidently told Barry:

**“I can fix you.”**

45. Duntsch recommended an anterior approach (through Barry’s navel area) to fuse Barry’s L5-S1 vertebrae. He scheduled Barry’s surgery for January 11, 2012. It would ultimately be a disaster.

46. Barry’s surgery began as scheduled and should have taken less than ninety minutes. The medical records show the OR was scheduled for a two hour procedure. The surgery would ultimately last approximately four and a half hours. Dr. Randall Kirby, a vascular and general surgeon, participated in the procedure; he would later recount the horror he witnessed in a June 23, 2013 letter to the Texas Medical Board, wherein he pleaded for intervention, because Duntsch “is an impaired physician, a sociopath, and must be stopped from practicing medicine by the Texas Medical Board immediately”.<sup>4</sup> He also related ridiculous statements made by Duntsch in his presence wherein he indicated that he was the best spine surgeon in Dallas and the only spine surgeon in Dallas who was trained in minimally invasive spine surgery.

47. According to Dr. Kirby, Duntsch’s performance “was pathetic on what should have been a fairly easy case—he [Duntsch] had trouble from the start with getting the disc out, bleeding issues, poor visualization of the operative field, and seemed to be struggling getting the interbody device in position—he was functioning at a first to second year neurosurgical resident level but had no apparent insight into how bad his technique was”.<sup>5</sup>

48. Morgan *again* assisted Duntsch on Barry’s procedure. She never reported Duntsch’s incompetence and impairment to Barry or the previous confrontation weeks earlier during Mr. Passmore’s procedure where another doctor attempted to physically intervene in an

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<sup>4</sup> **Ex. D** (Dr. Kirby’s June 23, 2013 letter to the Texas Medical Board).

<sup>5</sup> *Id.*

attempt to keep Dr. Duntsch's from harming the patient. Morgan had never reported anything to Baylor Medical in connection with Mr. Passmore's failed surgery and never once reported it to Barry. Had Barry been informed of what had gone on, he would not have proceeded with the surgery by Duntsch and Morgan.

49. Office records from Duntsch before Barry's surgery clearly show that Barry had back pain that did not involve his legs. Immediately following Duntsch's surgery, Barry began to experience continuous pain, paresthesia, and loss of sensation in his left leg. Although Duntsch's records sporadically mention this, nursing records confirm that Barry was in excruciating pain to the point that the nursing staff called Morgan to the floor twice to evaluate what to do with Barry's left leg. Following the second request, Morgan would eventually come to evaluate Barry. Duntsch eventually showed up after hours had passed with Barry complaining of left leg pain of "10" on a scale of 1 to 10. Records report over and over of his complaints of "significant pain, numbness, and weakness" in his left leg. Duntsch and Morgan continued to medicate Barry with pain medications and ignored the significant clinical change in Barry's condition. No diagnostic imaging studies were ordered and no reasonable explanation was offered for Barry's condition. Ultimately, Barry left the hospital with what lead to permanent, severe personal injuries involving the S1 nerve, among other things. When he called Duntsch's office, he was told it would "go away".

50. It wasn't until more than six months elapsed before Duntsch even bothered to evaluate Barry's condition. After over six months of complaining of continuous, severe pain, weakness, and loss of sensation in his left leg, Duntsch finally ordered an MRI in an attempt to evaluate the problem. Upon reviewing the results Duntsch failed to correlate Barry's signs and symptomatology to the radiographic evidence and insisted Barry was fine. Duntsch told Barry

he had a “new problem” which had nothing to do with his prior issues or the surgery. Barry would learn that Duntsch had not been forthright about his condition and that Duntsch ignored circumstances that a reasonable neurosurgeon would have more carefully evaluated. Barry’s symptoms would continue to get worse.

51. Barry sought a second opinion from Dr. J. Michael Desaloms, Chief Neurosurgeon at Texas Health Presbyterian Hospital Dallas. Desaloms reviewed an MRI and CT myelogram and determined that these imaging studies showed probable compression of the S1 nerve root from a posteriorly directed bone fragment from Duntsch’s surgery. Barry would later learn that the severe back and left leg pain along with the loss of sensation, paresthesia and weakness he had experienced for over 8 months was the result of multiple bone fragments in his spinal canal, compressing and adhering themselves to his S1 nerve. It would later be discovered that Duntsch installed the hardware incorrectly. Barry needed surgery—immediately.

52. Dr. Desaloms was able to tediously remove the large posterior bone fragment left behind by Duntsch as well as reveal and remove other bone fragments in order to decompress the ventral S1 nerve root. Notwithstanding Dr. Desaloms’ efforts, it was too late. Barry is now faced with permanent nerve damage, for which there is no currently available surgical intervention to fix. In addition, imaging studies have revealed permanent and severe arachnoiditis as a result of Barry’s injuries to his spine. This condition appears to be the result of scarring and adhesion to the spinal nerves which causes a lifetime of severe, debilitating pain. While Barry is thankful to be alive, Barry will be forced to walk with a cane or some other assistance for the remainder of his life. He is now only 47 years old. Perhaps even worse, he will continue to have constant, day-to-day pain which requires multiple medications just to dull the pain.

***Baylor Medical Does...Nothing.***

53. Duntsch continued to operate on patients at Baylor Medical for their benefit for months, despite the documented problems of Kenneth Fennell, Mary Efurd, Robert Passmore and Barry Morguloff's disastrous surgeries. Just weeks after permanently maiming Barry Morguloff, on February 2, 2012, Duntsch operated on his lifelong friend and roommate, Jerry Summers. Duntsch rendered Mr. Summers a quadriplegic.

54. Following his surgery, Mr. Summers would tell the ICU nursing staff he witnessed Duntsch using drugs the night before his surgery. Baylor Medical suspended Duntsch's privileges and removed Duntsch from Jerry's case, assigning another spine surgeon to care for him—an unusual occurrence typically reserved for situations when a physician is believed to be impaired or incapacitated in some way. Baylor Medical never reported this incident to the National Practitioner Data Bank or the Texas Medical Board.

55. Inexplicably, Baylor Medical reinstated Duntsch's surgical privileges about a month later. Just *one day* after his privileges were reinstated, Duntsch operated on another unsuspecting victim, Kelly Martin. Sadly, Ms. Martin died as a result of massive blood loss during the surgery. Other surgeons claimed Kelly's death was due to "horribly poor and clueless surgical technique".

***Baylor Medical Tries to Save Face.***

56. After Ms. Martin's death, Baylor Medical *again* suspended Duntsch. During this time, Duntsch resigned his position with Baylor Medical. In his April 20, 2012 resignation letter, Duntsch claimed he was moving his practice to a different location, and, as a result, he had elected "to resign" his medical staff position with Baylor Medical.<sup>6</sup>

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<sup>6</sup> Ex. E (April 20, 2012 resignation letter).

April 20, 2012

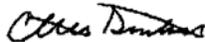
Baylor Regional Medical Center at Plano  
4700 Alliance Blvd.  
Plano, Texas 75093  
Medical Staff Services  
Patti Sproles  
Delivery via email [pattis@baylorhealth.edu](mailto:pattis@baylorhealth.edu)

RE: Resignation at Baylor Regional Medical Center at Plano

Dear Ms. Sproles:

I am in the process of moving my practice to a different location, and as a result I have decided to resign my position as a member of the medical staff and my clinical privileges at Baylor Medical Center at Plano, effective immediately.

Signed,



Christopher Duntsch, MD, PhD

57. Contrary to their legal, ethical, and moral duty to report Duntsch to the National Practitioner Data Bank and Texas Medical Board, Baylor Medical again failed to do so. Duntsch would go on to kill or maim more patients, in part, thanks to Baylor Medical.

58. Despite everything that had occurred at their direction and with their knowledge, Baylor Medical instead provided Duntsch with the following letter of recommendation, most notably on the same date of his “resignation”, April 20, 2012:<sup>7</sup>



PRIVILEGE  
Tex. Rev. Civ. Stat. Ann. Art. 4495b and 5.06  
Tex. Health & Safety Code Chp. 161.032  
Medical Staff Committee Document

April 20, 2012

Christopher Duntsch, MD  
4708 Alliance Blvd.  
Pavilion I – Suite 830  
Plano, Texas 75093

Dear Dr. Duntsch:

On behalf of the Medical Executive Committee of the Medical Staff of Baylor Regional Medical Center at Plano, I am authorized to notify you of the following:

All investigations with respect to any areas of concern regarding Christopher D. Duntsch, M.D. have been closed.

As of this date, there have been no summary or administrative restrictions or suspensions of Dr. Duntsch's Medical Staff membership or clinical privileges during the time he has practiced at Baylor Reg. Medical Center at Plano.

Yours Very Truly

  
Patricia Sproles, CPCS  
Director, Medical Staff Services

59. For a few months, Duntsch applied to other hospitals around the DFW Metroplex without much luck. Eventually, he was approached by Dallas Medical Center (formerly known as R.H. Dedman Hospital). Much like Baylor Medical, they were anxious to have a revenue-

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<sup>7</sup> Ex. F (April 20, 2012 letter from Baylor Medical).

producing staff spine surgeon and granted him temporary privileges to perform surgeries at their facility while they completed their credentialing process. Baylor Medical's recommendation letter facilitated just that.

60. Thanks, in large part to Baylor Medical, Duntsch's reign of terror would continue. At Dallas Medical Center, he operated on a woman named Floella Brown. In July 2012, Ms. Brown died as a result of a careless vascular injury, resulting from what other surgeons have described as "horrendous surgical technique" where Duntsch essentially transected her vertebral artery resulting in a stroke and her eventual death.

61. After he killed Ms. Brown, Duntsch operated on another unsuspecting patient at Dallas Medical Center and removed one or more of the patient's spinal nerve roots and installed hardware intended for use in bony structures of the spine into the muscles *adjacent* to the patient's spine. This surgery was performed so poorly, one surgeon contacted Duntsch's training program in Tennessee to confirm whether the Duntsch in Dallas was actually an imposter. He was surprised to learn that Duntsch was actually what he purported to be—a medical doctor.

62. Duntsch later performed another surgery so poorly the scrub nurses stopped him from operating further; ultimately, the entire operating room staff had to restrain Duntsch so he would stop what he was doing.

63. Finally, the Texas Medical Board temporarily suspended Duntsch's license to practice medicine in Texas on June 26, 2013.

## VICARIOUS LIABILITY

### A. Agency / Joint Venture

64. Barry adopts and incorporates all preceding paragraphs for all purposes and pleads that Baylor Medical is liable for the acts or omissions and injuries caused by Duntsch pursuant to the joint venture they created with Duntsch. Baylor Medical and Duntsch had a mutual right of control over an express or implied agreement for Duntsch to perform spinal surgeries at Baylor Medical's facilities in Plano with the common purpose of recruiting patients and performing spinal surgery in return for money for each participant in the venture. They had a community of pecuniary interest in the common purpose of putting in up-front cash to get the venture started, and they each had an equal voice in the direction of the enterprise and shared in expenses. Baylor Medical and Duntsch are liable to Barry for all injuries caused by the surgery Duntsch performed, pursuant to their joint venture.

65. Because Baylor Medical engaged in a joint venture with Duntsch, both jointly and severally liable to Barry for his injuries and damages.

66. The employees of Baylor Medical, including Morgan, were acting not only in their individual capacities, but also as agents, representatives, and/or employees of Baylor Regional Medical Center at Plano and/or Baylor Health Care System. Under the doctrines of agency and *respondeat superior*, Baylor Medical is liable for the acts and omissions of their employees and agents.

67. Baylor Medical is also responsible for the negligence of Duntsch, as he was their actual or apparent agent and/or employee, and/or by virtue of the joint venture relationship they had established with Duntsch in which they funded his work and his office practice,

reached an agreement with him, which included actively marketing his services to referring physicians and the public, among other things.

**B. Alter Ego/Joint Enterprise**

68. Baylor Health Care System d/b/a Baylor Regional Medical Center at Plano owned and operated Baylor Regional Medical Center at Plano and shared officers and directors. Baylor Health Care System had the right to direct and control Baylor Regional Medical Center at Plano and had an authoritative voice and right of control over an aspect of the enterprise that the other did not, and without each other, could not provide comprehensive healthcare services to Barry in the furtherance of the joint enterprise and common purpose of providing comprehensive patient care by and through its subsidiaries.

69. Moreover, Baylor Health Care System, acting through its apparent, ostensible, actual, or by estoppel agents, officers, employees, subsidiaries and/or affiliated companies, organized and operated Baylor Regional Medical Center at Plano through the time of the rendition of medical services to Barry, that the ultimate parent corporation and/or Baylor Health Care System should be treated as one and the same legal entity with regard to any liability to Barry arising out of the claims made in this complaint due to the control asserted by Baylor Health Care System over the other and the inter-relationship of their business dealings, financial arrangements and the provision of the emergency room professional medical services, their corporate formalities should be disregarded, and each of them held vicariously liable for the conduct of the other.

## CAUSES OF ACTION

### A. Negligence: Baylor Medical

70. Barry's damages and injuries, including his S1 nerve damage and arachnoiditis, were proximately caused by the negligent acts and omissions of Baylor Medical. These negligent acts and omissions include, but are not limited to, the following:

- a. Failing to follow appropriate nursing practices and responsibilities, including being patient advocates directly to Barry as well as towards the institution;
- b. Failing to properly and timely use the chain of command to report the December 30, 2011 altercation between Duntsch and another Baylor Medical surgeon;
- c. Failing to inform Barry of the December 30, 2011 altercation between Duntsch and the other surgeon;
- d. Failing to timely interview the witnesses to said altercation in the operating room and respond to the information properly;
- e. Failing to follow proper credentialing standards prior to allowing Duntsch to perform surgery at Baylor Medical's facilities;
- f. Failing to prevent Duntsch from performing surgery on Barry on January 11, 2012;
- g. Failing to properly monitor and/or supervise Duntsch after they granted him privileges to perform spinal surgeries;
- h. Failing to notice Duntsch's pattern of intraoperative complications and poor surgical outcomes and to take action to prevent him from causing harm to patients;
- i. Failing to investigate Duntsch's odd behavior, lack of appropriate demeanor and extreme lack of organization;
- j. Failing to investigate Duntsch's multiple excuses for not undergoing requested drug testing; and
- k. Allowing Duntsch to operate on Baylor Medical patients after having received warnings about his lack of competence, questionable mental stability, alcoholism, and/or drug addiction.

### B. Credentialing: Baylor Medical

71. Barry adopts and incorporates all preceding paragraphs and pleads that Baylor Medical should never have granted surgical privileges to Duntsch and/or should have required him to operate only with a proctor and/or should have revoked his privileges prior to him being allowed to operate on Barry.

**C. Gross Negligence: Baylor Medical**

72. Barry adopts and incorporates, by reference, all preceding paragraphs and further pleads that Baylor Medical's acts and omissions constitute gross negligence. The acts or omissions, when viewed objectively from Baylor Medical's standpoint at the time they occurred, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others, and Baylor Medical had actual, subjective awareness of the risk.

73. The above acts and omissions involved an extreme degree of risk, and Baylor Medical had actual and subjective awareness of this extreme degree of risk. These acts of gross negligence proximately caused Barry's injuries and damages.

74. In addition to the foregoing, and pleading in the alternative, the conduct of Baylor Medical in allowing Duntsch to perform surgery on Barry was with malice, as that term was defined at common law; Baylor Medical acted with reckless disregard for the rights of others, thus injuring Barry. *See Shannon v. Jones*, 76 Tex. 141, 13 S.W. 477, 478 (1890) (defining malice as a reckless disregard for the rights of others).

75. In addition, and pleading in the alternative, if Texas Civil Practice and Remedies Code § 41.001(7) is deemed to require proof that Baylor Medical had actual, subjective intent to harm Barry on the occasion in question before liability attaches, then the Legislature's act of deleting § 41.001(7)(B) of the definition of "malice" (that allowed proof of gross negligence) violates the "Open Courts" provision of the Texas Constitution by eliminating a common

law right arbitrarily in light of the purposes of the statute leaving only an impossible condition before liability will attach. *See* TEX. CONST. ART. I § 13. In the past, § 41.001(7) passed constitutional muster because section (B) was included. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 506 (Tex. 1997) (“Considering the Legislature’s pronouncement that “malice” need not be directed toward a specific individual in the context of exemplary damages, it does not follow that in the context of peer review, the committee must necessarily act with malice toward a specific patient for that patient to prove his or her case). With the elimination of section (B) in 2003, the statute now violates the Texas Constitution if it requires an actual subjective intent to harm or injure the specific patient involved before liability attaches.

76. In addition to the foregoing, and pleading in the alternative, the conduct of Baylor Medical in allowing Duntsch to perform surgery on Barry was with malice, as that term is defined in Texas Civil Practice and Remedies Code § 41.001.

**D. Negligence: Duntsch & Baylor Medical**

77. Barry’s damages and injuries, including his S1 nerve damage and arachnoiditis, were proximately caused by the negligent acts and omissions of Duntsch. Additionally, Baylor Medical is both directly and vicariously liable for Duntsch’s negligent acts and omissions, which include, but are not limited to, the following:

- a. Failing to meet the applicable standard of care by misplacement of the hardware to the left of mid-line;
- b. Failing to meet the applicable standard of care by damaging the vertebral body, breaking off part of the bone, resulting in bone fragments that caused compression to the S1 nerve and became physically adherent to the S-1 nerve;
- c. Failing to meet the applicable standard of care by failing to recognize that the vertebral body had been damaged and remove the bone fragments timely;

- d. Failing to meet the applicable standard of care by not properly assessing Barry's condition post-surgery and ordering appropriate imaging studies to diagnose the cause of his condition in a timely manner; and
- e. Failing to meet the applicable standard of care by not addressing and/or repairing Barry's condition and complaints post-surgery.

**E. Gross Negligence: Duntsch & Baylor Medical**

78. Barry adopts and incorporates, by reference, all preceding paragraphs and further pleads that Duntsch's acts and omissions constitute gross negligence. The acts or omissions, when viewed objectively from Duntsch's standpoint at the time they occurred, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others, and Duntsch had actual, subjective awareness of the risk.

79. The above acts and omissions involved an extreme degree of risk, and Duntsch had actual and subjective awareness of this extreme degree of risk. These acts of gross negligence proximately caused Barry's injuries and damages. Additionally, Baylor Medical is both directly and vicariously liable for Duntsch's grossly negligent acts and omissions.

**F. Negligence: Morgan & Baylor Medical**

80. Barry's damages and injuries, including his S1 nerve damage and arachnoiditis, were proximately caused by the negligent acts and omissions of Morgan. Additionally, Baylor Medical is both directly and vicariously liable for Morgan's negligent acts and omissions, which include, but are not limited to:

- a. The failure to inform Barry of the December 30, 2011 altercation between Duntsch and another surgeon;
- b. The failure to inform Baylor Medical of the December 30, 2011 altercation between Duntsch and another Baylor Medical surgeon;
- c. The failure to timely assess and evaluate Barry's complaints of pain, weakness, and paresthesia in his left leg after surgery in a timely fashion;

- d. The failure to timely report Barry's complaints of pain, weakness, and paresthesia in his left leg after surgery to a medical doctor; and
- e. The failure to timely report that Duntsch had not properly evaluated and responded to Barry's complaints of pain, weakness, and paresthesia in his left leg after surgery.

**G. Gross Negligence: Morgan & Baylor Medical**

81. Barry adopts and incorporates, by reference, all preceding paragraphs and further pleads that Morgan's acts and omissions constitute gross negligence. The acts or omissions, when viewed objectively from Morgan's standpoint at the time they occurred, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others, and Morgan had actual, subjective awareness of the risk.

82. The above acts and omissions involved an extreme degree of risk, and Morgan had actual and subjective awareness of this extreme degree of risk. These acts of gross negligence proximately caused Barry's injuries and damages. Additionally, Baylor Medical is both directly and vicariously liable for Morgan's grossly negligent acts and omissions.

**DAMAGES**

83. As a direct proximate result of the acts or omissions described above, singularly and collectively, Barry has been injured, sustained damages, and requests compensation in a sum far in excess of the minimum jurisdictional limits of this Court. Each and all of the violations of the standard of care outlined herein were a proximate cause of damages, injuries and harm to Barry.

84. Barry has suffered damages which include, but are not limited to, past and future medical and healthcare expenses, past and future physical pain, past and future mental anguish, past and future disfigurement, and past and future physical impairment, loss of earnings, and loss of earning capacity, for which he seeks monetary damages.

85. In addition, Barry seeks exemplary damages, pre-judgment interest, post-judgment interest, costs of court, and such other and any other relief to which he may be entitled.

**JURY DEMAND**

86. Barry Morguloff demands a trial by jury.

**PRAYER**

87. Barry Morguloff respectfully prays that Baylor Health Care System d/b/a Baylor Regional Medical Center at Plano, Baylor Regional Medical Center at Plano, Kimberly Morgan and Christopher Duntsch are cited to appear and answer, and that upon jury trial, he recovers a judgment against them for all damages sought, including all costs of court, prejudgment interest at the highest rate allowed by law, interest on the judgment at the highest legal rate from the date of judgment until collected, and any other relief, in law and in equity, to which he may be entitled.

Respectfully submitted,

DEANS & LYONS, LLP

/s/ Michael P. Lyons

**Michael P. Lyons**

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**ATTORNEYS FOR PLAINTIFF**

PHYSICIAN PRACTICE START-UP ASSISTANCE AGREEMENT

BAYLOR REGIONAL MEDICAL CENTER AT PLANO;

CHRISTOPHER DUNTSCHE, M.D.; AND

MINIMALLY INVASIVE SPINE INSTITUTE, P.A.

*1<sup>st</sup> day of July, 2011* *CDP*

This PHYSICIAN PRACTICE START-UP ASSISTANCE AGREEMENT ("Agreement") is made as of the ~~6<sup>th</sup> day of June, 2011~~ ("Effective Date"), by and between BAYLOR REGIONAL MEDICAL CENTER AT PLANO ("Hospital"), on the one hand, and CHRISTOPHER DUNTSCHE, M.D. ("Physician") and MINIMALLY INVASIVE SPINE INSTITUTE, P.A. ("Practice"), jointly and severally, on the other. For purposes of this Agreement, the Hospital, the Physician and the Practice are each a "Party" and collectively they are the "Parties."

RECITALS

WHEREAS, one of the primary missions of the Hospital is to make medical services available to the residents of the Hospital Service Area (as defined below in Section 1.6), and such residents often include patients without an attending physician or the ability to pay for some or all of the services rendered;

WHEREAS, the Hospital has determined that there is a shortage of physicians specializing in Neurosurgery (the "Specialty") in the Hospital Service Area, and as a result the population residing in the Hospital Service Area is underserved in terms of the Specialty;

WHEREAS, the Practice provides neurosurgery services and desires to recruit the Physician, who specializes in the Specialty, to relocate to the Hospital Service Area, become employed by the Practice and commence making additional neurosurgery services available to residents of the Hospital Service Area; and

WHEREAS, by providing the assistance described in this Agreement to the Physician and to the Practice in connection with the Practice's recruitment and employment of the Physician, the Hospital desires to induce the Physician to relocate to the Hospital Service Area and to join the Hospital's Medical Staff so that the Physician will be able to provide the needed services to residents of the Hospital Service Area.

NOW, THEREFORE, based on the foregoing premises and the mutual promises and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

In addition to the other terms specifically defined within the text of this Agreement, the following terms have the indicated meanings:

1.1 "Commencement Date" means the earlier to occur of ~~June 6, 2011~~ *July 1, 2011* or the date on which Physician begins the Full-Time Practice of Medicine in the Hospital Service Area. *J.M. CDP*

1.2 "Concluding Date" means the earlier of: (i) the date on which all amounts advanced to the Practice under Section 3.2 together with the accrued interest, are repaid or forgiven under Article IV, provided that should no amounts be advanced to the Physician or the Practice under Section 3.2, the Concluding Date will be the date on which the Guarantee Period ends; and (ii) the effective date of the termination of this Agreement for any reason. *CDP*

1.3 "Full-Time Practice of Medicine" means the Physician is devoting the Physician's full professional time, attention and best efforts to directly providing patient care services and performing activities directly related to patient care for a minimum of forty (40) hours per week for at least forty-eight (48) weeks per year.

1.4 "Guarantee Period" shall mean the twelve (12) month period beginning on the Commencement Date.

1.5 "Guaranteed Income" means Fifty Thousand and no/100 Dollars (\$50,000.00) per month during the Guarantee Period.

1.6 "Hospital Service Area" means the geographic area comprised of the following zip codes:

75093	75252	75075	75248	75023
75034	75287	75098	75080	75025
75074	75007	75070	75024	75006
75081	75044	75002	75035	75082
75040	75094	75056	75048	75069
75013	75068	75254	75001	75234
75071	75043	75009	75230	75240
75243				

1.7 "Loan Balance" means all then-current amounts advanced to the Practice under Section 3.2, together with and including all accrued and unpaid interest, which amounts have not been repaid or forgiven in accordance with the provisions of Article IV.

1.8 "Net Collections" means all cash or cash equivalents and the value of goods and services received (or unbilled for a period of thirty (30) days or more), directly or indirectly, by or for the Practice or the Physician, or any other person or entity, in exchange for or in any way related to, tied to or associated with the Physician's practice of medicine or any and all other uses of the Physician's medical training, less any refunds actually made by or on behalf of the Practice or the Physician to patients or Payors (as defined below in Section 2.4.2) for the Physician's services. Without limiting the generality of the foregoing, Net Collections shall also include distributions, dividends, and like revenue and payments received by the Physician or the Practice in connection with investments by the Physician or by the Practice on behalf of the Physician, directly or indirectly, as an owner, investor, partner, member or shareholder in any entity that makes health care items or services available to patients or other residents in the Hospital Service Area, with the exception of investments described in 42 CFR §§411.356(a) and (b), or any successor statute or regulation.

1.9 "Net Receipts" means Net Collections for any month during the Guarantee Period minus Operating Expenses for the same month.

1.10 "Operating Expenses" means those necessary and reasonable expenses actually incurred by or on behalf of the Physician or the Practice in connection with the Physician's medical practice on or after the Commencement Date which are: (i) deductible on federal income tax reporting forms relating to the Practice or the Physician as the case may be and (ii) consistent with the Baylor Health Care System ("BHCS") Guidelines for Physician Practice Start-up Assistance Agreements applicable to approved and

unapproved operating expenses. For purposes of this Agreement, Operating Expenses are limited to Forty-Four Thousand and no/100 Dollars (\$44,000.00) per month during the Guarantee Period.

1.11 "Practice Documentation" means true and correct documentation, satisfactory to the Hospital in its sole discretion, which details the monthly Net Collections and Operating Expenses of the Practice and the Physician for each month during the Guarantee Period, which shall be submitted to the Hospital by the Practice or the Physician, as the case may be, on or before the fifteenth (15<sup>th</sup>) day of the month immediately subsequent to the month in which they were incurred.

1.12 "Prime Rate" means the rate of interest published by the *Wall Street Journal*, reflecting the base rate on corporate loans by at least seventy-five percent (75%) of the nation's thirty (30) largest banks as of the Commencement Date.

## ARTICLE II

### CERTAIN OBLIGATIONS OF THE PHYSICIAN AND THE PRACTICE

2.1 Medical License; Full-Time Practice of Medicine. Beginning on the Commencement Date and at all times thereafter until no earlier than the Concluding Date, the Physician shall: (i) be duly licensed and in good standing under the Applicable Law (as defined below in Section 6.6) of the State of Texas to engage in the unrestricted practice of medicine; (ii) be duly registered and certified to administer and prescribe medications and controlled substances; and (iii) maintain a medical practice in the Specialty, and be actively engaged in the Full-Time Practice of Medicine in the Hospital Service Area.

2.2 Medical Staff Membership. In order that the Physician will be eligible to care for patients, including indigent patients, seeking medical care at the Hospital, the Physician shall, at least thirty (30) days prior to the Commencement Date, apply for membership on the Hospital's Medical Staff with appropriate clinical privileges. Beginning no later than the ninetieth (90<sup>th</sup>) day after the Commencement Date the Physician shall have obtained Medical Staff membership and clinical privileges at the Hospital, and all times thereafter until no earlier than the Concluding Date, the Physician shall continuously maintain Medical Staff membership and clinical privileges at the Hospital in good standing and without restriction or limitation. Moreover, while Medical Staff membership at the Hospital with appropriate clinical privileges is a continuing condition to this Agreement, this Agreement is not, and shall not be construed as, any form of guarantee or assurance by the Hospital that the Physician will obtain or maintain Medical Staff membership or clinical privileges. Matters relating to granting of Medical Staff membership and clinical privileges are governed solely by the bylaws, rules, regulations, policies, procedures, and manuals of the Medical Staff of the Hospital (collectively, "Medical Staff Bylaws") as are in effect from time to time. The nonrenewal, expiration or termination of this Agreement shall not affect the Medical Staff membership or clinical privileges of the Physician at the Hospital, which status shall be separately governed by the Medical Staff Bylaws; provided, however, the event causing a termination of this Agreement may also be grounds for action under the Medical Staff Bylaws. The Physician specifically and expressly agrees that any due process or other requirements of the Medical Staff Bylaws shall not apply to the termination, expiration or nonrenewal of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Physician shall be free, without notice to or other consent of the Hospital, to obtain and maintain medical staff membership and clinical privileges at any hospital or facility.

2.3 Malpractice Insurance. Beginning on the Commencement Date and at all times thereafter until no earlier than the end of the applicable statute of limitations period after the Concluding Date, the Practice or the Physician, as the case may be, shall maintain professional liability insurance for any and all claims and demands concerning or otherwise arising from or related to the practice of medicine by the Physician ("Malpractice Insurance"). The Malpractice Insurance shall be issued by an insurer

reasonably acceptable to the Hospital and shall be in amounts of coverage not less than that required from time to time for membership on the Hospital's Medical Staff. To the extent permitted by the applicable carrier, such insurance policy shall require the carrier to provide the Hospital with written notice of any cancellation, nonrenewal or reduction of the Malpractice Insurance coverage at least twenty (20) days in advance. If the Malpractice Insurance coverage is on a claims-made basis and the Physician ceases to be covered by Malpractice Insurance from the applicable carrier, the Practice or the Physician, as the case may be, shall obtain from an insurance carrier reasonably acceptable to the Hospital and in the amounts described above: (i) an unlimited reporting endorsement or extended coverage policy ("Tail"); (ii) retroactive coverage ("Nose"); or (iii) "Prior Acts" coverage with a retroactive date on or prior to the Commencement Date covering all acts or occurrences related to the practice of medicine by the Physician until no earlier than the end of the applicable statute of limitations period after the Concluding Date (collectively, "Continuing Coverage"). Upon request, the Practice or the Physician, as the case may be, shall promptly deliver to the Hospital certificates evidencing the Malpractice Insurance and, if applicable, the Continuing Coverage. Notwithstanding anything to the contrary contained in this Agreement, the Hospital may terminate this Agreement immediately in the event of cancellation, nonrenewal or reduction of the Malpractice Insurance or failure to obtain Continuing Coverage.

#### 2.4 Medicare and Medicaid Program and Managed Care Participation.

2.4.1 Medicare and Medicaid Program Participation. As of the Commencement Date the Physician shall be a participating provider in the Medicare and Medicaid programs or shall have made application to become a participating provider in the Medicare and Medicaid programs and be actively pursuing such status. Moreover, if not obtained on or prior to the Commencement Date, the Physician shall obtain participating provider status in the Medicare and Medicaid programs no later than the sixtieth (60<sup>th</sup>) day after the Commencement Date. At all times after the Commencement Date or the date on which participating provider status in the Medicare and Medicaid programs has been obtained, whichever is later, until no earlier than the Concluding Date, the Physician shall continue to be certified as a participating provider in the Medicare and Medicaid programs and shall take such other actions as are required to offer and provide services to patients whose care is reimbursed by such programs. The Practice or the Physician, as the case may be, shall provide documentation to the Hospital upon request evidencing the Physician's status as a participating provider in the Medicare and Medicaid programs, and if additionally requested, further information that services provided by the Physician have been reimbursed by such programs. Without limiting the generality of the foregoing and anything to the contrary contained in this Agreement notwithstanding, in the event that the Physician does not become a participating provider in the Medicare and Medicaid on or at any time prior to the sixtieth (60<sup>th</sup>) day after the Commencement Date, or thereafter ceases to maintain participating provider status in the Medicare and Medicaid programs at any time prior to the Concluding Date, the Hospital shall be entitled to terminate this Agreement immediately upon notice and, except as otherwise specifically provided in this Agreement, require that the Physician and the Practice immediately repay all amounts paid or advanced to the Practice or the Physician, as the case may be, under this Agreement (excluding amounts repaid under Section 4.1 or 4.2 below, but specifically including any amounts previously forgiven under Section 4.3 below); it being understood and agreed by the Parties that the Physician's participation in the Medicare and Medicaid programs is a material and ongoing condition under this Agreement.

2.4.2 Managed Care Participation. The Hospital has, and may from time to time enter into, contracts with third parties, including without limitation health maintenance organizations, preferred provider organizations, employers, labor unions, governmental payors, third-party administrators, and insurance companies (collectively, "Payors"), providing for payment to the Hospital for its services rendered to patients. Upon request by the Hospital, the Practice and the

Physician agree to use commercially reasonable efforts to enter into agreements with Payors under contract with the Hospital, which agreements will provide for payment to the Practice or the Physician, as the case may be, for professional medical services provided to patients of the Hospital covered by such Payors.

2.5 Patient Billing. The Practice or the Physician, as the case may be, shall promptly (within thirty (30) days of services being rendered) bill for all services provided by the Physician and diligently pursue collection for such services.

2.6 No Other Professional Services Contracting or Employment. Beginning on the Commencement Date and at all times thereafter until no earlier than the Concluding Date, and with the specific exception of the Practice and Practice-owned affiliates and the specific exception of shared call coverage arrangements, the Physician shall not be employed by, under contract with, or otherwise professionally associated with (not to include membership on the medical staff of a hospital or other health care facility, which is expressly permitted in this Agreement) any person or entity (including without limitation any entity formed by the Physician) in connection with the provision of professional medical services without the prior written consent of Hospital, which consent shall not be unreasonably withheld. Without limiting the generality of the foregoing, the Physician and the Practice specifically acknowledge and agree that the Physician's or the Practice's acceptance of such employment or other association will entitle the Hospital to terminate this Agreement immediately upon notice and, except as otherwise specifically provided in this Agreement, require that the Physician and the Practice immediately repay all amounts paid or advanced to either or both of the Practice and the Physician, as the case may be, under this Agreement (excluding amounts repaid under Section 4.1 or 4.2 below, but specifically including any amounts previously forgiven under Section 4.3 below); it being understood and agreed by the Parties that the compliance by the Physician and the Practice with the provisions of this Section 2.6 is a material and ongoing condition under this Agreement.

2.7 Representations and Warranties.

(a) The Physician and the Practice represent and warrant to the Hospital that:

(i) with the exception of anything provided to the Physician by the Practice, neither the Practice nor the Physician has received and neither will accept any other recruitment incentive, loan, payment or benefit of any kind which is given in whole or in part because the Physician has located Physician's medical practice in the Hospital Service Area;

(ii) attached and incorporated into this Agreement as Exhibit A is a true and correct copy of the employment agreement between the Practice and the Physician ("Employment Agreement");

(iii) the Practice and the Physician shall at all times prior to the Concluding Date strictly comply with the terms of the Employment Agreement, and the Practice and the Physician shall not deviate from, modify, amend, or terminate the Employment Agreement without the prior written notice to the Hospital; provided, however, any (A) changes to or addition of restrictions on the Physician's ability to establish a medical practice in the Hospital Service Area, in the event of termination of the Employment Agreement prior to the Concluding Date, and (B) reduction in the compensation payable to the Physician under the Employment Agreement shall be subject to the prior written approval of the Hospital, which approval shall not be unreasonably withheld;

(iv) other than the Employment Agreement, there are no agreements, contracts, leases, arrangements, or relationships, whether verbal or written, between the Physician and the Practice, and at no time prior to the Concluding Date shall the Practice and the Physician enter into any agreement, contract, lease, arrangement, or relationship, whether verbal or written (other than the Employment Agreement or an agreement for shared call coverage) without the prior written approval of the Hospital, which approval may be withheld in the Hospital's sole discretion; and

(v) at no time prior to the Concluding Date shall the Practice or the Physician enter into any agreement, contract, lease, arrangement, or relationship, whether verbal or written, with a physician or entity, which employs or which is owned or controlled, in whole or in part by, physicians, to obtain items or services, the cost of which the Practice intends to be treated as Operating Expenses, without the prior written approval of the Hospital, which approval may be withheld in the Hospital's sole discretion.

(b) The Practice represents and warrants to the Hospital that any and all restrictions on the Physician's ability to practice medicine in the Hospital Service Area, whether contained in the Employment Agreement or otherwise, are reasonable and comply with Applicable Law and shall not unreasonably restrict the Physician's ability to establish a medical practice in the Hospital Service Area, in the event of termination of the Employment Agreement prior to the Concluding Date.

(c) Without limiting the generality of the foregoing and anything to the contrary contained in this Agreement notwithstanding, a breach by the Physician or the Practice of any of the representations and warranties contained in this Section 2.7 shall entitle the Hospital to terminate this Agreement immediately upon notice and, except as otherwise specifically provided in this Agreement, require that the Physician and the Practice immediately repay all amounts paid or advanced to the Practice or the Physician, as the case may be, under this Agreement; (excluding amounts repaid under Section 4.1 or 4.2 below, but specifically including any amounts previously forgiven under Section 4.3 below); it being understood and agreed by the Parties that compliance by the Practice and the Physician with the representations and warranties contained in this Section 2.7 is material and ongoing condition under this Agreement.

2.8 Participation in Educational Programs. Upon request by the Hospital, the Physician shall participate in providing medical education through programs offered by the Hospital for physicians and other health care providers; provided, however, the Physician shall not be required to devote more than twenty (20) hours during any calendar year to such participation.

2.9 Conflicts of Interest and Other BHCS Relationships. The Physician represents and warrants that: (i) the Physician is not bound by any agreement or arrangement that would prevent or hinder the Physician in any manner from entering into, or from fulfilling the Physician's obligations and responsibilities under, this Agreement; and (ii) the Physician shall not enter into such an agreement or arrangement during the term of this Agreement. The Physician and Practice each jointly and separately represent and warrant to the Hospital that, other than as established by this Agreement or identified on Exhibit B, attached and incorporated into this Agreement, neither the Physician nor the Practice, or any immediate family member of the Physician or any owner or shareholder of the Practice, has any agreement or arrangement (whether oral or written) for the provision of items or services with the Baylor Health Care System ("BHCS") or any of its affiliated organizations. Furthermore, this Agreement shall be included in a master list of contracts that is: (a) centrally maintained and updated by BHCS and (b)

available for review by the Secretary of the United States Department of Health and Human Services upon request.

**ARTICLE III  
CERTAIN OBLIGATIONS OF THE HOSPITAL**

3.1 Relocation Expenses. In addition to the practice start up-loans available under Section 3.2 below, the Hospital agrees to reimburse the Physician directly for the reasonable expenses incurred in connection with the Physician's relocation to the Plano, Texas area. Such reimbursement shall not exceed Fifteen Thousand Dollars (\$15,000), and is contingent upon the Physician providing the Hospital with necessary documentation to substantiate the expenses in conformance with the Internal Revenue Service requirements and BHCS policies. If this Agreement is terminated for any reason set forth in Section 5.2(b) through 5.2(p) below, or by Physician for any reason, with the result that the Physician will no longer be engaged in the Full-Time Practice of Medicine in the Hospital Service Area prior to the end of the Guarantee Period, the Physician shall promptly repay one-twelfth (1/12) of the relocation expense reimbursement times the number of months between the effective date of such termination and the end of the Guarantee Period.

3.2 Practice Start-up Loans.

(a) The maximum amount Hospital shall advance to the Practice on behalf of the Physician under this Agreement shall be Six Hundred Thousand and no/100 Dollars (\$600,000.00), and all advances under this Section 3.2 shall be subject to this cap on the maximum principal amount the Hospital will loan to the Physician and the Practice.

(b) The Hospital shall advance to the Practice for each month during the Guarantee Period an amount equal to the amount by which the Guaranteed Income for such month exceeds Net Receipts for the same month. Each payment shall be made on or before the last day of the calendar month after the month in which such deficit occurred.

(c) In addition, upon request by the Practice or the Physician, the Hospital may, in its discretion, advance to the Practice after the Effective Date but prior to the Commencement Date, up to the monthly amount of the Guaranteed Income (without regard to Net Receipts). Payment of any such advance shall directly reduce the amount the Practice and the Physician may otherwise request for the first month of the Guarantee Period.

(d) Nothing in this Agreement requires, or shall be construed to require, that the Practice or the Physician request any advance from the Hospital.

3.3 Conditions to Advances, Payments and Reimbursements. The obligation of the Hospital to make any advance, payment or reimbursement is subject to the following conditions precedent:

(a) The Hospital shall have received the following, each in the form satisfactory to the Hospital, dated on or before the date of any reimbursement, advance or other payment under this Agreement: (i) a promissory note in the form of that attached to this Agreement ("Note") and (ii) a security agreement in the form of that attached to this Agreement ("Security Agreement");

(b) The Practice shall have submitted the applicable Practice Documentation to the Hospital by the fifteenth day (15<sup>th</sup>) day of the month after the month for which an advance under Section 3.2 is requested; and

(c) Both the Practice and the Physician shall be in compliance with all covenants and requirements of this Agreement and with all other agreements, if any, between the Physician or the Practice, on the one hand, and the Hospital or any affiliates of the Hospital, on the other.

3.4 Interest. All amounts advanced to the Practice by the Hospital shall bear interest compounded monthly at the annual rate equal to the lesser of: (i) the Prime Rate, plus two percent (2%), or (ii) the maximum lawful rate. In the event that amounts are prepaid to the Hospital pursuant to Section 4.1, the Hospital shall, at the end of the Guarantee Period, forgive all interest that has accrued on such prepaid amounts. Each amount advanced shall begin to accrue interest on the date of such advance, and shall continue accruing interest until it is either completely repaid or forgiven.

3.5 Access to Books and Records. Beginning on the Commencement Date and at all times thereafter until no earlier than the Concluding Date, the Practice shall provide the Hospital with access to any and all of the Practice's books and records, including but not limited to, banking records, accounting ledgers, tax returns and other sources, so that Hospital may verify that the Physician is engaged in the Full-Time Practice of Medicine and monitor Net Collections, Net Receipts, Operating Expenses and other matters material to this Agreement. Furthermore, to the extent applicable, the Practice and the Physician shall comply with Applicable Law governing the maintenance of documentation to verify the cost of services rendered under this Agreement. Until the expiration of four (4) years after the Concluding Date, the Physician and the Practice shall make available, upon written request of the Secretary of the Department of Health and Human Services, the Comptroller General of the United States, or any of his duly authorized representatives, this Agreement, and books, documents, and records of the Practice and the Physician, as applicable, that are necessary to certify the nature and extent of such costs. If the Physician or the Practice receives a request or demand to disclose any books, documents or records relevant to this Agreement for the purpose of an audit or investigation, the Physician or the Practice, as the case may be, shall immediately provide a copy of such request or demand to the Hospital and, upon written request by the Hospital, make available to the Hospital all such books, documents or records.

#### ARTICLE IV PAYMENTS AND CREDITS

4.1 Required Prepayments. For each month, if any, during the Guarantee Period that Net Receipts exceed Guaranteed Income, the Practice shall pay to the Hospital, as a required prepayment of the Loan Balance, one hundred percent (100%) of Net Receipts in excess of the Guaranteed Income for such month, up to the total amount of the outstanding principal of the Loan Balance. For each such month that the Practice is required to make a payment hereunder, such payment shall be made on or before the end of the month subsequent to the month to which such payment applies.

4.2 Optional Prepayments. The Practice and the Physician may prepay, at any time, a part of or the entire amount of the outstanding Loan Balance without penalty. Any partial payment will not excuse or reduce any scheduled payment until the entire Loan Balance is paid in full.

4.3 Forgiveness of Payments. At the end of the Guarantee Period and provided that the Practice and the Physician have performed all obligations and met all conditions set forth in this Agreement and all other agreements, if any, between the Practice or the Physician, on the one hand, and the Hospital or any affiliates of the Hospital, on the other, the then-current Loan Balance, together with accrued interest, shall be subject to forgiveness as follows:

(a) The Hospital will forgive one-third (1/3) of the Loan Balance on and as of the last day of the twelfth (12<sup>th</sup>) month after the end of the Guarantee Period;

(b) The Hospital will forgive one-half (1/2) of the remaining Loan Balance on and as of the last day of the twenty-fourth (24<sup>th</sup>) month after the end of the Guarantee Period; and

(c) The Hospital will forgive the remaining Loan Balance on and as of the last day of the thirty-sixth (36<sup>th</sup>) month after the end of the Guarantee Period.

4.4 Tax Consequences. The Physician and the Practice understand and agree that they are solely responsible for obtaining advice on the tax consequences of payments, reimbursements, advances, and credits that occur or are provided under this Agreement and that any amounts credited to the Loan Balance as a result of forgiveness or amounts reimbursed or paid by the Hospital to the Physician or the Practice will be reported as income to the Physician or the Practice, as the case may be, in accordance with the Internal Revenue Code.

#### ARTICLE V TERM AND TERMINATION

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter until the Concluding Date, unless terminated as provided in this Agreement.

5.2 Termination by the Hospital. Occurrence of any of the following prior to the Concluding Date shall entitle the Hospital to terminate this Agreement, effective immediately upon written notice:

(a) the Physician's death or permanent and total disability, such that the Physician can no longer engage in the Full-Time Practice of Medicine;

(b) the Physician fails to commence the Full-Time Practice of Medicine within the Hospital Service Area by the Commencement Date, or, at any time thereafter until no earlier than the Concluding Date, to be continuously engaged in the Full-Time Practice of Medicine in the Hospital Service Area;

(c) the denial, termination, suspension, probation, revocation, voluntarily relinquishment under threat of, or subject to, disciplinary action, or any other restriction of the Physician's: (i) license to practice medicine in the State of Texas or in any other jurisdiction; (ii) certificate or registration to prescribe medications and controlled substances in the State of Texas or in any other jurisdiction; (iii) specialty board certification; or (iv) medical staff membership or clinical privileges at the Hospital or any other hospital or health care facility;

(d) the Physician fails to apply for membership on the Hospital's Medical Staff and appropriate clinical privileges at least thirty (30) days prior to the Commencement Date, or to be appointed to the Hospital's Medical Staff with appropriate clinical privileges on or before the ninetieth (90<sup>th</sup>) day after the Commencement Date, through no fault of the Hospital;

(e) Physician's conduct in the Hospital that the Hospital determines: (i) fails to conform to applicable Hospital policies; or (ii) otherwise constitutes a threat to the health, safety or welfare of any person or persons;

(f) charge or conviction of the Physician or the Practice (including any plea of *nolo contendere* or its equivalent) for any crime involving fraud, moral turpitude, or immoral conduct;

(g) a finding that the Physician has engaged in unprofessional or unethical conduct by any board or professional organization having a right or privilege to pass upon the professional conduct of the Physician, and discipline the Physician therefor;

(h) cancellation, nonrenewal, reduction, or failure to obtain no later than the Commencement Date and maintain until no earlier than the Concluding Date the Malpractice Insurance or to obtain the Continuing Coverage, in either case as set forth in Section 2.3;

(i) the Physician fails to become a participating provider in the Medicare and Medicaid programs or the Physician fails to maintain participating provider status in the Medicare and Medicaid programs, at any time prior to the Concluding Date as set forth in Section 2.4.1;

(j) the Physician or the Practice is excluded or debarred from any state or federal health care program;

(k) employment, contracting, or other professional association of the Physician in violation of Section 2.6;

(l) the failure of the Physician or the Practice to comply with the representations and warranties set forth in Section 2.7, or should any such representation or warranty no longer be true or correct;

(m) without the prior written consent of the Hospital, the agreement by the Physician or the Practice: (i) to an arrangement whereby any person, other than an employee of the Practice, provides administrative services required for the day-to-day operation of the Practice and the Physician's practice of medicine, unless such services are limited strictly to billing and collection services; (ii) to sell, assign, transfer or convey all or substantially all of the Practice's or the Physician's assets or medical practice to any person or entity; or (iii) to the engagement of the Physician by any person or entity other than the Practice to provide any professional medical services which requires fifty percent (50%) or more of the time devoted by the Physician to the Full-Time Practice of Medicine;

(n) the Physician or Practice fails or refuses to provide access to books and records as required under Section 3.5, or provides Practice Documentation that is inaccurate, incorrect or otherwise misleading;

(o) the appointment of a receiver for any part of the Collateral (as defined in the Security Agreement), assignment of the Collateral for the benefit of any creditor by the Physician or the Practice or the commencement of any bankruptcy or insolvency proceedings under any Applicable Law by or against the Physician or the Practice; or

(p) any other breach of a material term of this Agreement, the Security Agreement or the Note by the Physician or the Practice that is not cured within ten (10) business days after written notice of such breach is provided to the Physician or the Practice, as the case may be.

**5.3 Termination by the Physician or the Practice.** Breach by Hospital of any material term of this Agreement that is not cured within thirty (30) business days after written notice of such breach is provided by the Physician or the Practice to the Hospital shall permit either or both of the Physician and the Practice to immediately terminate this Agreement, effective upon delivery of written notice of termination.

5.4 Effects of Termination.

(a) In the event the Practice or the Physician terminates this Agreement under Section 5.3 or the Hospital terminates this Agreement under Section 5.2(a), no further amount shall be due and payable by the Hospital, and neither the Practice nor the Physician shall be required to repay any outstanding Loan Balance, which Balance shall, in such event, be considered forgiven.

(b) In the event that the Hospital terminates this Agreement pursuant to any of Sections 5.2(b) through 5.2(p): (i) no further amount shall be due and payable by the Hospital; (ii) the Physician and the Practice shall be jointly and severally liable to immediately repay any outstanding Loan Balance, and if applicable pursuant to Section 2.4.i, 2.6, or 2.7, any amount previously forgiven under Section 4.3, together with accrued interest, without any notice of acceleration, notice of intent to accelerate, or any other notice, demand or presentation, or any other action whatsoever required of the Hospital, and any such outstanding Loan Balance, shall not be subject to any further forgiveness; and (iii) the Hospital may exercise all of the Hospital's rights and remedies under this Agreement, the Note and the Security Agreement, as well as those available under Applicable Law or in equity.

ARTICLE VI  
GENERAL PROVISIONS

6.1 Assignment. Neither the Practice nor the Physician may assign or delegate their respective rights, duties or obligations under this Agreement without obtaining the prior written consent of the Hospital. The Hospital may assign or delegate its rights, duties and obligations under this Agreement without the consent of the Practice or the Physician to BHCS or an entity owned or controlled by BHCS; provided, however, such assignment or delegation shall not relieve the Hospital of any of its responsibilities to ensure performance under this Agreement. The Hospital may not assign or delegate its rights, duties or obligations under this Agreement to any person or entity other than BHCS or an entity owned or controlled by BHCS without obtaining the prior written consent of the Practice and the Physician.

6.2 Governing Law; Venue. This Agreement shall be construed and governed according to the Applicable Law of the State of Texas, without giving effect to its conflict of laws provisions. The Parties expressly agree that this Agreement is executed and shall be performed in Collin County, Texas and venue of all disputes, claims and lawsuits arising hereunder shall lie in Collin County, Texas.

6.3 Waiver of Breach. Waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach of the same or similar provision. None of the provisions of this Agreement shall be considered waived by a Party except when such waiver is given in writing.

6.4 Relationship of the Parties. The Parties mutually understand and agree that for purposes of this Agreement, the Practice and the Physician, on the one hand, and the Hospital, on the other, are independent contractors, and neither the Practice nor the Physician is an agent (whether actual, apparent or ostensible) or employee of the Hospital. The Hospital shall neither have nor exercise any control or direction over the medical judgment of the Physician or over the methods or manner by which the Physician practices medicine. Nothing contained in this Agreement is intended to give or shall be construed as giving that degree of control or direction on the part of the Hospital that creates an employer-employee, joint venture, or landlord/tenant relationship between the Hospital, on the one hand, and the Practice and the Physician, on the other. Other than the payments described in Article III, the Physician shall not be entitled to any salary or other compensation from the Hospital or to any employee benefits

provided by the Hospital, including disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday, or vacation pay as a result of this Agreement. The Hospital shall not withhold from amounts, if any, reimbursed or advanced to the Practice or the Physician under this Agreement any sum for income tax, unemployment insurance, social security or any other withholding pursuant to any Applicable Law or other requirement of any governmental body applicable to employers. With respect to income earned by the Physician, the Practice and the Physician, as the case may be, shall submit reports and returns, make any necessary payments, and maintain any records required by any applicable local, state or federal governmental agency. The Parties agree to take any and all action as may be reasonably requested by any of them to inform the public, patients of the Hospital, and others using the Hospital of the independent contractor nature of their relationship.

**6.5 Entire Agreement; Representation; Construction.** This Agreement, together with the Note and the Security Agreement, which are hereby incorporated into this Agreement, constitutes the entire agreement among the Parties regarding its subject matter and supersedes all prior or contemporaneous discussions, representations, correspondence, offer letters, letters of intent, memoranda and agreements, whether oral or written, pertaining to the subject matter of this Agreement. By executing this Agreement, the Parties acknowledge that they have been represented, or have had the opportunity to be represented, by legal counsel, and have had the opportunity to review and consider the terms of the Agreement. The language of this Agreement shall be construed as a whole according to its fair and common meaning. The various titles of the sections in this Agreement are used solely for convenience and shall not be used for interpreting or construing any word, clause, paragraph, or subparagraph of this Agreement.

**6.6 Change in Applicable Law; Severability.** The Parties recognize that this Agreement is at all times subject to applicable federal, state and local law, together with any amendments and binding interpretations thereof including but not limited to HIPAA and HITECH and the regulations promulgated thereunder; the Social Security Act and the regulations promulgated thereunder; Texas laws and regulations; the rules, regulations and policies of the Office of Inspector General of the Department of Health and Human Services, the Centers for Medicare and Medicaid Services ("CMS"), the Internal Revenue Service ("IRS") and the Texas Department of State Health Services ("TDSHS"); new legislation or regulations, such as a new federal or state economic stabilization program or health insurance program; and other changes in reimbursement for hospital or medical services (collectively, "Applicable Law"). Any provision of Applicable Law that invalidates this Agreement or a portion of this Agreement, or that would cause any of the Parties to be in violation of Applicable Law or jeopardize the tax-exempt status of Hospital, BHCS or any other BHCS affiliate, shall be deemed to supersede such provision of this Agreement and shall require reformation of this Agreement. Moreover, if any term or provision of this Agreement is held illegal, invalid or unenforceable to any extent pursuant to Applicable Law or otherwise, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. The Parties shall exercise their reasonable best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the Applicable Law. If the Parties are unable to mutually agree regarding the reformation of this Agreement called for by Applicable Law, any Party may terminate this Agreement by giving the other Parties ninety (90) days prior written notice.

**6.7 Corporate Practice of Medicine.** Nothing contained in this Agreement is intended or shall be construed: (a) to constitute the use of a medical license for the practice of medicine by anyone other than a licensed physician; (b) to aid the Hospital or any other corporation to practice medicine when such corporation is not licensed to practice medicine; or (c) to do any other act or create any other arrangements in violation of the Texas Medical Practice Act.

6.8 Confidentiality. Neither the Practice nor the Physician shall disclose the terms of this Agreement to anyone other than designated legal counsel, tax advisors and accountants unless necessary to implement the terms of this Agreement. Breach of this provision shall be considered a material breach of this Agreement.

6.9 Notices. Notices or communications to be given under this Agreement shall be provided to the appropriate Party in writing either by personal delivery, overnight delivery service, confirmed telefacsimile or registered or certified mail, postage prepaid, as follows:

To the Hospital:

Baylor Regional Medical Center at Plano  
4700 Alliance Blvd.  
Plano, Texas 75093  
Attn: President  
Telefacsimile: (469) 814-2999

With a copy to:

BHCS Law Department  
4005 Crutcher Street, Suite 300  
Dallas, Texas 75246  
Telefacsimile: (214) 820-1535

To the Physician:

Christopher Duntsch, M.D.  
Minimally Invasive Spine Institute, P.A.  
6957 West Plano Parkway, Suite 2600  
Plano, TX 75093  
Telefacsimile: (214) 948-6308

To the Practice:

Minimally Invasive Spine Institute, P.A.  
6957 West Plano Parkway, Suite 2600  
Plano, TX 75093  
Telefacsimile: (214) 948-6308  
Attn: President

or to such other addresses and to such other persons as a Party may from time to time designate by notice given as provided in this Section 6.9. Such notices or communications shall be deemed to have been given: (i) upon receipt if by personal delivery; (ii) one (1) business day after delivery if by an overnight delivery service; (iii) upon transmission confirmation if by telefacsimile; and (iv) three (3) business days after deposit in the United States mail if sent by regular, registered or certified mail, postage prepaid.

6.10 Health Care Services Laws and Regulations. The Parties enter into this Agreement with the intent of conducting their relationship in full compliance with Applicable Law, including without limitation, the federal Anti-Fraud and Abuse statute and regulations, the so-called "Stark Law" and its implementing regulations, and the Texas Prohibition on Solicitation of Patients. Notwithstanding any

unanticipated effect of any of the provisions of this Agreement, none of the Parties shall intentionally conduct itself under this Agreement in a manner that would constitute a violation of any provision of the federal Anti-Fraud and Abuse statute and regulations, the Stark Law and its implementing regulations, or the Texas Prohibition on Solicitation of Patients. Moreover, nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) the Practice and the Physician, on the one hand, and the Hospital, on the other, to refer or direct any patients to one another or to otherwise use one another's facilities or those of any BHCS affiliate. This Agreement does not prohibit, and shall not be construed to prohibit, the Physician from obtaining membership on the medical staff of any other hospital or health care facility or from referring patients to or utilizing the services of any other hospital or health care provider.

6.11 Further Acts. Each Party agrees to cooperate fully with the other Parties to take such further action and execute such other documents or instruments as necessary or appropriate to implement this Agreement.

6.12 Amendments. This Agreement shall be amended only by a written instrument signed by the Parties.

6.13 Force Majeure. No Party shall be liable or be deemed in breach of this Agreement for any failure or delay of performance which results, directly or indirectly, from acts of God, civil or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of such Party.

6.14 Remedies. The remedies provided to the Parties by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies the Parties may have under Applicable Law or in equity.

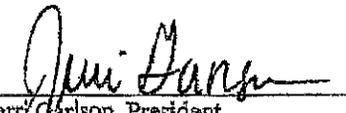
6.15 Attorney Fees. If a Party brings an action against another Party or Parties to enforce any condition or covenant of this Agreement, the prevailing Party or Parties, in addition to other relief awarded by a court or arbitrator, shall be entitled to recover from the non-prevailing Party or Parties its court costs and reasonable attorneys' fees incurred in such action.

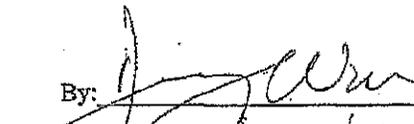
6.16 Electronic Execution; Counterparts. This Agreement may be executed electronically, in accordance with the Uniform Electronic Transactions Act. In addition, the Agreement may be executed in multiple counterparts, with each counterpart considered an original whether or not such counterpart is executed electronically.

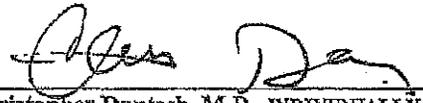
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BAYLOR REGIONAL MEDICAL CENTER  
AT PLANO

MINIMALLY INVASIVE SPINE INSTITUTE, P.A.

By:   
Jerr Carlson, President

By:   
Its: Douglas Allen

  
Christopher Duntch, M.D., INDIVIDUALLY

**EXECUTION VERSION**

**PHYSICIAN SERVICES AGREEMENT**

**BETWEEN**

**MISI, P.A.**

**AND**

**CHRISTOPHER DUNTSCH, M.D.**

Dated as of May 24, 2011



**PHYSICIAN SERVICES AGREEMENT**

THIS PHYSICIAN SERVICES AGREEMENT (this "Agreement") is made and entered into as of the 24 day of May, 2011 by and between MISI, P.A., a Texas professional association ("Association"), and CHRISTOPHER DUNTSCH, M.D. ("Physician").

**WITNESSETH:**

WHEREAS, Association is a professional association that duly renders authorized professional medical services and services incident thereto through its employees and independent contractors who are duly licensed to practice medicine in the State of Texas;

WHEREAS, Physician is a practicing physician who is or will be upon the Commencement Date (as hereinafter defined) duly licensed and in good standing to practice medicine in the State of Texas; and

WHEREAS, Association desires to employ Physician and Physician desires to become employed by Association, all on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, and other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

**ARTICLE I.**

**EMPLOYMENT**

1.1 General. Association agrees to employ Physician, and Physician agrees to be employed by Association, as hereinafter set forth for the term of this Agreement.

1.2 Conditions to Employment. Physician's employment by Association shall be conditioned upon the execution and delivery by Physician of (i) that certain Physician Recruitment Agreement dated as of May 24, 2011 (the "Physician Recruitment Agreement") by and among Physician, Association and Baylor Regional Medical Center at Plano ("Baylor Plano"), (ii) the Promissory Note in substantially the form attached hereto as Exhibit A; and (iii) such other documents as the Association deems to be necessary and appropriate to implement the transactions contemplated by the Physician Recruitment Agreement.

**ARTICLE II.**

**EMPLOYMENT AND DUTIES**

2.1 Duties of Physician. During the term of this Agreement, Physician shall, subject to the reasonable direction and instructions of Association, practice medicine as an employee of Association and perform such other duties as are reasonably assigned to him from time to time by the officers of the Association (the "Officers") or the Board of Directors of Association (the

"Board of Directors") (the Officers and/or the Board of Directors being hereinafter collectively referred to as the "Management"). Such duties shall include, without limitation, the following:

(a) Physician shall devote his full professional time, attention, and energies to rendering spinal surgical services and services incident thereto at the Association's offices located at 6957 West Plano Parkway, Suite 2600, Plano, Texas 75093 and at such other places in the State of Texas as may be designated from time to time by and for the benefit of Association;

(b) Physician shall provide "on call" services with other physician employees and physician independent contractors of Association as appropriate to Physician's practice and geographic location;

(c) Physician agrees to keep and maintain (or cause to be kept and maintained) appropriate and accurate records relating to all professional services rendered by him hereunder and to attend to all billing reports, claims, and correspondence required in connection with his services rendered under this Agreement;

(d) Physician agrees to promote, by entertainment or otherwise, to the extent permitted by law and the applicable canons of professional ethics and applicable parts of this Agreement, the professional practice of Association;

(e) Physician shall attend, to the extent reasonable and necessary to abide by the continuing medical education ("CME") requirements of the Texas Medical Board, with respect to Physician's medical license and the certifying board with respect to Physician's board specialty (if any), professional conventions and post-graduate seminars and participate in professional societies and will do all things reasonably necessary to maintain and improve his professional skills;

(f) Physician shall be and remain duly licensed by the State of Texas to practice medicine without restriction and shall comply with and be controlled and governed by, and otherwise perform services hereunder in accordance with, applicable law and the ethics and standards of care of the medical community or communities in which Physician shall from time to time provide services;

(g) Physician shall maintain a federal Drug Enforcement Administration certificate without restrictions, to the extent necessary for Physician's practice;

(h) Physician shall maintain at Baylor Plano and such facilities as may be designated by Association, full hospital medical staff memberships and clinical privileges as are appropriate to Physician's specialty and as are determined by Association to be necessary in connection with participation in contracts with third-party payors negotiated by Association or on Association's behalf by an agent of Association;

(i) Physician shall perform all professional services through Association in accordance with all applicable federal, state and local laws and regulations and with prevailing standards of care and medical ethics and with practice protocols and policies

as adopted from time to time by Association;

(j) Physician shall maintain eligibility for insurance under the professional liability policy or policies at a commercially reasonable cost as determined by Association carried by or on behalf of Association for Physician's practice;

(k) Physician shall abide by any reasonable guidelines adopted by Association designed to encourage the appropriate, efficient and cost-effective delivery of medical services, subject always to the clinical judgment and final determination of Physician, and cooperate with and participate in all other Association programs regarding quality assurance, utilization review, risk management and peer review; and

(l) Physician shall perform such other duties as Association and Physician may from time to time mutually agree and shall satisfy such other reasonable requirements as established from time to time by Association.

2.2 Professional Judgment. Physician shall be free to exercise his own judgment regarding the diagnosis and treatment of any particular patient, and all such decisions shall be the responsibility of Physician which shall be rendered in accordance with the standards of medical practice in the community.

2.3 Patients; Fees. Physician specifically agrees that the Management shall have the sole right to designate and assign patients to Physician for treatment and that the Management shall determine the fees to be charged by Association for the professional services rendered by Physician hereunder. Further, the Management will have authority over acceptance or refusal of any person as a patient of Association.

2.4 Certain Restrictions. Physician shall not, without the prior written consent of the Board of Directors of Association:

(a) Employ any monies, property, or effects belonging to Association, or engage the credit thereof, or contract any debt on account thereof, except in the due and regular course of business and upon the account or for the benefit of Association;

(b) Compromise, release, or discharge any debt due to Association without receiving the full amount thereof;

(c) Knowingly do or suffer any act or thing whereby the property or effects of Association or any part thereof may be attached seized, or taken in execution; or

(d) Lend any money of, or to, Association.

2.5 Exclusive Service. Except as specifically permitted by Section 2.6 herein below, Physician shall devote his full-time and best efforts to the performance of Physician's duties under this Agreement. During the term of this Agreement, Physician shall not at any time or

place whatsoever, either directly or indirectly, engage in the practice of medicine or surgery to any extent, unless otherwise specifically authorized by the Management.

2.6 Teaching, Writing, Non-Clinical Consulting, and Other Activities. Honorary fees or other remuneration generated from personal appearances, writing, teaching, non-clinical consulting, medical research, medico-legal activities, on-call stipends, deposition fees, intellectual property, or other services or activities provided by Physician (not on behalf of Association) shall not be part of this Agreement. Such remuneration shall belong solely to Physician; provided, that, any professional activity to be performed by Physician for remuneration beyond the scope of this Agreement (i) must be approved in advance by the Board of Directors, which such approval shall not be unreasonably withheld, and (ii) such activities shall not be covered by the professional liability insurance provided by the Association pursuant to this Agreement. Moreover, any honorary fees or other remuneration generated from personal appearances, writing, teaching, non-clinical consulting, medical research, medico-legal activities, on-call stipends, deposition fees, intellectual property, or other services or activities provided by Physician for or on behalf of the Association shall belong solely to the Association.

Any remuneration generated by Physician's creation or ownership (or maintenance of ownership) of any copyright, patent, or intellectual property that has been created, or is created, in whole or in part, by Physician alone and/or in conjunction with independent third parties before, during, or following the term of this Agreement shall belong solely to Physician. Notwithstanding the foregoing statement in this Section 2.6, any copyright, patent, or intellectual property created by Physician (with or without the cooperation of other physicians of Association) in the course of providing services as an employee of Association under this Agreement and through the use of identifiable funds of Association for the purposes of creating such copyright, patent, or intellectual property, or through the use of Confidential Information (as defined in Section 9.2 of this Agreement), shall remain the sole and exclusive property of Association, including any remuneration generated from such copyright, patent, or intellectual property.

### ARTICLE III.

#### COMPENSATION

3.1 Base Compensation. As compensation for Physician's services and in consideration of Physician's other agreements and covenants as set forth herein, Association shall pay Physician a base salary per annum in the amount and subject to the terms set forth in the Addendum of Additional Terms attached hereto as Exhibit B. Subject to the conditions set forth in the Addendum of Additional Terms, the base salary, less any and all federal and state tax withholding amounts, shall be payable by Association to Physician in twelve (12) approximately equal monthly installments. Each such installment shall be made at such time and in such manner as is consistent with the compensation practices of Association then in effect with respect to physician employees.

3.2 Bonus Compensation. In addition to the base compensation provided for in Section 3.1 hereof, Physician shall receive bonus compensation at such times and in such amounts as set forth in the Addendum of Additional Terms attached hereto as Exhibit B.

3.3 Memberships. Association shall reimburse expenses incurred by Physician with respect to (i) the license fees for the state(s) in which Physician practices for Association, and (ii) the dues for Physician's membership in the local and state medical societies, and the state and national specialty boards in which Physician holds membership that are relevant to Physician's employment by Association which the Board of Directors of Association, in its discretion, deems an appropriate organization for membership by Physician up to a maximum amount set forth in the Addendum of Additional Terms attached hereto as Exhibit B.

3.4 Professional Fees; Assignment and Delivery of Revenues. Physician acknowledges that Association shall be entitled to bill and to receive all fees generated by Physician pursuant to professional services rendered on behalf of Association hereunder, and all such fees shall be and remain the property of Association. Physician expressly and irrevocably transfers, assigns, and otherwise conveys to Association all right, title, and interest of Physician in and to any fees, whether in cash, goods, or other items of value, resulting from or incident to Physician's practice of medicine pursuant to this Agreement during the term hereof and hereby appoints Association as attorney-in-fact for collection of same or otherwise enforcing Physician's interests thereto.

Physician acknowledges that Association shall:

(a) Bill in Association's name, under its provider number(s) and on its behalf all claims (including co-payments due from patients) for reimbursement or indemnification from payors (as defined below), fiscal intermediaries or patients for all covered medical services provided by Physician or Association to patients;

(b) Take possession of and endorse in the name of Physician or Association all cash, notes, checks, money orders, insurance payments, and any other instruments received as payment of accounts receivable (and Physician covenants to transfer and deliver promptly to Association all funds received by Physician from patients or payors for medical services), all such funds to be deposited directly into an Association account and to be applied in a manner consistent with Association's business practices;

(c) Deposit all collections directly into an Association account with a banking institution selected by Association and approved by Association and to make withdrawals from such Association account for such purposes as are consistent with the Association's business practices;

(d) Collect and receive in (i) Association's name and on its behalf, and (ii) Physician's name and on Physician's behalf, all accounts receivable generated by such billings and claims for reimbursement and upon notice to and approval from Physician, to place such accounts for collection with an agency outside of Association, settle and compromise claims, and institute legal action for the recovery of accounts; and

(e) Sign checks on behalf of Association and make withdrawals from Association accounts for payments as requested from time to time by Association.

Physician shall cooperate fully with Association in facilitating such collections; including endorsing checks and making delivery to Association of all revenues, in whatever form, received from patients or payors on their behalf, and completing all forms necessary for the collection of said revenues, including, without limitation, executing and delivering to each financial institution wherein Association maintains an account, such additional documents or instruments as may be necessary to evidence or effect the power of attorney granted hereby to Association; provided, however, that, in the event an account receivable or claim for reimbursement is placed for collection with an agency outside of Association, then Physician shall be held harmless and indemnified against any and all losses, claims, actions or liabilities (except for professional liabilities) arising from or relating to such collection. If Association assigns said power of attorney, then Physician shall execute a power of attorney in favor of the assignee in a form acceptable to Association.

For purposes of this Section, "payors" shall mean any persons or entities that, on behalf of a patient, enrollee or employee, pay or reimburse Physician or Association for providing health care services or for managing the provision of health care services, such as insurance companies, managed care plans, employers or the Medicare and Medicaid programs. The provisions of this Section shall survive the termination of this Agreement.

#### ARTICLE IV.

##### TERM AND TERMINATION

4.1 Term of Employment. The initial term of employment hereunder shall be for the period set forth in the Addendum of Additional Terms attached hereto as Exhibit B (the "Initial Term"). Upon expiration of the Initial Term, this Agreement will be automatically extended for additional successive one (1) year periods thereafter unless either party shall notify the other party in writing at least one hundred and twenty (120) days prior to the next scheduled expiration date that the notifying party intends to terminate this Agreement as of such scheduled expiration date.

4.2 Termination of Agreement. This Agreement may be terminated under any of the following circumstances:

(a) Termination by Association immediately upon the date of the death of Physician or the date Physician is inducted into active military service (subject to the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994; 38 U.S.C. § 4301-4335; and the federal regulations promulgated thereunder);

(b) Termination by Association immediately upon the inability of Physician to perform fully Physician's duties hereunder, whether by reason of injury or illness (physical or mental) incapacitating Physician either for a continuous period exceeding sixty (60) calendar days, or for a noncontinuous period exceeding ninety (90) calendar days during any 12-month period, excluding any leaves of absence approved in writing

by Association. In this regard, Association shall have the right to have Physician examined at such reasonable times by such physicians as Association may designate, and Physician will be available for and submit to such examination as and when requested;

(c) Termination by Association immediately upon the date of the suspension, revocation or restriction of Physician's license to practice medicine by the State of Texas for any cause or upon the date of the suspension or revocation of Physician's hospital staff privileges for a period of five (5) days or more at any hospital at which Physician then holds such privileges;

(d) Termination by either party immediately upon material breach of this Agreement, which breach shall have remained uncorrected (i) for seven (7) consecutive days following written notice to the breaching party from the non-breaching party in the event of a payment default hereunder, or (ii) for ten (10) consecutive days following written notice to the breaching party from the non-breaching party in the event of any other material breach;

(e) Termination by Association immediately upon Association's determination that Physician has repeatedly failed or refused to comply with the reasonable policies, standards and regulations of the Association, which may from time to time be established or announced by the Association and the Association has provided written notice of such failure or refusal, following which Physician has not cured within ten (10) days of such notice;

(f) Termination by Association immediately upon Association's determination that Physician has intentionally and repeatedly refused to follow specific instructions of Association's Board of Directors and the Association has provided written notice of such, following which Physician has not cured within ten (10) days of such notice (provided, that, such instructions are made in good faith, are reasonable, not arbitrary or capricious, and do not require Physician to be subjected to criminal or civil liability or any other disciplinary action);

(g) Termination by Physician immediately upon the dissolution of the Association; and

(h) Termination at any time by mutual written consent of the parties.

4.3 Effects of Termination. In the event of a foregoing occurrence, neither party shall have any further obligations hereunder except for (i) obligations accruing prior to the date of termination, such as compensation and services and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement, including, without limitation, confidentiality of information and indemnities (which covenants and agreements shall survive the termination or expiration of this Agreement).

4.4 Transition Following Notice of Termination. Following any notice of termination of employment hereunder, whether given by Association or Physician, Physician shall fully cooperate with Association in all matters relating to the completion of his pending work on

behalf of Association and the orderly transfer of such work to the other professional employees of Association. On or after the giving of notice of termination hereunder and during any notice period, Association will be entitled to such full-time or part-time services of Physician as Association may reasonably require up to the termination date. Association will specifically have the right to terminate the active services of Physician at the time notice of termination is given and pay to Physician the compensation due to him under Article III for the duration of the notice period.

## ARTICLE V.

### PAID TIME OFF AND LEAVE

5.1 Paid Time Off Allocation. Physician shall be entitled to take paid time off in the amount set forth in the Addendum of Additional Terms attached hereto as Exhibit B. In addition, Physician shall be entitled to the holidays afforded by Association to its physician employees under Association's then current holiday policy. Unused days of paid time off may not be carried over from one fiscal year to another beyond the Association allowed reserve, and additional income will not be given for vacation time or holidays not taken during any year.

5.2 Professional Meetings and Continuing Medical Education. Physician shall be entitled to take off time each year without any reduction in his base compensation, for the purposes of attending professional meetings and continuing medical education conferences. In connection therewith, Association will reimburse Physician for the reasonable costs incurred in attending such professional meetings or continuing medical education conferences. The Physician shall submit evidence satisfactory to Association for all expense items in excess of Twenty-Five Dollars (\$25.00) for which Physician seeks reimbursement hereunder. The amount of time that Physician is entitled to take off annually for such purposes and the maximum amount for which Physician will be reimbursed in connection therewith are set forth in the Addendum of Additional Terms attached hereto as Exhibit B.

## ARTICLE VI.

### BENEFITS

6.1 Standard Employee Benefits. Physician and Physician's dependents shall be entitled to receive any hospitalization and major medical and life insurance benefits provided by Association in accordance with Association's standard personnel policies. After one (1) year of full-time employment, Physician shall also be entitled to participate in any profit sharing, pension or other employee benefit plan for which he is eligible. Enrollment dates are January 1 and July 1 of each calendar year.

6.2 Employee Business Expenses. Physician is encouraged and expected, from time to time, to promote the business of Association. Association anticipates that Physician will incur expenses for travel, entertainment, professional advancement, and community service. Under the

Association's general policies, such employee expenses are not subject to reimbursement unless they are essential and directly related to the enhancement of Association's practice and Physician's standing among members of the medical profession. The Management will review any such expense that Physician believes should be reimbursed and may, at its election, decide to reimburse Physician for these expenses upon presentation by the Physician of an itemized expense voucher.

6.3 Working Facilities. Association shall provide during the term of this Agreement such telephone, office, facilities, equipment, personnel and supplies as Association deems are appropriate and reasonable for the practice of medicine by Physician.

## ARTICLE VII.

### PROFESSIONAL LIABILITY INSURANCE

7.1 Professional Liability Insurance. Association agrees to obtain and maintain throughout the term of this Agreement a policy or policies of insurance insuring Physician's risks of comprehensive general liability and professional medical liability incurred in connection with providing professional services for Association hereunder, in such amounts, with such limits of liability, with such company or companies and under such terms and conditions as are mutually acceptable to Association and Physician, naming Physician and Association as named insureds to the extent that their individual, respective and collective interests may appear.

7.2 Tail Insurance Requirements. Upon the termination of this Agreement for any reason other than by Association pursuant to Sections 4.2(c), (d), (e), or (f), Association shall obtain and will maintain for a period of two (2) years from the expiration or termination date of this Agreement, professional liability insurance tail coverage, or equivalent continuing professional liability insurance, covering claims made against Physician and/or Association relating to events that occurred or allegedly occurred during the term of this Agreement. Alternatively, if this Agreement is terminated by Association pursuant to Sections 4.2(c), (d), (e) or (f) or, if this Agreement is terminated by Physician without cause, then Physician shall obtain and will maintain for a period of two (2) years from such termination of this Agreement, professional liability insurance tail coverage, or equivalent continuing professional liability insurance, covering claims made against Physician and/or Association relating to events that occurred or allegedly occurred during the term of this Agreement. Such insurance shall be generally comparable to the professional liability insurance obtained and maintained by Association on behalf of Physician pursuant to Section 7.1. If the party required to obtain such insurance (the "Insuring Party") fails to provide the other party (the "Insured Party") with written evidence of the Insuring Party's having obtained such insurance, the Insured Party may, but shall not be required to, obtain and maintain such insurance on behalf of the Insured Party and invoice the cost thereof, together with any other costs incurred in connection with obtaining and maintaining such insurance, to the Insuring Party and the Insuring Party shall be required to promptly reimburse the Insured Party for such invoiced amount.

## ARTICLE VIII.

### PAYOR CONTRACTS; PATIENTS, CASE RECORDS, AND HISTORIES

8.1 Payor Contracts. Physician acknowledges and agrees that Association shall act as Physician's exclusive agent to negotiate and execute contracts ("Payor Contracts") with health maintenance organizations, insurance companies, preferred provider organizations and various other entities that pay or arrange for the payment of medical services (collectively, "Payors"). Physician agrees to render medical services in Physician's area of expertise to patients covered by Payor Contracts entered into by Association to the extent that payment thereof is covered by such contracts. During the term of this Agreement, Physician shall not unilaterally negotiate or execute any Payor Contract, but shall refer to Association all inquiries from Payors relating to the negotiation and/or entering into such contracts. Physician acknowledges that he shall have no right, power or authority to negotiate or execute any Payor Contract on behalf of Association without the express consent of the Association's Board of Directors. Any Payor Contract negotiated and/or executed by Physician in contravention to the provisions of this Section 8.1 shall be null and void and without effect as to Association.

8.2 Patients and Records of Association. Physician acknowledges that any papers, X-rays or other imaging materials, slides, medical data, medical records, patient lists, fee books, patient records, files, or other documents or copies thereof, or other confidential information of any kind pertaining to Association's business, sales, financial condition, products, or medical activities, belong to and will remain the property of Association. Physician further agrees that should Physician's active service with Association terminate for any reason, Physician will neither take nor retain any property of Association without prior written authorization from Association. Notwithstanding the foregoing, Physician will have the right to request, receive, and use in continuing his practice, if living and then licensed to practice medicine, such copies of documents as any patient or former patient treated by Physician specifies in writing directed to Association; provided, that, (i) the disposition of such copies is subject to such patient's control, and approval of release (ii) Physician pays in advance the amount per chart with respect to any such patient as established by the Texas Medical Board of Examiners under Section 159.008 of the Texas Occupation Code and (iii) Physician shall become the Medical Record Custodian of such patient chart. Association shall continue to operate as the Medical Record Custodian of all patient charts which remain at Association.

### ARTICLE IX.

#### NONDISCLOSURE OF CONFIDENTIAL INFORMATION

9.1 Background. Physician understands and acknowledges that Association has developed and contemplates the further development of unique concepts and techniques in the management and marketing of Association's business and services.

9.2 Physician's Obligations. Physician understands and acknowledges that Physician will have access to "Confidential Information" concerning Association's business and that Physician has a duty at all times not to use such information in competition with Association or to disclose such information or permit such information to be disclosed to any other person, firm, association, or other third party during the term of this Agreement or at any time thereafter. For

purposes of this Agreement, "Confidential Information" shall include, without limitation, any and all secrets or confidential technology, proprietary information, customer or patient lists, trade secrets, records, notes, memoranda, data, ideas, process, methods, surgical and other techniques, systems, formulas, patents, models, devices, programs, computer software, writings, research, personnel information, customer or patient information, plans or any other information of whatever nature in the possession or control of Association that is not generally known or available to members of the general public. Physician further agrees that if his employment hereunder is terminated for any reason, he will neither take nor retain, without prior authorization from Association originals or copies of any records, papers, programs, computer software, documents, x-rays or other imaging materials, slides, medical data, medical records, patient lists, fee books, files or any other matter of whatever nature which contains Confidential Information.

9.3 Subsequent Employment. Physician expressly agrees that for a period of five (5) years after the termination of this Agreement, he will not accept any position, enter into a contractual arrangement or have any interest in any business or organization if by doing so Physician would be required to disclose Confidential Information except to the extent disclosure is made in the course of treating Physician's patients as contemplated under Section 3.2 of this Agreement.

9.4 Survival of Protective Covenants. Each covenant in this Article IX on the part of Physician shall be construed as an agreement independent of any other provision of this Agreement, and shall survive the termination of this Agreement, and the existence of any claim or cause of action of Physician against Association, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Association of such covenant.

## ARTICLE X.

### REMEDIES

Physician acknowledges that the covenants of Physician set forth in Articles VIII and IX are necessarily of a special, unique, and extraordinary nature and that the loss arising from a breach thereof cannot reasonably and adequately be compensated by money damages, as such breach will cause Association to suffer irreparable harm. Physician recognizes and acknowledges that irreparable injury will result to Association and its respective business and property in the event of any breach by Physician of any of the provisions of Articles VIII and IX. Physician's continued employment hereunder is predicated in part upon the covenants of Physician as set forth in Articles VIII and IX. In the event of any breach of any of Physician's covenants as set forth in Articles VIII and IX, Association or any of its successors or assigns shall be entitled, in addition to any other remedies and damages available, to injunctive relief to restrain the violation of such covenants by Physician or by any person or persons acting for or with Physician in any capacity. Association shall be entitled to such injunctive relief without the necessity of posting a bond of cash or otherwise. The rights and duties of the parties set forth in Articles VIII and IX and the provisions of this Article X shall survive termination of this Agreement.

**ARTICLE XI.**

**REPRESENTATIONS AND WARRANTIES**

Physician represents and warrants to Association as follows:

(a) Physician is, or will be upon the Commencement Date, duly licensed to practice medicine under the laws of the State of Texas;

(b) Physician has complied with all applicable laws, rules and regulations relating to the practice of medicine and is able to enter into and perform all duties under this Agreement;

(c) Physician possesses a valid federal narcotics number which has never been revoked or suspended (other than a temporary suspension, now cured, resulting solely from late filing of renewal papers);

(d) Physician's medical staff privileges at any hospital have never been (other than for delinquency in the completion of medical records) and are not in the process of being curtailed, suspended, revoked or otherwise the subject of any proceedings which can or could have resulted in the same;

(e) Neither Physician's provider number for and eligibility to participate in Blue Cross Blue Shield, Medicare or Medicaid programs nor Physician's eligibility to participate in any other third-party payment system has ever been or is in the process of being curtailed, suspended, revoked or otherwise the subject of any proceedings which can or could have resulted in the same;

(f) Physician has not been convicted of a criminal offense related to participation in the delivery of medical care service under Titles XVIII, XIX or XX of the Social Security Act;

(g) Physician's license to practice medicine in any state has never been revoked (not including revocation solely for non-payment of filing or renewal fees), suspended, restricted or otherwise curtailed nor has Physician been placed on probation by any medical licensing board; and

(h) Physician is not a party to or bound by any other agreement or commitment, or subject to any restriction or agreement related to previous employment or consultation containing confidentiality or non-compete covenants or other relevant restrictions which may have a possible present or future adverse effect on Association or Physician in the performance of his duties under this Agreement.

Physician agrees to immediately notify Association of any act or circumstance which occurs or is discovered during the term of this Agreement, which in itself or with the passage of

time and/or the combination with other reasonably anticipated factors renders or will render any of these representations and warranties to be untrue.

## ARTICLE XII.

### SUBSTANCE ABUSE POLICY

It is Association's policy (the "Policy") that none of its employees shall use or abuse any controlled substances at any time (other than those medications lawfully prescribed by a medical doctor in a reasonable diagnosis and which do not interfere with the Physician's capacity to perform his obligations under this Agreement) or be under the influence of alcohol or be affected by the use of alcohol during the time period required to perform their duties and obligations under any employment arrangements. Association and Physician both acknowledge and agree that the purpose of this Policy is for the benefit of Association, Physician and the individuals whom they serve.

In compliance with this Policy, Physician agrees to submit to random drug testing immediately upon Association's request. Testing may include, but shall not be limited to, the taking of blood and urine samples and utilization of gas chromatography. In the event that a positive test result is reached indicating a violation of the Policy, Physician may, at his own expense and subject to the supervision and approval of Association of the manner and testing facilities utilized, elect to have a second drug test performed, at a time which is no longer than two (2) days after the initial positive results were received by Association and Physician. Association may, in its sole and absolute discretion, terminate Physician for cause in the event either: (i) a positive test result is received in the initial drug test and the Physician fails to exercise his option for a second test in the manner provided for in this Article, or (ii) positive test results are received from both tests. Association may, at any time, retest Physician pursuant to the terms of this Article.

## ARTICLE XIII.

### MISCELLANEOUS PROVISIONS

13.1 Additional Assurances. Physician shall from time to time execute such additional instruments and documents as the parties may deem reasonably necessary to effectuate this Agreement.

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

13.3 Governing Law. THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO, SHALL BE GOVERNED BY AND

CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS.

13.4 Arbitration. The parties shall use their respective best efforts to settle amicably any disputes, differences or controversies arising between the parties out of or in connection with or in respect of this Agreement. However, if not so settled then the same shall be submitted to arbitration and to the fullest extent permitted by law, be solely and finally settled by arbitration, except as specifically provided otherwise herein. The arbitration proceeding shall be held in Dallas, Texas, before a single arbitrator and shall be conducted in accordance with the American Health Lawyers Alternative Dispute Resolution Service Rules of Procedure for Arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and any order of enforcement as the case may be. The arbitrator shall not award any party punitive, exemplary, multiplied or consequential damages, and each party hereby irrevocably waives any right to seek such damages in arbitration or in judicial proceedings. Each party shall bear its own costs in the arbitration and the fees and expenses of the arbitration shall be shared equally by the parties. Notwithstanding the foregoing, the arbitrator shall have the right and authority to apportion among the parties all reasonable costs, including attorney's fees and witness fees, taking into account relative fault of the parties. The foregoing provisions of this Section 13.4 do not limit the right of a party to seek injunctive or other equitable relief from a court of competent jurisdiction pending resolution of a dispute by arbitration.

13.5 Jurisdiction. Subject to the provisions of Section 13.4, each of the parties hereto submits to the exclusive jurisdiction of any state or federal court sitting in Dallas, Texas, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceedings may be heard and determined in any such court and hereby expressly submits to the personal jurisdiction and venue of such court for the purposes hereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum. Each of the parties hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its address set forth in Section 13.10, such service to become effective ten (10) days after such mailing.

13.6 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any of the provisions of this Agreement.

13.7 Attorneys' Fees. Subject to Section 13.4 hereof, in the event that any action or proceeding is commenced by either party hereto for the purpose of enforcing any provision of this Agreement, the party to such action or proceeding may receive as part of any award, judgment, decision or other resolution of such action or proceeding its costs and attorneys' fees as determined by the person or body making such award, judgment, decision or resolution.

Should any claim hereunder be settled short of the commencement of any such action or proceeding, the parties in such settlement may mutually agree to include as part of the damages alleged to have been incurred reasonable costs of attorneys or other professionals in investigation or counseling on such claim.

13.8 Benefit/Assignment. Subject to any provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns; provided, however, that neither party may assign this Agreement or any of such party's rights or obligations hereunder without the prior written consent of the other party.

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

13.10 Notices. All notices, claims or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by facsimile followed by delivery by reputable overnight courier service (providing proof of delivery), (iii) one day after being sent to the recipient by reputable overnight courier service (charges prepaid) and providing proof of delivery, or (iv) five (5) days after being deposited in the United States mail, postage prepaid and sent by either registered or certified mail, return receipt requested. Such notices, claims and other communications shall be sent to Physician and Association at the addresses indicated below or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

If to Association:

MISI, P.A.  
10400 N. Central Expressway  
Dallas, Texas 75231  
Attn: Chief Executive Officer

If to Physician:

Christopher Duntsch, M.D.  
1564 Vance Avenue  
Memphis, Tennessee 38104

14.11 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the date hereof, are interpreted by judicial decision, a regulatory agency or legal counsel in such a manner as to indicate that this Agreement or any provision hereof may be in violation of such laws or regulations, the parties hereto shall amend this Agreement as necessary to preserve the underlying economic and financial arrangements between the parties hereto and without

substantial economic detriment to either party. Neither party shall claim or assert illegality as a defense to the enforcement of this Agreement or any provision hereof; instead, any such purported illegality shall be resolved pursuant to the terms of this Section.

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

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

13.14 Exhibits. The terms and provisions contained in the Exhibits attached hereto shall be and hereby are incorporated herein by reference for all purposes.

13.15 Entire Agreement; Amendment. This Agreement supersedes all previous contracts, and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the subject matter and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that, in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained herein and not others. All prior representations or agreements, whether written or oral, not expressly incorporated herein, are superseded and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by the parties hereto.

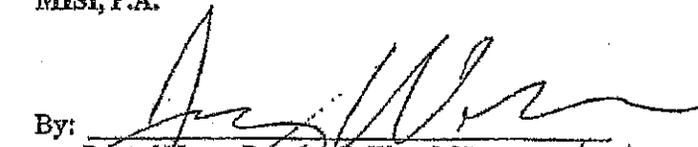
13.16 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

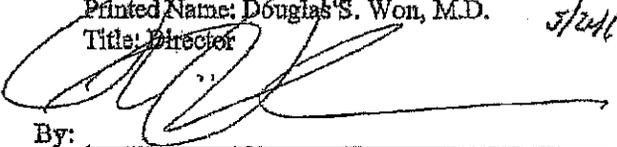
**ASSOCIATION:**

**MESI, P.A.**

By: 

Printed Name: Douglas S. Won, M.D. 5/24/11

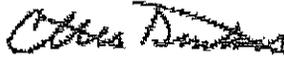
Title: Director

By: 

Printed Name: Michael Rimlawi, D.O. 5/24/11

Title: Director

**PHYSICIAN:**



Printed Name: Christopher Duntsch, M.D.

#837770v5

**EXHIBIT B**

**ADDENDUM OF ADDITIONAL TERMS**

**Additional Terms and Provisions**

1. Base Compensation. Pursuant to Section 3.1 of the Agreement, Association shall pay Physician a base salary of Six Hundred Thousand Dollars (\$600,000.00) per annum for the first and second year(s) that the Agreement is in effect.

2. Incentive Bonus Compensation. Pursuant to Section 3.2 of the Agreement, not later than forty-five (45) days after the end of each full year that Physician is employed by Association, Association shall determine, award and pay to Physician such additional incentive bonus compensation, if any, as shall be determined to be payable by the Management of Association. Association shall determine and pay to Physician the following incentive bonus compensation:

(a) For the year beginning on the Commencement Date and ending on June 14, 2012, Physician shall be paid forty percent (40%) of all Gross Collections collected by Association and that are generated by Physician in excess of Eight Hundred Thousand Dollars (\$800,000.00); and

(b) For the year beginning on the June 15, 2012 and ending on June 14, 2013, Physician shall be paid forty percent (40%) of all Gross Collections collected by Association and that are generated by Physician in excess of Eight Hundred Thousand Dollars (\$800,000.00).

For purposes of this Paragraph 2, the term "Gross Collections" shall mean the revenues collected by Association for medical services personally rendered by Physician hereunder.

3. Membership, Dues and Fees. Pursuant to Section 3.3 of the Agreement, Association shall reimburse Physician up to an aggregate amount of Two Thousand Six Hundred Dollars (\$2,600.00) per annum for fees associated with establishing and maintaining a medical practice in the State of Texas. In addition to this annually permitted reimbursement, Association shall reimburse Physician up to an aggregate amount of One Thousand Five Hundred Dollars (\$1,500) per annum, for expenses associated with professional society fees, medical staff dues, and professional subscriptions.

In addition to this annually permitted reimbursement, Association shall also reimburse Physician for the full documented amount of all fees and expenses associated with obtaining and maintaining board certification(s) previously approved by the Association.

4. Term of Employment. Pursuant to Section 4.1 of the Agreement, the initial term of the Agreement shall commence as of June 15, 2011 (the "Commencement Date") and, subject to earlier termination pursuant to Section 4.2 of the Agreement, shall end at midnight on the

second (2nd) year anniversary of the Commencement Date (the "Termination Date"). The term of the Agreement shall be subject to renewal as set forth in Section 4.1 of the Agreement.

6. Paid Time Off Allocation. Pursuant to Section 5.1 of the Agreement, Physician shall be entitled to an allocation of one hundred and twenty (120) hours annually to use for personal time off. Such allocation shall be scheduled at the mutual agreement of Association and Physician and shall abide by Association policies for such matters. Neither party's agreement in this respect shall be unreasonably withheld.

7. Professional Meetings and Continuing Medical Education. Pursuant to Section 5.2 of the Agreement, Physician shall be entitled to (i) take off up to five (5) business days per annum to attend professional meetings and continuing medical education conferences, which shall not be counted toward the maximum number of vacation days set forth above, and (ii) be reimbursed up to Two Thousand Five Hundred Dollars (\$2,500.00) per annum in connection with Physician attending any such meetings and conferences.

8. Health Insurance. Pursuant to Section 6.1 of the Agreement, Physician shall be entitled to health insurance benefits and term life insurance for Physician only on the same basis as health insurance benefits and/or term life insurance are provided to all other physician employees of Association. Family enrollment in said benefits is optional and cost of such benefits for Physician's dependents will be the sole responsibility of Physician.

9. Professional Liability Insurance. Pursuant to Section 7.1 of the Agreement, Physician shall be entitled to professional liability insurance in a minimum amount equal to that in place for each of the other physician employees of the Association.

PROMISSORY NOTE  
FOR  
PHYSICIAN PRACTICE START-UP ASSISTANCE AGREEMENT  
BAYLOR REGIONAL MEDICAL CENTER AT PLANO;  
CHRISTOPHER DUNTSCHE, M.D.; AND  
MINIMALLY INVASIVE SPINE INSTITUTE, P.A.

SIX HUNDRED THOUSAND  
and no/100 DOLLARS (\$600,00.00)

*JD*  
*JD*  
July 6, 2011  
~~June 6, 2011~~  
Plano, Texas  
*CP*

FOR VALUE RECEIVED, the undersigned Christopher Duntsch, M.D. and Minimally Invasive Spine Institute, P.A. (each a "Maker" and collectively the "Makers"), each, jointly and severally, hereby unconditionally promise to pay to the order of Baylor Regional Medical Center at Plano ("Payee"), at 4700 Alliance Blvd., Plano, Texas 75093, or at such other address given to the Makers by the Payee, the principal sum of Six Hundred Thousand and no/100 DOLLARS (\$600,000.00), or so much thereof as may be advanced prior to maturity, in lawful money of the United States of America, together with interest compounded monthly (calculated on the basis of a 365 or 366-day year, as appropriate), on the unpaid principal balance from day-to-day remaining, computed from the date of advance until maturity at the rate per annum equal to the Prime Rate plus two percent (2%) as set forth in that certain Physician Practice Start-up Assistance Agreement of even date herewith between the Makers, on the one hand, and the Payee, on the other ("Agreement"), or, if less, the maximum lawful rate. Terms not defined in this Note shall have the meanings specified in the Agreement.

The principal of, and interest on, this Note shall be due and payable as follows:

(a) Interest, computed as aforesaid, shall accrue monthly and be payable on demand of the Payee, commencing on the first anniversary of this Note and thereafter on the same day of each succeeding calendar month until all principal and interest payable under this Note is paid in full or forgiven in accordance with the terms and conditions of the Agreement; and

(b) Principal shall be due and payable on demand of the Payee commencing on the first anniversary of this Note until all principal and interest payable under this Note is paid in full or forgiven in accordance with the terms and conditions of the Agreement.

This Note has been executed and delivered pursuant to, and is subject to the terms and conditions set forth in, the Agreement, and is the "Note" referred to in the Agreement. The Payee of this Note shall be entitled to the benefits provided in the Agreement, including those provisions relating to forgiveness of amounts due under this Note. Reference is made to the Agreement for a statement of: (i) the obligation of the Payee to advance funds thereunder; (ii) the Makers' rights to cure certain breaches of the Agreement, if any; and (iii) required prepayments.

This Note is secured by, among other things, that certain Security Agreement of even date herewith executed by the Makers in favor of the Payee ("Security Agreement") pursuant to the Agreement.

If the Makers fail or refuse to pay any part of the principal of or interest under this Note as this Note becomes due, or upon the occurrence of any event of default under this Note or under any other agreement or instrument securing or assuring the payment of this Note or executed in connection with this Note, including without limitation the Agreement and the Security Agreement, then in any such event the Payee or any holder of this Note may, at its option, do any or all of the following: (i) declare the entire unpaid balance of principal of and accrued interest to be immediately due and payable without



presentment or notice of any kind, which the Makers hereby waive; (ii) reduce any claim to judgment; and (iii) pursue and enforce any of the Payee's rights and remedies available pursuant to any agreement, as well as available under Applicable Law (as defined in the Agreement) or in equity.

The Makers and every other surety, endorser, guarantor and other party ever liable for payment of any sums of money payable on this Note, jointly and severally, waive presentment, protest, notice of protest and non-payment, or other notice of default, notice of acceleration and intention to accelerate, and agree that liability under this Note shall not be affected by any renewal or extension in the time of payment hereof, or in any indulgences, or by any release or change in any security for the payment of this Note, and hereby consent to any and all renewals, extensions, amendments, indulgences, releases or changes, regardless of the number of such renewals, extensions, amendments, indulgences, releases or changes.

No waiver by the Payee of any of its rights or remedies hereunder or under any other document evidencing or securing this Note or otherwise shall be considered a waiver of any other subsequent right or remedy of the Payee. No delay or omission in the exercise or enforcement by the Payee of any rights or remedies shall ever be construed as a waiver of any right or remedy of the Payee. No exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of the Payee.

The Makers reserve the right to prepay the outstanding principal balance of this Note, in whole or in part, at any time and from time to time, without premium or penalty. Any such prepayment shall be made together with payment of interest accrued on the amount of principal being prepaid through the date of such prepayment, and shall be applied to the installments of principal due hereunder in the inverse order of maturity.

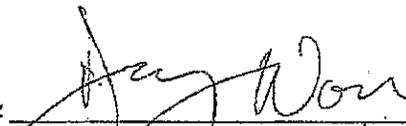
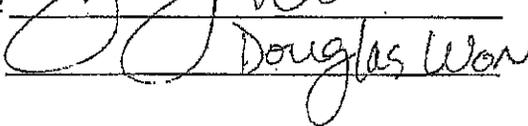
Regardless of any provision contained in this Note, the Agreement, the Security Agreement or any other document executed or delivered in connection with the foregoing, the Payee shall never be deemed to have contracted for or be entitled to receive, collect or apply as interest on this Note, any amount in excess of the maximum rate of interest allowed pursuant to Applicable Law. In the event that the Payee ever receives, collects or applies as interest any excess interest, such amount which would be deemed excess interest shall be applied to the reduction of the unpaid principal balance of this Note, and, if the principal balance of this Note is paid in full, any remaining excess interest shall forthwith be paid to the Makers. In determining whether the interest paid or payable under any specific contingency exceeds the highest maximum rate of interest allowed pursuant to Applicable Law, the Makers and the Payee shall, to the maximum extent permitted under Applicable Law: (i) characterize any non-principal payment (other than payments which are expressly designated as interest payments under this Note) as an expense or fee rather than as interest; (ii) exclude voluntary prepayments and the effect thereof; and (iii) spread the total amount of interest throughout the entire contemplated term of this Note so that the interest rate is uniform throughout such term. However, if this Note is paid and performed in full prior to the end of the contemplated term of this Note, and if the interest received for the actual period of existence of this Note exceeds the highest maximum rate of interest permitted by Applicable Law, if any, the Payee or any holder hereof shall refund to the Makers the amount of such excess, or credit the amount of such excess against the aggregate unpaid principal balance of all advances made by the Payee or any holder hereof under this Note at the time in question.

This Note is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the Applicable Law of the United States may apply to the terms hereof, the Applicable Law of the State of Texas, without giving effect to its conflict of laws provisions, shall govern

the validity, construction, enforcement and interpretation of this Note. In the event of a dispute involving this Note or any other instruments executed in connection with this Note, the Makers irrevocably agree that venue for such dispute shall lie in any court of competent jurisdiction in Collin County, Texas.

**MAKERS:**

**MINIMALLY INVASIVE SPINE INSTITUTE, P.A.**

By:   
As: 

  
Christopher Duntseh, M.D., INDIVIDUALLY

**RANDALL P. KIRBY, M.D., F.A.C.S.**  
**BOARD CERTIFIED IN VASCULAR SURGERY**  
**BOARD CERTIFIED IN GENERAL SURGERY**

**PRESBYTERIAN HOSPITAL OF DALLAS**  
PROFESSIONAL BUILDING 2  
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**MEDICAL CITY DALLAS**  
7777 FOREST LANE  
BUILDING C, SUITE 760  
DALLAS, TEXAS 75230  
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FAX (972) 566-6872

23 June 2013

Marie Lopez, Lead Investigator  
Investigations Department  
Texas Medical Board  
MC - 263  
P O Box 2018  
Austin, TX 78768-2018

Dear Ms. Lopez,

This letter will serve as the statement you requested on Friday, June 21, 2013, 2:16 PM regarding my first hand knowledge of Dr. Christopher Duntsch and his surgical skill and medical decision making. Attached is my sworn statement form, properly executed as you have requested.

Let me be blunt: Dr. Christopher Duntsch (TMB license N8183) is an impaired physician, a sociopath, and must be stopped from practicing medicine by the Texas Medical Board immediately.

I am a vascular and general surgeon (TMB license H5716) and have been in private practice in Dallas, Texas since July 1, 1996. I was graduated from Rice University in 1984, earned my Medical Doctor degree from Baylor College of Medicine in May 1988, and completed an internal medicine internship at Baylor College of Medicine in June 1989. I completed a five year general surgery residency in June 1994, and a two year vascular surgery fellowship in June 1996, both at Baylor College of Medicine. I am currently certified in both general and vascular surgery by the American Board of Surgery. Among my major areas of expertise includes the subspecialty of anterior spinal access surgery: helping neurosurgical and orthopedic spine surgeons obtain safe, effective access to the cervical, thoracic, and lumbar spine for correction of congenital and acquired spinal deformities. I currently hold unrestricted privileges in general and vascular surgery at over 20 institutions in the Dallas/Ft. Worth area, including but not limited to: Presbyterian Hospital of Dallas, Medical City Dallas/Medical City Children's Hospital, Baylor Regional Medical Center of Plano, Dallas Medical Center, Presbyterian Hospital of Plano, Baylor Medical Center at Uptown, Victory Medical Center Plano, Victory Hospital Mid-Cities, Doctors Hospital at White Rock Lake, Forest Park Dallas Medical Center, Forest Park Frisco Medical Center, Texas Health Harris Methodist Hospital Southlake, Methodist Medical Center Dallas, Methodist Hospital for Surgery, Texas Institute of Surgery, North Central Surgery Center, Pine Creek Medical Center, and was recently granted emergency privileges at University General Hospital Dallas. I have performed over 2000 spinal exposures in my 17 years of practice and have worked with over 30 different spine surgeons.

Let us get started: Dr. Duntsch has maimed or killed, in the operating room, seven patients I have direct knowledge of. Dr. Robert Mark Hoyle, in his complaint to the TMB on June 19, 2013, has clearly



documented an eighth case, performed at Baylor Regional Medical Center in the fall of 2011 I knew about, but neglected to mention in my original complaint to the TMB on June 18, 2013. I agree completely with Dr. Hoyle's complaint to the board when he stated that Dr. Duntsch is the most careless, clueless, and dangerous spine surgeon either of has ever seen.

Dr. Duntsch apparently completed a neurosurgical training program in Memphis at the University of Tennessee Health Science Center and spine fellowship at Semmes-Murphey Neurologic and Spine Institute. He apparently was in a lab between July of 2010 and June of 2011 and then unfortunately for all of us made his way to Dallas, Texas between July and Aug of 2011. He came to Dallas to join the Minimally Invasive Spine Institute, run by spine surgeons Dr. Mike Rimlawi and Dr. Douglas Won. His employment did not last long - Dr. Won took an immediate dislike to Dr. Duntsch, they could not get along and Dr. Duntsch eventually MISI before doing even one procedure. Then, in what will be universally recognized as the single worst executive decision ever made in the long history of the Baylor Health Care System, the administration at Baylor Regional Medical Center at Plano signed Dr. Duntsch to physician services agreement and he started operating at that facility in September of 2011. Dr. Duntsch's operative experience was fairly limited for the rest of 2011 - on Friday, June 21, 2013 while operating at Baylor Plano I reviewed the case logs with the operating room staff - he did 12 procedures between September and end of December 2011, including the case and subsequent reoperation Dr. Hoyle mentioned in his complaint.

The first failed surgery I am aware of is on the patient Barry Morguloff, date of birth 8/2/66. Mr. Morguloff arrived at Baylor Plano on January 11, 2012 for an elective anterior lumbar fusion procedure at L5-S1. I was already booked with another spine surgeon, Dr. Paul Vaughn, at that facility most of the day but was asked by the general surgeon Dr. Bob Steckler to hold my first case to assist him in exposing the spine for Dr. Duntsch (Bob Steckler did not have much experience in spine access procedures - he is primarily a head and neck surgeon). I found Dr. Duntsch extraordinarily arrogant - before the case he explained to me he was the best spine surgeon in Dallas and the only one fellowship trained in minimally invasive surgery. He felt most of the spine surgery being done in Dallas was malpractice and he was going to have to clean things up (I'm not kidding - that's what he said). That bravado did not translate well to the OR - I stayed during the first part of the case with Dr. Steckler to make sure the left ureter or an iliac vein was not injured. Dr. Duntsch's performance on the case was pathetic on what should have been a fairly easy case - he had trouble from the start with getting the disc out, bleeding issues, poor visualization of the operative field, and seemed to be struggling getting the interbody device in position - he was functioning at a first to second year neurosurgical resident level but had no apparent insight into how bad his technique was. Mr. Morguloff eventually left the hospital with more pain in his legs and back than he started with - after two to three weeks of continuous severe pain he sought a second opinion from the neurosurgeon Dr. Mike Deseloms. The postoperative MRI showed a huge posterior disc fragment in the spinal canal and Mr. Morguloff underwent immediate reoperation by Dr. Deseloms at Methodist Hospital for Surgery shortly thereafter. Mr. Morguloff filed a complaint with the TMB on this episode but it was apparently dismissed. He now is permanently disabled and still in constant pain.

Things got worse quickly - on February 2, 2012 the patient Jerry Summers, date of birth 11/2/70, came to Baylor Plano for an elective anterior cervical fusion at C3-C5. The case went poorly for Mr. Summers - the case was complicated by over 2 liters of blood loss and upon waking in the recovery room could not move his arms or legs. Instead of immediately returning to Mr. Summers to the operating room or performing a diagnostic study like a CT or MRI, Dr. Duntsch ignored the obvious neurologic findings and pushed on with his operating schedule over the protests of the anesthesiologist Dr. Joy Ghermay (cell 972 757-1406). Dr. Ghermay stayed with Mr. Summers and another anesthesiologist was brought into

the hospital by Dr. Duntsch. While Dr. Duntsch ignored this most devastating of complications Mr. Summers foundered in the ICU and did not regain function of his arms or legs. Eventually the pulmonologist on the case insisted on a CT scan (performed six hours after the original case) that revealed a complete block of the canal at C3-4 with bone and disc. Dr. Duntsch returned the patient to the OR later that night for a posterior decompression but Mr. Summers, age 41, remained a quadriplegic. Later in the week Dr. Duntsch was removed from the case by the administration at Baylor -- the ICU nursing staff overheard Dr. Duntsch repeatedly telling Mr. Summers after the second surgery that Dr. Ghermay's intubation technique caused the original complication and things got very incendiary between Duntsch and Mr. Summers family (rightfully so!). The internationally recognized scoliosis surgeon and director of the Baylor Scoliosis Center, Dr. Mike O'Brian was brought on the case by the administration. He uncovered a left vertebral artery injury that was diagnosed and treated in interventional radiology by I believe Dr. David Kim and then the patient had to be taken back to the operating room for vertebral corpectomies at C3 and C4 and anterior and posterior instrumentation because the cervical spine was so unstable after Dr. Duntsch two failed surgeries. Mr. Summers eventually received a tracheostomy and gastrostomy, remains a quadriplegic, and has retained attorney Rob Crain to represent him in a malpractice action against Dr. Duntsch.

Baylor Plano temporarily suspended Dr. Duntsch for approximately a month but he was inexplicably allowed continue operating a month later. This decision did not turn out well for Kellie Martin, date of birth 6/21/57. On 3/12/12, in Dr. Duntsch's first case after his suspension, he performed what should have been an easy routine elective L5-S1 microlaminectomy on Mrs. Martin -- the case was complicated by high blood loss and hypotension. On arrival to the ICU she was severely hypotensive, pulseless in the left leg, and went into cardiac arrest and died less that 20-30 minutes after arrival and without any attempt by Dr. Duntsch to return the patient to the OR or consult a vascular surgeon with what was so obviously a retroperitoneal arterial vascular injury. Autopsy by the Collin County medical examiner revealed a retroperitoneal hematoma, a hole in the anterior spine (caused by Dr. Duntsch's horribly poor and clueless surgical technique), and a vascular injury. I have obtained Mrs. Martin's autopsy report and death certificate and will attach it with this letter. Dr. Mike O'Brian has reviewed the case for Baylor Plano is in total agreement with my impression. The family has retained Rob Crain as their attorney in a malpractice action against Dr. Duntsch.

That was the end of Dr. Duntsch's career at Baylor Plano - I don't have any details on what the separation terms were or if the TMB or National Practitioner Data Base was notified but Dr. Duntsch still had an active medical license and he was determined to continue his disastrous surgical career. He showed up at Dallas Medical Center and was given temporary privileges to do five cases. Apparently the first operation went alright but his last two fit the same low standard he set at Baylor Plano -- a death and a maiming.

Floella Brown arrived at Dallas Medical Center for an elective anterior cervical fusion in the spring of 2012. Again, it was another rocky case was complicated by bleeding and hypotension. She performed poorly in the recovery room and could not extubated -- she had suffered a massive cerebral accident during surgery. A stat CT scan revealed a massive posterior circulation stroke and a left vertebral artery injury. Dallas Medical Center has no facilities for intracranial neurosurgery (she needed a cerebellar decompression) -- Mrs. Brown herniated and was brain dead on arrival to UT Southwestern later in the day. No autopsy was done (at the family's request) but it is well documented that the stroke was due to an left vertebral artery injury due to Dr. Duntsch's horrendous surgical technique. The family has retained the council of attorney Frank Branson -- I reviewed this case with Dr. Martin Lazar, neurosurgeon and expert witness on the case and he completely agrees the intraoperative stroke was

due to an arterial injury, not an "Act of God" or any other nonsense Dr. Duntsch is blaming Mrs. Brown's death on.

The very next procedure performed at Dallas Medical Center by Dr. Duntsch was on Mary Efurd, date of birth 8/31/37. Unbelievably this was Dr. Duntsch second failed surgery on Mrs. Efurd – he had operated on her in the fall of 2011 at Baylor Plano. Mrs. Efurd went to surgery for a revision posterior lumbar fusion procedure – again a rocky case and bleeding issues. The patient awoke from surgery is horrible pain and with significant lower extremity weakness – I not clear what happened next but it must have again been incendiary because the CEO of the hospital Dr. Cora Ramirez fired Dr. Duntsch from the case and brought in spine surgeon Dr. Bob Henderson. After a CT showed all the hardware in incorrect position (actually just sitting in the soft tissue of the back!) Dr. Henderson immediately took the patient back to the OR and revised the surgery. Unfortunately the patient is now is essentially a paraplegic and permanently disabled. Dr. Henderson has filed a complaint with the TMB on this case (under investigation) and the family has retained the services of malpractice attorney Kay Van Wey. This case concluded Dr. Duntsch's career at Dallas Medical Center – I am not privy to the details of his resignation/removal from staff.

In the middle of all this mayhem and death somehow Dr. Duntsch apparently got privileges at Legacy Surgery Center of Frisco – at that facility I believe he did a anterior cervical fusion in December of 2012 on Jacqueline Troy, date of birth 12/3/66. The case and result was awful for Mrs. Troy with postoperative hoarseness, constant coughing, and an inability to swallow well – the patient made it out of the hospital but showed up in the emergency room at Presbyterian Hospital of Dallas two weeks postoperatively with the unheard of complication of a tracheo-esophageal fistula and in addition to a paralyzed right vocal cord. Over the next three weeks a team led by thoracic surgeon Dr. David Fosdick repaired Mrs. Troy trachea and esophagus; spine surgeon Dr. Charles Banta removed Dr. Duntsch's malpositioned, infected cervical hardware and redid the cervical fusion, and ENT specialist Dr. John Gilmore reconstructed her right vocal cord. Dr. Fosdick has filed a complaint with the TMB on this case. I have attached Dr. Fosdick's and Banta's operative reports for your review.

The last case I will make the TMB aware involves the patient Jefferey Glidewell, date of birth 11/24/63. On June 10, 2013 at University General Hospital Dallas Mr. Glidewell was taken to the OR for a cervical fusion at C5-C6. Immediately there were problems with tissue planes, bleeding, and he had to be stopped by the scrub nurses from operating at the wrong level (he, not the nurse, misread the intraoperative X-ray – he was going to try to do a fusion at C6-C7). Within 45 minutes a liter and a half of blood was lost and Dr. Duntsch was forcibly restrained from continuing the surgery by the OR team. The Glidewell family was told by Dr. Duntsch he encountered a vascular tumor and had to stop. There was no plan of action and Dr. Duntsch left the patient to die in the SICU. There were no attempts to transfer or obtain consultation by a real spine surgeon by Dr. Duntsch. By the second postoperative day the family grew tired of the lies Dr. Duntsch was telling them and appropriately fired him. Postoperative CXR's and CT's clearly revealed an esophageal injury and a sponge in the soft tissue of the neck. Dr. Alex Santos, a general surgeon, was consulted by the internist managing the case on Thursday, June 13 when pus started coming out Mr. Glidewell's neck wound and he became septic. Dr. Santos consulted me on the afternoon of June 14 and the owner and CEO of the hospital, Dr. Hassan Chahadeh (in Houston at the time) granted me emergency privileges. I came to the hospital and was horrified – the incision was at the sternal notch, two to three inches lower and an inch too midline from where it should have been oriented for a C5-C6 fusion, saliva and pus were coming out of the wound, and his neck was severely swollen, he was hoarse, dyspnic, and could not swallow. He was immediately transferred to Methodist Medical Center, two miles away. A CT and CTA at Methodist showed a sponge and free air in the neck.

and a left vertebral artery injury (with thrombosis of the artery) at C6. Thoracic surgeon Dr. John Jay took the patient to the OR that evening, pulled the retained sponge out of the neck, repaired a 3 cm hole the cervical esophagus, and drained the anterior mediastinum. Mr. Glidewell is alive and on the floor at Methodist at this time thankfully – he also has a left recurrent laryngeal nerve injury in addition to the injuries listed above. I am attaching the CT, CTA reports, and Dr. Jay's operative note from Methodist with this letter.

The TMB must stop this sociopath Duntsch immediately or he will continue maim and kill innocent patients. He has been suspended from operating at University General Hospital, no longer on staff at Baylor Plano or Dallas Medical Center, but was actively seeking privileges at Forest Park Dallas as of Monday, June 17, 2013 – I have communicated with administration at Forest Park Dallas my issues with Dr. Duntsch, including with board members of that institution including Drs. Genecov, Toussaint, and Barker

I urged the Glidewell family to file charges with the Dallas County District Attorney's office and I believe they did so with their attorney Kay Van Wey last week. I am meeting with that office 8:30 AM Tuesday, June 25<sup>th</sup>. I, along with Dr. Henderson and Dr. Fosdick, are going to urge the DA to arrest Dr. Duntsch and put him in jail. It is the only way we can think of to stop this madness – nothing has slowed him down yet. I am beginning to think only the police are the only ones intellectually and physically capable of getting to the bottom of this matter – we need an investigation where the witnesses (anesthesiologists, nurses, etc.) are actually interviewed face to face – not the current chart review type investigation the TMB is running from Austin, Texas.

I have one last thing to remind the Texas Medical Board – your mission is to protect the public – Dr. Duntsch is a clear and present danger to the citizens of Texas.

Respectfully,

Randall P. Kirby, M.D.

April 20, 2012

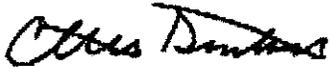
Baylor Regional Medical Center at Plano  
4700 Alliance Blvd.  
Plano, Texas 75093  
Medical Staff Services  
Patti Sproles  
Delivery via email [pattis@baylorhealth.edu](mailto:pattis@baylorhealth.edu)

RE: Resignation at Baylor Regional Medical Center at Plano

Dear Ms. Sproles:

I am in the process of moving my practice to a different location, and as a result I have decided to resign my position as a member of the medical staff and my clinical privileges at Baylor Medical Center at Plano, effective immediately.

Signed,



Christopher Duntsch, MD, PhD





**PRIVILEGE**  
**Tex. Rev. Civ. Stat. Ann. Art. 4495b and 5.06**  
**Tex. Health & Safety Code Chp. 161.032**  
**Medical Staff Committee Document**

April 20, 2012

Christopher Duntsch, MD  
4708 Alliance Blvd.  
Pavilion I – Suite 830  
Plano, Texas 75093

Dear Dr. Duntsch:

On behalf of the Medical Executive Committee of the Medical Staff of Baylor Regional Medical Center at Plano, I am authorized to notify you of the following:

All investigations with respect to any areas of concern regarding Christopher D. Duntsch, M.D. have been closed.

As of this date, there have been no summary or administrative restrictions or suspensions of Dr. Duntsch's Medical Staff membership or clinical privileges during the time he has practiced at Baylor Reg. Medical Center at Plano.

Yours Very Truly

A handwritten signature in cursive script that reads "Patricia Sproles".

Patricia Sproles, CPCS  
Director, Medical Staff Services

EXHIBIT

F