

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

**OBJECTION TO CLAIMS OF JEFFREY P. NEES, M.D.**

---

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases (collectively, the “**Assignment Cases**” or the “**Assignment Estates**”) of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, the “**Assignors**”).

**NOTICE OF OPPORTUNITY TO OBJECT  
AND REQUEST A HEARING**

**The Assignee seeks an order disallowing the Nees Claims (defined below) filed by Sandra Sims. Responses must be filed and served on Assignee, Soneet R. Kapila, KapilaMukamal, LLP, 1000 South Federal Highway, Suite 200, Fort Lauderdale, FL 33616 and Scott Stichter, Stichter Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 within 21 days from the service of this Objection. If no responses are filed, the Court may grant the relief without further notice. In the event a response is timely filed and served, the Court will hold a hearing to consider any timely filed responses and to consider this Objection. Any such hearing will be separately noticed.**

Soneet Kapila, as Assignee for the Assignment Estates, objects to the claims filed by Jeffrey P. Nees, M.D. (“Nees”), seeking to recover an unsecured claim in the LSI bankruptcy case and, in support thereof, states:

**BACKGROUND**

1. On March 14, 2019, Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the “**LSI Assignment Case**”).

2. On July 11, 2019, Nees submitted two proofs of claim (the “**Nees Claims**”), copies of which are attached as **Composite Exhibit A**. The Nees Claims were filed without including any amount for the Amount of Claim (see, Composite Exhibit A, listing the Amount of Claim as “See Attached Petition”). The only documentation attached to the Nees Claims were a Professional Services Agreement and a lawsuit (the “**Sims Lawsuit**”) filed by Carey E. and Sandra L. Sims.

3. The Nees Claims should be disallowed as the Sims Lawsuit has been dismissed with prejudice and the claims which are the subject of the Sims Lawsuit against Nees have been released.

4. In addition, the Nees Claims cannot be allowed as filed because they are filed in an unliquidated amount. The Assignment Statute (Chapter 727 of the Florida Statutes, 717.101 et seq.) requires that “Claims shall be in written form entitled “proof of claim,” setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor’s authorized agent.” § 727.112(3), Fla. Stat. (Emphasis added). The Nees Claims do not comply with this statutory provision and must be disallowed. Further, the Assignment Statute imposes a duty on the Assignee to determine the validity of claims. § 727.108(10) Fla. Stat. The Assignee cannot make any determination as to the validity of the Nees Claims since they were filed without listing the amount of the claim.

5. The Assignee requests that the Nees Claims be disallowed.

WHEREFORE, the Assignee requests that the Court (i) enter an order subsequently in the form attached as **Exhibit B** disallowing the Nees Claims, and (ii) granting such further relief to which he is entitled.

/s/ Scott A. Stichter  
Scott A. Stichter (Florida Bar No. 0710679)  
Stichter, Riedel, Blain & Postler, P.A.  
110 E. Madison Street, Ste. 200  
Tampa, Florida 33602-4718  
Telephone: (813) 229-0144  
Facsimile: (813) 229-1811  
Email: [ssstichter@srbp.com](mailto:ssstichter@srbp.com); [ssstichter.ecf@srbp.com](mailto:ssstichter.ecf@srbp.com)  
Counsel for Soneet Kapila, Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the *Objection to Claims of Jeffrey P. Nees, M.D.*, has been furnished on January 5, 2024, via the Court's electronic filing portal to all counsel of record to and via U.S. Mail to:

Jeffrey P. Nees, M.D.  
4380 Covington Way  
Norman, OK 73072  
***Via certified mail***  
and via email: *jeffreynes@gmail.com*

/s/ Scott A. Stichter  
Scott Stichter



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,  
To: Consolidated Case No.  
2019-CA-2762

Soneet Kapila,  
Division L

Assignee

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU  
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE  
ASSIGNEE'S COUNSEL, NO LATER THAN:

**JULY 12, 2019**

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:

SONEET KAPILA, ASSIGNEE  
1000 SOUTH FEDERAL HIGHWAY, SUITE 200  
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:  
EDWARD J. PETERSON, ESQUIRE  
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.  
110 E. MADISON ST., SUITE 200  
TAMPA, FL 33602

RECEIVED  
JUL 12 2019  
Stichter, Riedel, Blain & Postler P.A.

1. PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:  
Laser Spine Institute, LLC  
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. CREDITOR NAME (Your name): Jeffrey P. Nees, M.D.  
ADDRESS: 4380 Covington Way  
ADDRESS:  
CITY, STATE, ZIP: Norman, OK 73072  
TELEPHONE NUMBER: (405) 850-4054  
E-MAIL ADDRESS: jeffreynees@gmail.com

*Please be sure to notify us if you have a change of address.*

Check box if address on claim differs from address to which this notice was sent: ☐

3. BASIS FOR CLAIM:  
☐ Goods Sold ☐ Wages, Salaries and Compensations ☐ Secured Creditor  
☐ Services Performed ☐ Taxes  
☐ Money Loaned ☐ Customer Deposit  
☒ Other: indemnity against liability in Oklahoma County;  
Oklahoma District Court Case No: CJ-2017-6065

4. DATE DEBT WAS INCURRED: October 26, 2015

5. AMOUNT OF CLAIM: see attached Petition

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s):  
No

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. SIGNATURE: Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

DATED: July 11, 2019

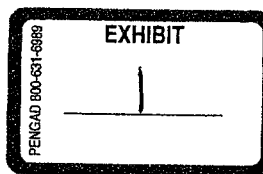
BY: 

Signature of Claimant or Representative

Jeffrey P. Nees, M.D.

Print Name and Title Here

For Assignee's Use Only:  
Claim Number: \_\_\_\_\_  
Date: \_\_\_\_\_



## PROFESSIONAL SERVICES AGREEMENT

Page 1 of 24

Initials Physician JN LSI YFB

## PROFESSIONAL SERVICES AGREEMENT

PHYSICIAN'S PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), is made as of the Effective Date (as defined herein), between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI") (each a "Party," collectively the "Parties").

### WITNESSETH

WHEREAS, Physician is a neurosurgeon currently licensed to practice medicine in the State of Oklahoma (License Number 18022);

WHEREAS, LSI manages medical facilities located throughout the United States providing surgical, medical, and health care services to the general public;

WHEREAS, LSI wishes to employ Physician for the purpose of Physician providing professional medical services to the general public under the terms and conditions set out herein; and

WHEREAS, Physician will provide medical services at LSI's Oklahoma City, Oklahoma location, and Physician may provide medical services at any of LSI's locations upon mutual agreement of the Parties;

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 agree as follows:

### AGREEMENT

1. Recitals Incorporated. The foregoing recitals are incorporated as if they were fully set out in the body of this Agreement and incorporated herein.
2. Agreement. LSI hereby employs Physician and Physician agrees to provide such services as an employee under the terms and conditions hereinafter provided.
3. Term.
  - 3.1 Initial Term. This Agreement will be effective on the 19<sup>th</sup> day of June, 2018 (the "Effective Date"). Physician's employment shall commence on that date and shall continue for three (3) years from that date subject to earlier termination by LSI or Physician as provided for herein.
  - 3.2 Renewal Term. Upon conclusion of the Initial Term, this Agreement shall automatically renew for successive three (3) additional year terms (the "Renewal Term"), unless either party gives notice to the other party of its intention not to renew the Agreement at least ninety (90) days prior to the commencement of any Renewal Term, subject to earlier termination by LSI or Physician as provided for herein.
4. Representations and Warranties.

## PROFESSIONAL SERVICES AGREEMENT

Page 2 of 24

Initials Physician JN LSI FFS

Physician represents and warrants to LSI that:

- 4.1 Physician is qualified and licensed without restriction or limitation in the State of Oklahoma and will continue to maintain that license during the term of this Agreement.
- 4.2 Upon request by LSI, Physician agrees to apply to obtain a license(s) to practice medicine without restriction or limitation in other LSI occupied state(s), and will continue to maintain that license(s) during the term of this Agreement.
- 4.3 Physician has, and shall continue to have, a controlled substance registration certificate issued by the United States Drug Enforcement Agency ("DEA") so that Physician may prescribe controlled substances without restriction or limitation.
- 4.4 Physician has not had any Sanction imposed on Physician's practice of medicine. A Sanction for this paragraph shall include, but shall not be limited to, a suspension, revocation, restriction, limitation, or termination of: (i) Physician's license to practice medicine in any state (or other political subdivision); (ii) Physician's DEA registration; (iii) the imposition of any type of disciplinary or corrective action taken by any medical licensing or certification authority; or (iv) the issuance of any reprimand, monetary fine, or penalty imposed by any medical licensing or certification authority, or governmental payor program.
- 4.5 To the best of Physician's knowledge, there are currently no investigations or proceedings pending or threatened (or facts concerning Physician's medical practice or the operation of Physician's medical offices) which could lead to: (i) a suspension, revocation, restriction, limitation or termination of Physician's license to practice medicine or Physician's Federal DEA registration; (ii) the imposition of any type of disciplinary or corrective action by any medical licensing, certification or regulatory authority; or (iii) any reprimand, monetary fine or penalty imposed by any medical licensing, certification or regulatory authority, in connection with Physician's practice of medicine or the operations of Physician's medical offices.
- 4.6 There are currently no medical negligence or medical malpractice actions against Physician that LSI is not aware of.
- 4.7 Physician either holds active staff privileges at the hospital(s) and health care facilities at which LSI's employees or independent contractors render services or agrees to apply for such privileges as may be reasonably requested by LSI, including without limitation, any designated transfer hospital.
- 4.8 There are currently no investigations or proceedings pending, or to Physician's best knowledge, threatened, the basis of which implicate the professional competence of Physician and which could lead to a suspension, revocation, restriction, limitation, or termination of Physician's medical staff privileges at any hospital or health care facility at which Physician is a member of the medical staff, and that no medical staff privileges of Physician have ever been suspended, restricted, or terminated.
- 4.9 Physician's status as a participating provider in any third party payor program, including any HMO, PPO, or other managed care program, has never been suspended, restricted,

## PROFESSIONAL SERVICES AGREEMENT

Page 3 of 24

Initials Physician LSI FFB

or terminated, and that to Physician's best knowledge, there are currently no investigations or proceedings pending, or to Physician's knowledge, threatened, which could lead to a suspension, restriction, or termination of such provider status.

4.10 Physician is an American citizen or holds a status that permits Physician to permanently reside in the United States.

4.11 Physician has not been:

4.11.1 Convicted of: (a) any offense related to the delivery of an item or service under the Medicare or Medicaid programs, (b) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service, (c) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service, (d) the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) obstructing an investigation of any crime referred to in (a) through (d) immediately above;

4.11.2 Required to pay any civil monetary penalty regarding false, fraudulent, or impermissible claims that were submitted or authorized by Physician in connection with health care services provided to beneficiaries of any state or federal health care program; or

4.11.3 Excluded from participation in the Medicare, Tricare, or Medicaid programs.

4.12 Physician represents and warrants that Physician does not have, and agrees that Physician will not have during the term of this Agreement, a financial relationship within the meaning of 42 U.S.C. 1395nn, or any of the regulations promulgated thereunder (collectively the "Stark Law"), with any person or entity that does not fall within a statutory or regulatory exception to the physician self-referral prohibition, whether or not memorialized in writing. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations. Physician shall participate in Stark Law training as determined by LSI.

4.13 Physician is not aware of any remuneration Physician has received that violates an applicable State statute and/or the federal Medicare and Medicaid anti-kickback statute set forth at 42 U.S.C. 1320a-7b(b) ("Anti-Kickback Statute"), and which do not fall within any safe harbor regulations as set out in 42 C.F.R. 1001.952, 56 Fed. Reg. 35,952. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations. Physician shall participate in training regarding federal and State fraud and abuse laws, including the Anti-Kickback Statute and Stark Law, as determined by LSI.

4.14 Physician will keep current with any continuing medical education required to maintain Physician's license(s) to practice medicine.

4.15 Physician will take all reasonable efforts to comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and related regulations, and Physician shall participate in HIPAA training as determined by LSI.

## PROFESSIONAL SERVICES AGREEMENT

Page 4 of 24

Initials Physician JS LSI FFB

4.16 Physician has not (a) had any final disciplinary action taken against Physician by a specialty board, (b) had any final disciplinary action taken against Physician by a licensing agency, or (c) had any disciplinary action taken against Physician by a health maintenance organization, pre-paid health clinic, nursing home, hospital or ambulatory surgical center.

4.17 Physician is not a party to any contract or other legal agreement which (a) would conflict in any way with the services to be provided hereunder by Physician, or (b) would in any way would affect the ability of LSI to collect fees for Physician's services from any insurance company or federally funded payor. This warranty and representation includes Physician's statement that Physician is not bound by, or subject to, any contract with any health insurer, managed care organization, or any other third party, under which Physician has agreed to limit the charges billed for Physician's services.

4.18 Physician is not subject to any form of contract, legal agreement, non-competition agreement, or other contractual provision that would conflict with the services Physician is providing under this Agreement to LSI or prohibiting Physician from entering into this Agreement.

4.19 Physician will undergo training and such fellowship in minimally invasive spinal surgery as requested by LSI. Physician understands that such training will be provided in Oklahoma City, Oklahoma (or another LSI location, if applicable).

4.20 Physician will immediately notify LSI orally, followed by written notification, of the occurrence of any adverse action or event in relation to any of the matters set forth above as warranties and representations. In the event of such an adverse action or event, or an event which would cause any of the matters set forth above to be false, LSI may, at its sole option, immediately terminate this Agreement.

### 5. Duties.

5.1 Physician will provide the services and perform the duties described in Schedule "A" to this Agreement, which is incorporated herein.

5.2 Physician shall provide professional medical services to, or on behalf of, LSI's patients at LSI's place of business in Oklahoma City, Oklahoma and such other location(s) as mutually agreed upon by the Parties. Physician understands that the services Physician will provide to LSI may include travel.

5.3 Physician acknowledges that quality patient care is contingent upon timely completion of patient records, including without limitation, (i) dictated notes, (ii) required medical information, and (iii) patient charts (collectively the "Records"). Physician agrees to maintain the Records relating to medical services provided hereunder in a timely, accurate, and complete manner. Physician acknowledges and agrees that compensation for Physician's services may be withheld by LSI pending completion of the Records in a timely manner. Pursuant to state law, LSI shall, in all instances, be considered the owner of the Records and any other medical records relating to the performance of medical services provided by Physician under this Agreement.

## PROFESSIONAL SERVICES AGREEMENT

Page 5 of 24

Initials Physician JN LSI LS

5.4 Physician shall provide all services in full compliance with the applicable canons of professional ethics and in accordance with the appropriate standard of care for the medical profession, and Physician's specialty. The Parties acknowledge and agree that decisions regarding the diagnosis and treatment of patients are the province of a physician and, therefore, all such decisions will be the responsibility of Physician. However, LSI shall have the authority to establish reasonable professional policies and procedures, which Physician shall follow when providing professional services on behalf of LSI. Physician hereby agrees to abide by all reasonable policies, procedures, and protocols adopted by LSI, as well as any reasonable instructions provided by LSI's Chairman of Surgery, Executive Director, or Chief Medical Director.

5.5 Physician shall, in addition to the foregoing, perform such other services as LSI assigns from time to time, which are necessary or appropriate, to effectuate the purposes of this Agreement.

5.6 Physician agrees that all income created, accrued, or derived from the application of Physician's medical knowledge, or other knowledge, including business knowledge, in any form during the term of this Agreement, shall belong exclusively to LSI. Any and all checks and other forms of payment for services provided by Physician during the term of this Agreement shall be promptly forwarded to LSI if received by Physician.

5.7 Physician shall, as directed by LSI, observe the provisions of all managed care contracts which LSI already has, or may in the future, enter into for the provision of health care services with managed care organizations, e.g.; Health Maintenance Organizations (HMO's), Independent Practice Associations (IPA's), Preferred Provider Organizations (PPO's), Medical Service Organizations (MSO's), Integrated Delivery Systems (IDS's) and Physician-Hospital Organizations (PHO's).

5.8 Notwithstanding the foregoing, Physician may engage in charitable, voluntary and/or non-income producing professional activities provided such activities do not materially interfere with the services required to be rendered by Physician under this Agreement. Additionally, the making of personal investments, and the conduct of private business affairs, shall not be prohibited hereunder.

5.9 Physician shall meet and abide by all other reasonable obligations determined by LSI, which are reasonably consistent with this Agreement.

### 6. Fees and Charges.

6.1 LSI shall bill patients for whom services are rendered by Physician on behalf of LSI. Such charges shall be as LSI deems appropriate, and as determined by LSI in its sole discretion. If it is necessary for LSI to use Physician's provider number for billing purposes during the term of this Agreement, Physician agrees in advance to such use. Physician shall be serving as an agent of LSI for the purposes of receiving payment for Physician's professional services.

## PROFESSIONAL SERVICES AGREEMENT

Page 6 of 24

Initials Physician JN LSI FFB

6.2 Physician shall not directly submit a billing or statement of charges to any LSI patient for services arising from the practice of medicine at LSI. In addition Physician will not reduce any charge or give any discount for care provided at LSI without the prior written authorization of LSI. LSI has complete authority to assign patients, set fees, determine write-offs, and to take any other action relating to billing and collection of fees for services provided by Physician.

6.3 Physician will participate in and comply with all compliance programs adopted by LSI.

6.4 Physician shall sign and participate in any contracts to which LSI is a party with any health insurer, managed care organization or any other third party for the provision of medical services. Physician hereby assigns and transfers to LSI all fees and other income on account of professional services rendered by Physician hereunder at the LSI facility or otherwise generated during the term of this Agreement.

6.5 Physician agrees to complete such documents and forms as required by Medicare, Medicaid, or other third-party payors, which allow LSI to receive an assignment of any payments due for professional services rendered by Physician during the term of this Agreement, to the fullest extent permissible under any applicable law. To the extent required by LSI, Physician agrees to obtain provider status from Medicare, Medicaid, any health insurer, any managed care organization, and any other third party payors designated by LSI.

6.6 Physician agrees to promptly remit to LSI all fees and income owing to LSI pursuant to this Section 6, which may be paid to or received by Physician in any form in relation to services provided on behalf of LSI. Physician agrees to execute any and all forms, waivers and other documents that are necessary to allow LSI to bill for, and receive payment from, third party payors, and Physician hereby assigns in advance all such payments to LSI.

6.7 All accruals and accounts receivable generated for services rendered by Physician pursuant to this Agreement are the sole property of LSI. Physician shall have no ownership interest in the receivables of LSI. Physician hereby authorizes any officer of LSI to sign as Physician's designee on insurance and other third-party claim forms and checks for services rendered by Physician to patients of LSI. This authorization shall continue after the expiration or termination of this Agreement.

6.8 In the event that there is a final audit determination of findings by any third party, including, but not limited to, an insurance company, Medicaid, Medicare, or workers compensation, which results in a requirement that LSI repay previously reimbursed amounts, fines, penalties, or interest (the "Impositions") as a result of Physician's gross negligence or the intentional submission by Physician of false or fraudulent claims, Physician agrees to indemnify and hold LSI harmless from such Impositions.

### 7. Compensation and Benefits.



## PROFESSIONAL SERVICES AGREEMENT

Page 7 of 24

Initials Physician SN LSI FFB

7.1 In consideration for the services provided by Physician pursuant to this Agreement, LSI will provide the compensation and benefits described in Schedule "B", attached hereto and incorporated herein.

7.2 Physician authorizes LSI to deduct monies which are due and payable to Physician under this Agreement for any outstanding monies that Physician may, for any reason, owe LSI. Physician shall not be entitled to any compensation after the termination or expiration of this Agreement.

7.3 The Parties acknowledge and agree that the compensation payable hereunder is not intended to be an inducement or payment for referral of, or recommending referral of, patients. The Parties intend at all times that payments and other remuneration made pursuant to this Agreement shall be in compliance with the applicable State statutes, Stark Law, the Anti-Kickback Statute and all interpreting regulations. Should Physician become aware that any remuneration received pursuant to this Agreement is or may be in violation of applicable State statutes, Stark Law or the Anti-Kickback Statute, Physician shall notify LSI within three (3) days of discovery. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations.

7.4 The Parties expressly acknowledge that nothing contained herein shall require referrals for orders or services between the Parties. The Parties also agree that the benefits to either Party hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral, or other arrangement for the provision of any item or service reimbursed under Medicare, Tricare or Medicaid, or any other third party payers. Any modification in Physician's compensation, bonus or benefits will not be determined in a manner that is directly or indirectly related to the volume or value of "designated health services" as defined by the Stark Law.

8. Relationship of Parties. For all purposes, the relationship between Physician and LSI will be as employee and employer.

9. Professional Liability.

9.1 During the Term of this Agreement, LSI shall provide, at its sole expense, professional liability insurance to Physician on a claims made basis insuring Physician against claims arising out of the performance of professional medical services hereunder in the minimum amount of One Million Dollars (\$1,000,000) per claim and a minimum aggregate annual amount of Three Million Dollars (\$3,000,000) per year.

9.2 In the event of a claim invoking such coverage and involving services performed by Physician during the term of Physician's employment with LSI (a "Claim"), LSI shall have the right to fully direct the defense of the Claim including, but not limited to, directing the settlement of such Claim.

9.3 Upon the termination or expiration of this Agreement, it is understood by Physician that LSI will provide professional medical liability insurance coverage for Physician

## PROFESSIONAL SERVICES AGREEMENT

Page 8 of 24

Initials Physician SN LSI FFB

for the period of time Physician was employed by LSI as part of LSI's global professional liability coverage.

9.4 Physician shall immediately notify LSI in writing: (a) upon Physician's receipt of any notice of a potential professional liability claim in any form regardless of Physician's belief of whether such potential claim has merit, (b) upon Physician's receipt of any document describing or seeking to impose a restriction, limitation, or modification of Physician's license, certification, credentials, hospital privileges or ability to render professional medical services under this Agreement, or (c) on any breach of any of the Representations and Warranties contained above in Section 4.

9.5 In the event of any claim or asserted claim arising out of or in relation to the services provided under this Agreement, Physician agrees to fully cooperate with, assist, and work with LSI's insurers, investigators, claim adjusters and attorneys. This includes, but is not limited to, Physician making himself available for meetings, depositions, court appearances, and assisting in the response to discovery requests.

### 10. Termination.

10.1 By Either Party Without Cause. This Agreement may be terminated without cause at any time by either party upon ninety (90) day written notice to the other party (the "Notice Period").

10.1.1 Should LSI terminate the Agreement pursuant to Section 10.1, LSI reserves the right to compel Physician to vacate LSI's premises and to cease the performance of services on behalf of LSI immediately upon delivery of notice of intent to terminate. However, LSI shall continue to pay Physician the compensation and benefits due hereunder during the Notice Period. Should LSI terminate the Agreement pursuant to Section 10.1, LSI shall have no obligation whatsoever to pay Physician the compensation and benefits due hereunder beyond the Notice Period. During the Notice Period, Physician shall not take any personal time off unless otherwise previously agreed to by LSI in writing. During the Notice Period this Agreement will remain in full effect and the expiration or termination of this Agreement will occur on the last day of the Notice Period.

10.2 By LSI With Cause. At any time during the Term of this Agreement, should any of the following events occur (the "Termination Events"), at the sole discretion of LSI, this Agreement may be terminated by LSI. Such termination shall be effective immediately unless a notice period is provided in the description of the termination event as set out herein. Should LSI terminate the Agreement pursuant to Section 10.2, LSI shall have no obligation to pay Physician the compensation and benefits due hereunder beyond Physician's last day of employment. At its option, LSI may suspend Physician with pay during any such notice period. The Termination Events are:

10.2.1 The death of Physician;

10.2.2 The disability of Physician for a period of more than thirty (30) days in any calendar year. For purposes of this section, disability is defined as the mental or physical

## PROFESSIONAL SERVICES AGREEMENT

Page 9 of 24

Initials Physician SN LSI FF

inability of Physician to perform the medical services for which Physician is contracted under this Agreement. LSI may terminate this Agreement on giving Physician written notice of its intent to terminate pursuant to this paragraph and the effective date of termination shall be the 11<sup>th</sup> day of the month following the giving of such notice by LSI;

10.2.3 Physician fails or neglects to perform, keep, or observe any term, provision, condition, or covenant contained in this Agreement (a "Breach") and the same is not cured to LSI's reasonable satisfaction within thirty (30) days after LSI gives Physician written notice identifying such default, or immediately on notice if the Breach is not capable of being reasonably cured ("Cure Period"). Notwithstanding the foregoing, in the event that Physician cures the Breach but then commits the same or a substantially similar Breach within six (6) months of the date that the Breach was cured, then LSI may terminate this Agreement immediately upon notice, without affording Physician an opportunity to cure;

10.2.4 Any breach by the Physician of the Representations and Warranties set out in Section 4 above, although if immediate written notice of such breach is provided by Physician, and such breach is reasonably curable, then termination shall occur only if such breach continues for a period of thirty (30) days from the date of the act or event giving rise to the breach;

10.2.5 LSI shall commence any case, proceeding or other action, or be the subject of any cause, proceeding or other action commenced (a) seeking to have an order for relief entered on LSI's behalf or against LSI as debtor, (b) to adjudicate LSI as bankrupt or insolvent, or seeking its reorganization, liquidation or dissolution under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) in the event LSI or a third party seeks the appointment of a receiver, trustee, custodian or similar official for LSI or for all or any substantial part of its property or assets;

10.2.6 LSI ceases its operations as a medical facility except for winding up its business affairs so as to be in statutory compliance with any State or Federal statute with respect to a corporate dissolution;

10.2.7 Physician fails to maintain a current, valid and unrestricted license to practice neurosurgery or fails to maintain a current, valid and unrestricted controlled substance registration certificate with the DEA;

10.2.8 Physician's clinical privileges or status as a member of the Medical Staff at any hospital or health care facility at which Physician renders services is terminated, suspended for more than thirty (30) days, or is restricted in any manner pursuant to the applicable staff bylaws or rules and regulations; provided that Physician (a) has had a fair opportunity to contest such action, and (b) the action resulted from a finding that Physician breached the applicable standard of medical care.

10.2.9 Physician fails to dictate and complete appropriate medical records after being advised of such failure in writing;

## PROFESSIONAL SERVICES AGREEMENT

Page 10 of 24

Initials Physician JN LSI 663

10.2.10 Physician fails to report an adverse event as those are defined by either the accrediting body for LSI (AAAHC) or the applicable State Agency for Healthcare Administration;

10.2.11 Any internal LSI peer review process finds that Physician has practiced in a manner at variance to the appropriate standard of care required of LSI physicians;

10.2.12 LSI is no longer able to secure or maintain professional medical liability insurance coverage under Section 9 at a reasonable cost, as a result of Physician's acts of malfeasance or nonfeasance.

10.2.13 Physician's conviction, plea of guilty, plea of no contest, or judicial finding of guilt to a felony or to a misdemeanor committed in the course of the practice of medicine or involving moral turpitude;

10.2.14 Physician performs medical services for compensation outside of the terms of this Agreement, except as otherwise notified in advance and approved in writing by LSI;

10.2.15 Physician fails to satisfy the credentialing and professional standards and requirements of LSI;

10.2.16 Physician ceases or fails to be an approved provider for Medicare, Medicaid, or a state-specific Bureau of Workers' Compensation if required by LSI;

10.2.17 Physician fails to abide by the rules, regulations or established procedures of the medical staff bylaws of LSI or any hospital or health care facility at which Physician renders services during the term of this Agreement. In such event, Physician shall be given written notice of such failure and at least thirty (30) days opportunity to cure such failure, prior to any termination by LSI;

10.2.18 In the event that any agency, department, or political subdivision of the United States, the State of Florida, or of the State where Physician provides services under this Agreement (if not Florida) (collectively the "Government"): (a) commences, or threatens commencement of, any action or proceeding concerning this Agreement or the services provided hereunder; (b) during the course of an investigation, indicates, suggests, or states that this Agreement or the services provided hereunder create legal risk or detriment to LSI under any applicable law; or (c) enters into settlement or reformation discussions with LSI with respect to this Agreement or the services provided hereunder; then this agreement can be reformed or modified by LSI in its absolute discretion so as to bring the Agreement into compliance with the Government's requests or so that the provisions(s) identified by the Government as giving rise to or causing the concern or dispute is modified or removed to the Government's satisfaction. In the event that the Government insists on the cancellation of this Agreement, then LSI may terminate this Agreement immediately subject to applicable provisions which survive termination; and/or

10.2.19 Any violation of Section 6.2 by Physician,

## PROFESSIONAL SERVICES AGREEMENT

Page 11 of 24

Initials Physician JD LSI FFB

10.3 By Physician With Cause. Physician may terminate this Agreement on a breach by LSI in the due observance or performance of any of LSI's obligations under this Agreement, if such default or breach continues for a period of thirty (30) days after written notice of such default or breach is given to LSI by Physician.

10.4 This Agreement may be terminated at any time by the mutual written agreement of LSI and Physician.

10.5 Upon the termination or expiration of this Agreement, Physician shall only be entitled to receive compensation earned up to the date of termination or other expiration of this Agreement. In no event will Physician be entitled to any portion of any post-termination collections of accounting accruals or accounts receivable attributable to Physician's pre-termination services.

10.6 Termination of this Agreement shall be subject to any provisions that survive such termination, including, but not limited to, the provisions of Sections 11 and 12, as well as any other provisions which are only given effect after termination.

### 11. Restrictive Covenant on Physician.<sup>1</sup>

11.1 Trade Secrets, Confidential Information, Patient Goodwill, Patient and Referral Source Relationships. Physician acknowledges and agrees that in addition to being provided such extraordinary and specialized training in minimally invasive spine surgery, Physician is also being provided knowledge of trade secrets of LSI, as defined in Florida Statute §688.002(4) and other valuable confidential business or professional information that otherwise does not qualify as trade secrets. Physician further acknowledges and agrees that LSI has developed substantial goodwill in the markets where LSI operates and that LSI has developed substantial, critical and important business relationships with its patients, prospective patients and referral sources.

11.2 Restrictive Covenant. In order to induce LSI to enter into this Agreement and to protect LSI's legitimate business interests, Physician hereby specifically covenants and agrees to the terms and conditions set forth in this Section 11. Physician covenants, warrants, and agrees that during Physician's employment with LSI and for a period of two (2) years after termination of Physician's employment with LSI, whether with or without cause, voluntary or involuntary, Physician will not under any circumstances:

11.2.1 Directly or indirectly, for Physician's own account or that of another, perform or engage in services or any activity related to the same or similar services offered by LSI within a fifty (50) mile radius of any of LSI's facilities as of the date of termination or expiration of this Agreement (the "Restrictive Area"). This restriction includes, but is not limited to, performing minimally invasive spine surgery at any office, hospital, surgical center, or health care facility of any kind within the Restrictive Area.

<sup>1</sup> Physician understands and agrees that the restrictive covenants contained herein as well as all rights and remedies related to said restrictive covenants as discussed in Sections 11 and 12 hereof are expressly enforceable by all of LSI's related and/or affiliated entities, whether now in existence or hereafter created, and that all such related and/or affiliated entities are intended third party beneficiaries of the restrictive covenants contained herein.

## PROFESSIONAL SERVICES AGREEMENT

Page 12 of 24

Initials Physician JN LSI FFB

11.2.2 Within the Restrictive Area, assist, be or become involved in or associated with, in any capacity whatsoever, including, but not limited to, as an employee, agent, independent contractor, consultant, partner, joint venturer, officer, director, member, or shareholder, any person, corporation, partnership, joint venture, sole proprietorship or other form of business entity that is engaged in or offers the same or similar services offered by LSI.

11.2.3 Divert, or attempt to divert, for Physician's direct or indirect benefit or for the benefit of any other person or entity, any patient of LSI, or any of the business or patronage of any patient of LSI.

11.2.4 Influence, or attempt to influence, any patient of LSI to change or transfer his patronage from LSI directly or indirectly to any other person, corporation, partnership, joint venture, or sole proprietorship, provided however that this provision is not intended to require referrals in the event a patient elects to continue a physician-patient relationship with Physician, if not otherwise in violation of this Agreement.

11.2.5 Interfere, disrupt, or attempt to disrupt the relationship of LSI and any of its suppliers, business contacts, professional service providers, or other valuable business relationships of LSI.

11.2.6 Solicit, engage, hire, employ, or contract with any of LSI's employees, independent contractors, or agents. This restriction applies to all persons who were employees of LSI or rendered services to or on behalf of LSI at any time during the term of Physician's employment.

11.3 Restrictive Covenant; Acknowledgments. Physician specifically agrees and acknowledges that the restrictive covenant as set out in the terms and conditions of this Section 11:

11.3.1 Is reasonable and necessary for the protection of the legitimate business purposes of LSI.

11.3.2 Is reasonable and necessary for the protection of the legitimate business purposes of LSI in both geographic and time limitations as set out herein.

11.3.3 Is not unreasonably burdensome to Physician, Physician's practice, or to Physician's ability to earn a living as Physician.

11.3.4 Applies regardless of which party terminates this Agreement and whether termination was with or without cause.

11.3.5 Physician expressly admits that LSI has legitimate business interests as such interests are provided for under Florida Statute §542.335. These legitimate business interests arise from, but are not limited to, (a) LSI having provided Physician extraordinary or specialized training, (b) LSI having given Physician knowledge of its trade secrets and valuable confidential business or professional information that otherwise does not qualify as trade secrets, (c) LSI's patient goodwill associated with its ongoing professional practice; and (d) LSI's substantial relationship with its patients, prospective patients, and referral sources.

**PROFESSIONAL SERVICES AGREEMENT**

Page 13 of 24

Initials Physician JN LSI LSI

11.3.6 Should, for any reason, any court of competent jurisdiction determine that the restrictions contained herein are overbroad or overlong, the Court shall modify the restrictions to protect LSI's legitimate business interests to the greatest extent permissible.

11.3.7 Physician acknowledges that Physician's ability to earn a livelihood without violating the restrictive covenant set out in this Section 11 herein is a material and specific condition precedent to LSI's entering into this Agreement.

11.3.8 Should Physician's title or position change and/or Physician's employment relationship with LSI change to, or be deemed, that of an employment relationship or any other non-employee relationship, such change shall not affect the validity and enforceability of any provision of this Agreement and all references to "Physician" and the "employee relationship" shall be construed as if such terms were replaced by the appropriate title and/or relationship.

11.4 Breach of Restrictive Covenant and Remedies. Should Physician violate this restrictive covenant as set forth in Section 11, then the time applicable restrictions shall be tolled during the period of any breach, and duration of the restrictive covenant will be extended for a period of time equal to the period of time during which Physician is in breach of the restrictive covenant(s).

11.4.1 The existence of any claim or cause of action by Physician against LSI, whether predicated upon this Agreement or accruing otherwise, shall not constitute a defense to the enforcement by LSI of the restrictive covenant.

11.4.2 LSI's rights and remedies herein are cumulative and the exercise or enforcement of any one or more of them will not preclude LSI from exercising or enforcing any other right or remedy.

11.4.3 LSI may pursue any or all equitable or legal remedies available to it for a breach or threatened breach of this Section 11, including without limitation, an injunction, and the recovery of damages from Physician. LSI may pursue any of such rights which shall be considered cumulative and not mutually exclusive in accordance with Section 15 of this Agreement.

11.5 Survivability of Restrictive Covenant. The restrictive covenant set out in this Section 11 shall apply during the term of the Agreement in addition to the above referenced post termination periods. This Section 11 shall survive any expiration or termination of this Agreement.

12. Confidential Information.

12.1 Physician recognizes and acknowledges that LSI's lists of patients, its files, its records of all kinds, and other Confidential Information provided to Physician in connection with Physician's performance under this Agreement are a valuable and unique asset of LSI's business.

## PROFESSIONAL SERVICES AGREEMENT

Page 14 of 24

Initials Physician JN LSI FF

12.2 For purposes of this Section 12, and elsewhere in this Agreement where the capitalized form of the words is used, "Confidential Information" shall include, but shall not be limited to, the following:

12.2.1 The clinical, medical, surgical, training, and research protocols, procedures, methods, and practices of LSI, including, but not limited to, surgical, medical, and clinical techniques, material specifications, and methods employed for spinal surgery and clinical patient care;

12.2.2 The suppliers of services, supplies, and materials to LSI;

12.2.3 The business plans, methods, and practices of LSI;

12.2.4 Any information relating to the financial performance and operation of LSI, including without limitation, all information as to pricing, financing sources, costs of operation, expenses, financial reporting, compensation to employees or independent contractors, revenue generation, and profits or losses;

12.2.5 All corporate records of LSI in any form;

12.2.6 Any data bases, data compilations, and lists in tangible or electronic form belonging to LSI and including, but not limited to, any of those containing patient and employee identifying elements including names, addresses, telephone numbers, or social security numbers;

12.2.7 Contractual arrangements between LSI and insurers, managed care associations and other payors, as well as all contracts relating to marketing materials and/or ideas;

12.2.8 All patient referral sources of LSI.

12.2.9 Any other, (a) company secrets, (b) intellectual property rights, (c) proprietary information, (d) financial information, (e) confidential information, (f) technological knowledge, or (g) any other trade secrets belonging to LSI, its employees or independent contractors; or any other matter or information ascertained by Physician during Physician's relationship with LSI that is not generally known by third parties or available in the public domain; and

12.2.10 The terms and conditions of this Agreement. However, nothing in this Agreement should be construed to prohibit any form of Section 7 activity under the National Labor Relations Act and nothing herein is intended to prevent, deter, or interfere with employees in the exercise of any employee rights under the National Labor Relations Act.

12.3 Physician covenants, warrants, and agrees that during the term of this Agreement, and until ten (10) years have passed after its termination or expiration for any reason, that Physician will not:



## PROFESSIONAL SERVICES AGREEMENT

Page 15 of 24

Initials Physician JN LSI FFB

12.3.1 Disclose, disseminate, transmit, or transfer any Confidential Information, in any form, or in any part, to any third party, including, but not limited to, any person, corporation, partnership, joint venture, sole proprietorship or other form of business entity;

12.3.2 Provide any kind of training or instruction on or regarding LSI's practices to any person who is not an employee of LSI except with the express written permission of LSI;

12.3.3 Disseminate or transmit any information or knowledge of LSI's practices to any third party anywhere including any person, corporation, partnership, joint venture, sole proprietorship or other business entity. This prohibition includes, but is not limited to, the publication of any professional articles, any professional instruction at any school, university, or seminar, and the posting of any information on the internet or any other electronic media;

12.3.4 Claim any right of ownership or dominion over any of LSI's Confidential Information.

12.3.5 Disclose to any third party, including any person, corporation, partnership, joint venture, sole proprietorship or other business entity, the names, addresses, or other confidential information relating to any patient of LSI, the prices charged to patients of LSI, or any other information regarding the business practices and methods of LSI;

12.3.6 Use any of the Confidential Information except in the provision of services pursuant to this Agreement;

12.3.7 Permit, transfer, sell, lease, convey or otherwise allow the use of any of the Confidential Information by any third party, including any other person or entity; and

12.3.8 Apply for any patent, trademark or copyright with respect to any Confidential Information.

12.4 Physician recognizes the need for great security and caution to be taken in connection with the Confidential Information and agrees to take all reasonable steps to ensure that any Confidential Information provided to Physician is kept secure at all times.

12.5 In the event that Physician becomes aware of any dissemination of the Confidential Information through inadvertence, theft or other willful acts, Physician will provide immediate notice in writing to LSI of such dissemination.

12.6 Any violation of this Section 12 may result in any or all of the following actions and remedies being imposed or sought by LSI at its sole option:

12.6.1 The immediate termination of this Agreement by LSI for cause;

12.6.2 The seeking of and the entry of an injunction to prevent or limit any violation; and/or

12.6.3 The initiation of legal proceeding to recover for LSI damages resulting from such violation.

## PROFESSIONAL SERVICES AGREEMENT

Page 16 of 24

Initials Physician JN LSI PPG

12.7 Upon termination or expiration of this Agreement, Physician will immediately turn over to LSI all Confidential Information, in any form, all documents, papers, memorandum and other materials in Physician's possession that are confidential to LSI. In addition, Physician will immediately delete any Confidential Information Physician may have in any computer, electronic device, or electronic media that cannot be physically returned to LSI. Upon termination of Physician's employment, Physician will certify in writing that Physician has complied with this provision.

12.8 Physician agrees to comply with all confidentiality and privacy policies and procedures of LSI in effect now, or promulgated in the future, as well as all applicable federal and state laws related to the privacy and security of protected health information, including patient records and information.

12.9 All medical records, including but not limited to, case records, charts, case histories, radiographic or magnetic resonance imaging records or results, and personal and regular files concerning patients of LSI or patients consulted, interviewed or treated by Physician shall belong to and remain the property of LSI. Upon termination or expiration of this Agreement, Physician will immediately return any such records as may be in Physician's possession to LSI. In addition, Physician will provide or furnish to LSI any missing or incomplete medical chart information or entries within twenty (20) days from the date that this Agreement is terminated or expires. Physician will be given reasonable access to patient charts for the purpose of this record completion. Upon termination or expiration of this Agreement, Physician will certify in writing that Physician has complied with this provision.

12.10 After the termination or expiration of this Agreement, Physician will be entitled to copies of patient charts and records if Physician provides LSI a request in writing from a patient with a HIPAA compliant release acceptable to LSI and so long as Physician is not in violation of the terms of this Agreement. In addition, after the termination or expiration of this Agreement, subject to HIPAA compliance and at Physician's expense, Physician may request in writing access to patient records so long as there is good cause for such access such as for the purpose of responding to a malpractice action or administrative investigation proceeding against Physician. Physician agrees to pay any reasonable copying and administrative changes incurred by LSI in responding to and handling such request.

12.11 The provisions set out in this Section 12 shall apply during the term of the Agreement in addition to the above referenced post termination periods.

12.12 This Section 12 shall survive any expiration or termination of this Agreement.

12.13 Notwithstanding anything to the contrary within this Agreement, in compliance with the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1833 (as amended):

12.13.1 No term or provision of this Agreement is intended to interfere with or discourage a good faith disclosure of a protected trade secret to any government entity related to a suspected violation of the law.

12.13.2 The Physician cannot and will not be held criminally or civilly liable

## PROFESSIONAL SERVICES AGREEMENT

Page 17 of 24

Initials Physician JW LSI FFB

under any federal or state trade secret law for disclosing otherwise protected trade secrets and/or confidential or proprietary information as long as the disclosure is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, as long as such filing is made under seal.

12.13.3 The Company will not retaliate against the Physician in any way for a disclosure made in accordance with the law.

12.13.4 If a disclosure is made, and the Physician files a lawsuit against the Company alleging that the Company retaliated against the Physician because of the Physician's disclosure, the Physician may disclose the relevant trade secret or confidential information to the Physician's attorney and may use the same in the court proceeding only if (1) the Physician ensures that any court filing that includes the trade secret or confidential information at issue is made under seal; and (2) the Physician does not otherwise disclose the trade secret or confidential information, except as required by court order.

### 13. Expense Reimbursement.

13.1 LSI will reimburse Physician for certain practice-connected expenses of Physician as set out in Schedule "B" to this Agreement.

13.2 Any expense reimbursement is provided hereunder is contingent upon Physician providing documentation to substantiate the expense including receipts or proof of payment and expense reports. Expenses incurred must be necessary and reasonable and incurred in the provision of professional services by Physician to or on behalf of LSI or otherwise within the scope of this Agreement. Requests for reimbursement of expenses must be submitted in accordance with LSI's Expense Reimbursement Policy, which may be modified at any time.

14. Use of Name or Likeness. LSI is hereby granted the sole and exclusive right during the term of Physician's employment to make use of and to permit others to make use of Physician's name, pictures, photographs, and other likenesses, and voice, in connection with the advertising and publicity of LSI's services.

### 15. Arbitration.

15.1 The Parties agree that any Controversy shall be settled by arbitration to be held in Tampa, Florida. Such arbitration shall be administered by the American Arbitration Association ("AAA") under the AAA Commercial Arbitration Rules (the "Rules"). If the AAA is unavailable, such arbitration shall be administered by Judicial Arbitration and Mediation Services ("JAMS").

15.1.1 The term "Controversy" as used herein shall include disputes of any kind arising out of, or relating to, this Agreement or any modification or extension thereof, the interpretation or breach thereof, or any other issue arising between the Parties including any claim based on express or implied terms, such as implied covenants of good faith, fair dealing,

## PROFESSIONAL SERVICES AGREEMENT

Page 18 of 24

Initials Physician LN LSI LS

commercial reasonableness and including, without limitation, negligence, breach of fiduciary duty, fraud, conversion, duress, interference, fraud in the inducement, or any other tort or breach of statutory or common law duty.

15.1.2 The term "Parties" as used herein shall include the respective employees, officers, directors, members, independent contractors, attorneys and other agents of the parties to this Agreement.

15.2 Any challenge to the validity or enforceability of this Agreement, in whole or in part, must be resolved in the arbitration proceeding called for by this Agreement.

15.3 Except as is otherwise specifically set out below in Section 15.5, the Parties agree that Arbitration shall be the exclusive method of dispute resolution to address any Controversy and they specifically waive the right to seek other legal remedies, including, but not limited to, their right to a jury trial.

15.4 The parties will use a single arbitrator chosen using the Rules.

15.5 Nothing in the preceding paragraph, or otherwise, nor the exercise of any right to negotiation, mediation or arbitration, nor the commencement or pendency of any proceeding, shall limit the right of any party to this Agreement:

15.5.1 To seek judicial equitable relief, or other equitable relief available to it under applicable statutory or case law including, but not limited to, injunctive relief in connection with enforcing the restrictive and confidentiality covenants in Sections 11 and 12 hereof; or

15.5.2 To exercise any other rights or remedies available to it by contract or applicable statutory or case law, including but not limited to the filing of an involuntary petition in bankruptcy, the right of set off, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any arbitration proceeding.

15.5.3 The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies, as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to submit a dispute to arbitration, including disputes that may arise from the exercise of such rights.

15.6 The arbitrator shall not have the power to order specific performance of any obligation or duty of any party to this Agreement or to issue injunctions in connection therewith or otherwise.

15.7 A judgment on any arbitration award resulting from arbitration between the Parties in accordance with this Agreement may be entered by any court of competent jurisdiction.

## PROFESSIONAL SERVICES AGREEMENT

Page 19 of 24

Initials Physician JA LSI FF

15.8 The substantially prevailing party in the arbitration proceeding, in any action filed to obtain a judgment as a result of such arbitration, in any lawsuit or legal proceeding to enforce this Agreement's restrictive covenants, and in any action to enforce and collect on such judgment, will have its reasonably attorneys' fees and costs paid by the other party. Costs, for purposes of this paragraph, will include AAA/JAMS filing fees, AAA/JAMS facilities fees, AAA/JAMS administrative fees, any other AAA/JAMS fee, and the fees and costs of the Arbitrator(s).

### 16. Indemnification.

#### 16.1 Definitions. As used in this Section 16:

16.1.1 "Claims" means all third-party demands, claims and actions, as well as, all associated liabilities, losses, costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and expenses;

16.1.2 "Indemnifying Party" means the Party providing indemnification; and

16.1.3 "Indemnified Party" means the Party being indemnified.

16.2 Obligation to Indemnify. LSI shall indemnify, reimburse and hold harmless the Physician from and against any and all Claims asserted against, imposed upon or incurred by the Physician arising from any acts within the scope of Physician's employment with LSI in accordance with LSI's insurance policy and as permitted by law. Physician shall indemnify, reimburse and hold harmless LSI from and against any and all Claims asserted against, imposed upon or incurred by LSI arising from any acts of Physician outside of the scope of Physician's employment with LSI as permitted by law.

16.3 Procedure on Claims. Promptly after receipt of any bill or demand that may constitute a Claim, the Indemnified Party shall give to the Indemnifying Party written notice of such Claim. The Indemnifying Party shall be responsible for and control all negotiations and the compromise and/or defense of such Claim. The Indemnifying Party shall have the right to select counsel that is reasonably acceptable to the Indemnified Party, provided the Indemnifying Party promptly shall notify the Indemnified Party of all material developments in the matter. The Indemnifying Party shall have the full right to reasonably compromise or settle any Claim without the prior consent of the Indemnified Party, provided the Indemnifying Party has provided to the Indemnified Party contemporaneous notice of the compromise or settlement and so long as the Indemnifying Party is paying the full amount of the Claim, obtaining a general release for the Indemnified Party as part of such compromise or settlement, and the Indemnifying Party obtains a dismissal with prejudice of any claim in litigation. The Indemnified Party shall have the right to hire their own counsel at their own cost to participate in any claim including litigation.

### 17. Miscellaneous Provisions.

17.1 No Waiver. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

## PROFESSIONAL SERVICES AGREEMENT

Page 20 of 24

Initials Physician JN LSI FFS

No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. Every right and remedy of each of the Parties shall be cumulative and either party, in its sole discretion, may exercise any and all rights or remedies stated in this Agreement or otherwise available at law or in equity.

17.2 Notices. Any notice required or permitted to be given under this Agreement shall be sufficient, if in writing, and sent by hand delivery, recognized courier, or first class mail to the Parties as follows:

***As to Physician:***

Jeffrey P. Nees, M.D.

4380 Covington Way

Norman, OK 73072

***As to LSI:***

Laser Spine Institute, LLC

Attn: Chief Executive Officer

5332 Avion Park Drive

Tampa, Florida 33607

In addition, notice may be provided by hand delivery to Physician or to the LSI Chief Executive Officer at any LSI facility. The Parties agree to provide immediate notice to the other Party if either of the Parties above address information changes.

17.3 Succession. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and upon their successors in interest. Physician expressly agrees that the restrictive covenants contained in Sections 11 and 12 hereof shall inure to the benefit of and be enforceable by LSI's successors and assigns without further consent from Physician.

17.4 Survival of Obligations. The provisions of Sections 11, 12, 16 and 17.7 herein, together with any other portions of this Agreement which by reasonable interpretation would require continued legal effect, shall survive the expiration or termination of this Agreement.

17.5 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties to this Agreement with respect to its subject matter, and the employment of Physician and LSI. Physician and LSI agree that no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained in it as a term shall be valid or binding. Physician agrees that no promises of any kind, that are not included as terms in this Agreement, have been made by LSI or anyone on its behalf to Physician. Physician states that Physician has carefully reviewed this Agreement and affirmatively states that there are no other terms and conditions with respect to Physician's employment by LSI that are not set out in this Agreement. Physician agrees that this Agreement represents the entire and complete agreement between himself and LSI. Physician also understands that any oral representation that is not included as a term in this Agreement cannot be used as a basis under which to claim that LSI has not performed in accordance with this Agreement.

17.6 Assignment. Neither this Agreement nor any duties or obligations under this Agreement shall be assigned, transferred, sold, or otherwise hypothecated by Physician without LSI's specific prior written consent. Such consent may be unreasonably withheld. Any attempt to transfer or assign the duties and obligations of Physician without such consent shall be null and void. In the event of a merger in which LSI is not the surviving entity, or a sale of all or substantially all of LSI's assets, LSI may, at its sole discretion, (a) assign this Agreement, and all rights and obligations under it, to any entity that

PROFESSIONAL SERVICES AGREEMENT

Page 21 of 24

Initials Physician JN LSI FF<sup>3</sup>

succeeds to all or substantially all of LSI's practice through that merger or sale of asset; or (b) With thirty (30) days prior written notice to Physician, terminate this Agreement as of the effective date of the merger or sale of assets.

17.7 Attorneys' Fees. If any action is instituted to enforce or interpret the provisions of this Agreement the substantially prevailing party will recover from the other party its reasonable attorney's fees and costs incurred in connection with such action, including such fees and costs incurred pre-suit, at the trial level, and at any appellate level.

17.8 Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be governed by the State of Florida without reference to its choice of law provisions.

17.9 Amendment. This Agreement may only be amended by the mutual agreement of the Parties in a writing executed by all Parties hereto.

17.10 Legal Construction. If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it. Section headings are for purposes of reference only and will not affect the meaning or interpretation of any provision of this Agreement.

17.11 Independent Counsel. Physician acknowledges that Physician has been advised to seek the advice of independent counsel and Physician acknowledges that Physician has either obtained such counsel or has knowingly waived such advice. In the event of any dispute concerning the interpretation or construction of this Agreement, the Parties agree that there will be no presumption applied based on the party preparing the Agreement. As a result, this Agreement shall not be construed in favor of or against any party.

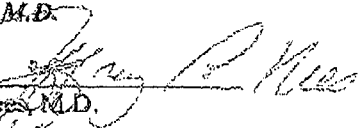
17.12 Variation of Pronouns. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

17.13 Execution by Counterpart. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement consisting of twenty-four (24) pages, each of which has been initialed, as of the day and year first above written.

For Physician

Jeffrey P. Nees, M.D.

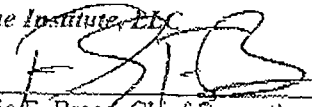
Signature: 

By: Jeffrey P. Nees, M.D.

Date: 10/1/18

For LSI

Laser Spine Institute, LLC

Signature: 

By: Frederic F. Brace, Chief Executive Officer

Date: 10/3/18

## PROFESSIONAL SERVICES AGREEMENT

Page 22 of 24

Initials Physician JN LSI CS

### Schedule A

This is Schedule A to the Professional Services Agreement (the "Agreement") by and between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI"). This Schedule A is incorporated as if fully set forth in the Agreement. In addition to the terms set out in the Agreement, the following are the duties and responsibilities of Physician to LSI under the terms of the Agreement:

#### 1. Provision of Professional Medical Services.

1.1 During the term of the Agreement, Physician shall provide professional medical services exclusively to LSI's patients or prospective patients. Physician will not provide any medical services to any patients other than LSI's patients or prospective patients without LSI's specific advance written authorization.

1.2 Physician shall observe and comply with all policies and procedures of LSI and will follow instructions issued by the Chairman of Surgery, Chief Medical Director, or any Executive Director of LSI.

1.3 Physician's services shall be provided at the highest possible level of professional medical practice and safety to LSI's patients.

1.4 At no time shall Physician engage in any conduct which jeopardizes the health, safety, or privacy of patients, nor shall Physician engage in conduct which may be disruptive, embarrassing, or detrimental to LSI or its employees.

1.5 LSI reserves the sole and unfettered discretion to modify Physician's duties and Physician shall have no recourse against LSI for any such modifications.

2. Service Areas. Physician will provide services to LSI patients in the practice area of neurosurgery, and more specifically minimally invasive spinal surgery. Such services include clinical review and examination, diagnostic testing and the performance of surgical procedures. In addition, LSI may require Physician to provide other services that Physician would be reasonably capable of performing.

3. Hours. LSI has the exclusive right to set the work hours and number of hours to be worked by Physician. The number of hours to be worked each week shall be in proportion to the hours worked by other LSI physicians and it is anticipated that Physician will work between eight (8) and ten (10) hours per day.



**PROFESSIONAL SERVICES AGREEMENT**

Page 23 of 24

Initials Physician JN LSI FFB

**Schedule B**

This is Schedule B to the Professional Services Agreement (the "Agreement") by and between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI"). This Schedule B is incorporated as if fully set forth in the Agreement. In addition to the terms set out in the Agreement, the following will be paid or provided to Physician by LSI:

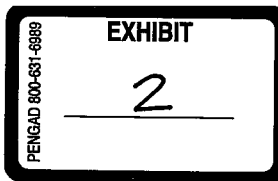
1. Salary. LSI will pay Physician a salary of Eight Hundred Fifty Thousand Dollars (\$850,000.00) for each 365 day period in which the Agreement is in effect. The payment of this salary shall start on the first date that Physician provides services to LSI under the Agreement. This salary shall accrue and be paid in arrears on a bi-weekly basis. Physician will at all times while the Agreement is in effect be paid as an employee of LSI. No payments of any kind under the Agreement will be made to Physician other than in Physician's physical capacity as an employee.
2. Bonus. Physician shall be eligible to receive a bonus from LSI (the "Bonus"). The range of the Bonus paid will vary from zero dollars to Three Hundred Thousand Dollars (\$300,000.00) for the first 365 day period the Agreement is in effect. In all instances, (i) the determination as to whether to pay a Bonus, (ii) the amount of the Bonus and (iii) the review of the Bonus Factors in determining the amount of the Bonus are all left to the sole and absolute discretion of LSI. If one is paid, the Bonus will be paid on a quarterly basis in any quarter when LSI determines in its sole discretion that a Bonus is payable to Physician. The factors that LSI will consider in making the determination to pay a Bonus to Physician and the amount of the Bonus (the "Bonus Factors") include, but are not limited to, (a) the corporate performance of LSI including revenue growth, profitability and cash flow, (b) Clinic and Operating Room group performance in terms of patient outcomes, patient satisfaction, employee satisfaction, efficiency and quality (c) the Physician's individual performance and (d) any LSI Compensation Plan that may be applicable to Physician. It is understood by Physician that no such Compensation Plan is currently in effect. Since the payment of the Bonus and the amount of any Bonus is in the sole discretion of LSI, Physician acknowledges that Physician is not entitled to receive or review any information relating to the Bonus Factors that LSI determines to be confidential. LSI reserves the right, in its sole and absolute discretion, to increase the amount of discretionary bonus each following year this Agreement is in effect.
3. Travel Reimbursement. LSI will reimburse Physician for travel related expenses in accordance with its Expense Reimbursement Policy and Guidelines, which may be modified at any time.
4. Benefits. During the Term of this Agreement, except as otherwise provided herein, Physician will be entitled to participate in employee benefit plans and receive all benefits for which physicians of LSI generally are eligible under any plan or program now existing or later established by LSI on the same basis as other physicians. Nothing in this Agreement will preclude LSI or any of its affiliates from amending or terminating any of the plans or programs applicable to salaried employees or physicians as long as such amendment or termination is applicable to all salaried employees or all physicians, as the case may be.

## PROFESSIONAL SERVICES AGREEMENT

Page 24 of 24

Initials Physician JN LSI PPB

5. Expense Reimbursement. LSI will reimburse Physician for travel related expenses in accordance with its Expense Reimbursement Policy and Guidelines, which may be modified at any time.
6. PTO. Physician shall be entitled to be absent from Physician's duties at LSI for a total of one hundred sixty (160) hours per calendar year for personal time off ("PTO") without a reduction in compensation. PTO shall accrue at a rate of 6.16 hours per pay period, and shall include absences for vacation, sick days, and personal days. Physician shall not take more than five (5) days of PTO, or other time off, at a time. The time off allowed in this section (a) cannot be carried over from one calendar year to another, (b) will not be paid to the Physician as compensation if not used in any given calendar year, and (c) will be forfeited if not used by the end of each calendar year, or by the date of termination of employment, whichever first occurs. In the event of any termination of this Agreement, PTO shall be forfeited. The scheduling of any PTO time must be made with the advance written approval of LSI management, obtained a minimum of sixty (60) days prior to the date of the requested time off. LSI, in its sole discretion, may approve or reject the Physician's request for PTO. Physician agrees and understands that if this Section is not strictly complied with that LSI may not allow Physician to take the PTO time.
7. CME. Physician shall also be entitled to be absent from Physician's duties at LSI for a total of forty (40) hours per calendar year for Continuing Medical Education ("CME Time"). This CME Time is subject to the same terms, conditions and restrictions as the PTO described above in Section 6, with the exception that LSI shall not be obligated to compensate Physician for any unused CME Time.
8. Retirement Plan. LSI has a 401K plan (the "Plan") and Physician shall be eligible to participate in the Plan in accordance with its terms, conditions and limitations as they presently exist or are changed by LSI in the future. Physician's participation in the Plan is further subject to any and all applicable limitations under the Internal Revenue Code. Physician understands that Physician will have to contribute to the Plan in order to receive the LSI contribution to the extent a contribution is offered. Physician may review the Plan in advance of signing the Agreement in the event of any questions.
9. Withholding and Deductions. All payments made by LSI to Physician for compensation pursuant to the Agreement are subject to all deductions and withholdings required by federal, state and local law.



CJT7

6065

Timmons

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

CARY E. SIMS and SANDRA L. SIMS, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 LASER SPINE INSTITUTE, LLC; LASER SPINE )  
 SURGERY CENTER OF OKLAHOMA, LLC; )  
 COMMUNITY HOSPITAL, LLC d/b/a )  
 COMMUNITY HOSPITAL; MARK A. )  
 FLOOD, D.O.; JEFFREY P. NEES, M.D., )  
 ROBERT CRANE, M.D.; MERCY HOSPITAL )  
 OKLAHOMA CITY, INC.; and JOHN DOES )  
 1-10; )  
 )  
 Defendants. )

Case No. **00-2017-6065**

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

OCT 20 2017

RICK WARREN  
COURT CLERK

73

PETITION

JURISDICTION

1. This Court has jurisdiction pursuant to Okla. Stat. tit. 12, § 2004(F), because Defendants committed acts within the State of Oklahoma, which caused harm to Plaintiffs within the State of Oklahoma, and because Defendants have minimum contacts with the State of Oklahoma such as would authorize this Court to exercise jurisdiction consistent with the Constitution of this State and the Constitution of the United States.

VENUE

2. Laser Spine Institute, LLC is a foreign limited liability company which may be served through its registered service agent: The Corporation Company, 1833 S. Morgan Rd., Oklahoma City, OK 73128.
3. Laser Spine Surgery Center of Oklahoma, LLC is a domestic limited liability company which may be served through its registered service agent: CT Corporation System, 1833

S. Morgan Rd., Oklahoma City, OK 73128.

4. Mercy Hospital Oklahoma City, Inc. is a domestic corporation which may be served through its registered service agent: Corporation Service Company, 10300 Greenbriar Pl., Oklahoma City, OK 73159.
5. Community Hospital, LLC d/b/a Community Hospital is a domestic limited liability company which may be served through its registered service agent: Edward Gray, 14024 Quail Pointe Dr., Oklahoma City, OK 73134.
6. Venue is proper in Oklahoma County.
7. The events giving rise to this case occurred in Oklahoma County.
8. Plaintiff's cause of action arose in Oklahoma County.

#### **CAUSE OF ACTION**

9. Cary E. Sims underwent surgery at Laser Spine Institute on or about October 26, 2015. The procedure was performed by Mark Flood, D.O.
10. On or about October 28, 2015, Mr. Sims presented to Mercy Hospital and Dr. Robert Crane, M.D.
11. On or about October 28, 2015 and October 29, 2015, Cary E. Sims underwent surgery at Community Hospital. The procedures were performed by Jeffrey Nees, M.D.
12. Defendant Laser Spine Institute, LLC, Defendant Laser Spine Surgery Center of Oklahoma, LLC, and Defendant Nees led Plaintiff Cary E. Sims to believe that Dr. Nees would perform spine surgery upon Plaintiff Cary E. Sims on October 26, 2015.
13. Dr. Nees did not perform that surgery. Instead, Defendant Flood negligently performed bilateral L4-5 laminotomy, faraminotomy, facetectomy, decompression of nerve root

with partial facetectomy and associated spinal surgery procedures.

14. As a result of Defendant Flood's negligent actions, Defendant Flood negligently caused a hematoma to develop in the area of Plaintiff Cary E. Sims's spinal column which caused nerve damage and *cauda equina* syndrome.
15. Defendant Flood failed to recognize that a hematoma would and did develop, failed to treat Plaintiff Cary E. Sims for the hematoma, and thereby Plaintiff Cary E. Sims was injured.
16. After the procedure, Plaintiff Cary E. Sims informed employees of Laser Spine Institute, LLC, and Laser Spine Surgery Center of Oklahoma, LLC, of his symptoms. Said employees had an obligation to communicate with Defendants Flood and Nees about Plaintiff Cary E. Sims's condition and about changes to his condition, but they negligently failed to do so. Plaintiff was thereby injured.
17. Plaintiff Cary E. Sims went to Mercy Hospital Oklahoma City, Inc. where its employee or ostensible agent, Dr. Robert Crane provided medical services to Mr. Sims. Mr. Sims needed immediate treatment, but instead, his treatment was delayed. Plaintiff was thereby injured.
18. Defendant Nees operated upon Plaintiff Cary E. Sims at Community Hospital, LLC d/b/a Community Hospital, but negligently failed to adequately provide treatment for Plaintiff Cary E. Sims's hematoma, thereby causing injury to Plaintiff Cary E. Sims.
19. Plaintiff Cary E. Sims had complications after the surgery which were not timely recognized by the staff members and employees of Community Hospital. Mr. Sims did not receive timely diagnosis and treatment of the complications. Plaintiff was thereby

injured.

20. At all pertinent times, Mark A. Flood, D.O., and Jeffrey P. Nees, M.D., were employees acting within the scope of their employment with Laser Spine Institute.
21. Defendant Jeffrey P. Nees was an employee acting within the scope of his employment with Community Hospital.
22. Plaintiff Cary E. Sims developed *cauda equina* syndrome due to the negligence of the Defendants.
23. Defendant Laser Spine Institute, LLC and Laser Spine Surgery Center of Oklahoma, LLC are liable for the negligence of Defendant Mark A. Flood, D.O., Defendant Jeffrey P. Nees, M.D., and its other employees and agents with regard to their actions undertaken within the scope of employment or agency.
24. Defendant Mercy Hospital Oklahoma City, Inc. is liable for the negligence of its employees, agents, and that of Robert Crane, M.D.
25. Defendant Community Hospital is liable for the negligence of Defendant Jeffrey P. Nees, M.D., and its other employees and agents with regard to their actions undertaken within the scope of employment or agency.
26. The surgeries and related medical services were within the control of the Defendants.
27. Plaintiff Cary E. Sims was injured as a result of negligent medical care.
28. Patients do not ordinarily suffer an injury such as Plaintiff Cary E. Sims suffered without negligence.
29. Plaintiff specifically relies on the theory of *res ipsa loquitur*.
30. The medical providers in this case should have complied with surgical and medical

- standards, policies, and procedures and hospital standards, policies, and procedures.
31. However, the medical providers in this case did not do so.
  32. Consequently, Plaintiff Cary E. Sims was injured.
  33. Defendants did not obtain fully informed consent from Plaintiff Cary E. Sims.
  34. The actions of the Defendants recklessly disregarded the rights of Plaintiff Cary E. Sims and Plaintiff Sandra L. Sims so as to warrant the imposition of punitive damages.
  35. Plaintiff Cary E. Sims would not have been injured if timely and proper medical care had been provided by the Defendants.
  36. Defendants owed duties to Plaintiff Cary E. Sims to exercise that degree of skill exercised by physicians similarly trained in dealing with the conditions of patients.
  37. The care provided to Plaintiff Cary E. Sims by Defendants fell below the standard of care and treatment required of physicians and hospitals generally under like circumstances.
  38. At all pertinent times, Plaintiff Sandra L. Sims was married to Plaintiff Cary E. Sims. Plaintiff Sandra L. Sims has suffered a loss of spousal consortium due to the injuries sustained by Plaintiff Cary E. Sims .
  39. Plaintiffs' pre-filing affidavits are attached to this Petition as Exhibit 1 and Exhibit 2.

#### **PRAYER FOR RELIEF**

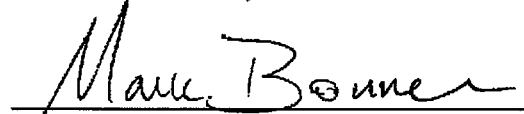
40. WHEREFORE, Plaintiffs pray as follows:
  - a) That process issue and that Defendants be served as provided by law;
  - b) That Plaintiffs recover judgment for physical injuries, nerve damage, loss of consortium, past and future medical expenses,

lost income and lost earning capacity, pain and suffering, and other elements of damages in excess of the amount of the Federal Court jurisdictional amount of \$75,000, plus punitive damages;

- c) That Plaintiffs have judgment against Defendants in amounts to be determined upon the evidence, and other damages determined upon the evidence by the enlightened conscience of the fact finder;
- d) That all costs of this action be cast against Defendants; and
- e) That Plaintiffs have such other and further relief as this Court deems just and proper.

**NORMAN & EDEM, P.L.L.C.**

By:



Emmanuel E. Edem, OBA # 2614

L. Mark Bonner, OBA #14541

127 N.W. 10<sup>th</sup> St.

Oklahoma City, OK 73103

405-272-0200

405-272-1055 (fax)

Attorneys for Plaintiffs

[eee@nemw.com](mailto:eee@nemw.com)

[lmb@nemw.com](mailto:lmb@nemw.com)

**ATTORNEY'S LIEN CLAIMED**





**AFFIDAVIT**

1. My name is Cary E. Sims.
2. I have, through my attorney, consulted and reviewed the facts of my claim with a qualified expert.
3. I have obtained a written opinion from a qualified expert that clearly identifies me and includes the determination of the expert that, based upon a review of the available material, a reasonable interpretation of the facts supports a finding that the care which was provided was below the medical standard of care.
4. On the basis of the review and consultation of the qualified expert, I have concluded that the claim is meritorious and based on good cause.

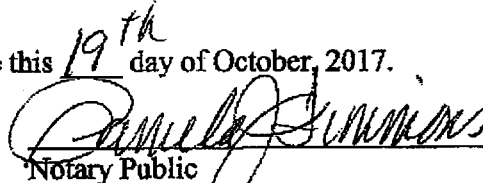
  
CARY E. SIMS

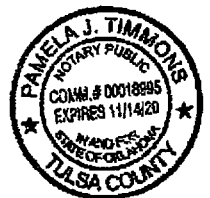
**NOTARIZATION**

State of Oklahoma            )  
  )  
County of Tulsa            )        ss.

Cary E. Sims, of lawful age and being first duly sworn states that he has read the foregoing, that he is familiar with the contents hereof, and that the statements set forth therein are true and correct.

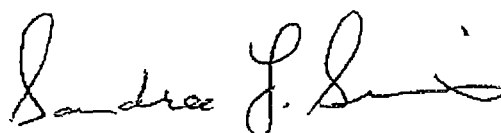
Subscribed and sworn to before me this 19<sup>th</sup> day of October, 2017.

  
Notary Public



AFFIDAVIT

1. My name is Sandra L. Sims.
2. I have, through my attorney, consulted and reviewed the facts of this medical malpractice claim with a qualified expert.
3. I have obtained a written opinion from a qualified expert that clearly identifies my husband, Cary E. Sims, as the patient and includes the determination of the expert that the care which was provided was below the medical standard of care.
4. On the basis of the review and consultation of the qualified expert, I have concluded that the claim is meritorious and based on good cause.



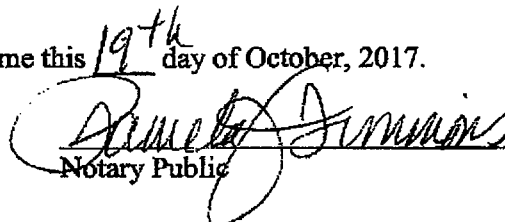
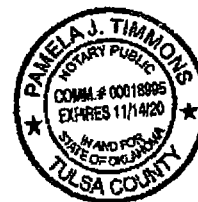
SANDRA L. SIMS

NOTARIZATION

State of Oklahoma            )  
  )     ss.  
County of Tulsa             )

Sandra L. Sims, of lawful age and being first duly sworn states that she has read the foregoing, that she is familiar with the contents hereof, and that the statements set forth therein are true and correct.

Subscribed and sworn to before me this 19<sup>th</sup> day of October, 2017.

  
Notary Public

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC  
CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762  
Case No. 2019-CA-2764  
Case No. 2019-CA-2765  
Case No. 2019-CA-2766  
Case No. 2019-CA-2767  
Case No. 2019-CA-2768  
Case No. 2019-CA-2769  
Case No. 2019-CA-2770  
Case No. 2019-CA-2771  
Case No. 2019-CA-2772  
Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

To: Assignors,  
Soneet Kapila,

Consolidated Case No.  
2019-CA-2762

Division L

Assignee

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU  
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE  
ASSIGNEE'S COUNSEL, NO LATER THAN:

**JULY 12, 2019**

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:

SONEET KAPILA, ASSIGNEE  
1000 SOUTH FEDERAL HIGHWAY, SUITE 200  
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:  
EDWARD J. PETERSON, ESQUIRE  
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.,  
110 E. MADISON ST., SUITE 200  
TAMPA, FL 33602

RECEIVED  
JUL 12 2019  
Stichter, Riedel, Blain & Postler P.A.

1. PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:  
Laser Spine Institute, LLC  
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. CREDITOR NAME (Your name): Jeffrey P. Nees, M.D.  
ADDRESS: 4380 Covington Way  
CITY, STATE, ZIP: Norman, OK 73072  
TELEPHONE NUMBER: (405) 850-4054  
E-MAIL ADDRESS: jeffreynees@gmail.com

*Please be sure to notify us if you have a change of address.*

Check box if address on claim differs from address to which this notice was sent: ☐

3. BASIS FOR CLAIM:  
☐ Goods Sold ☐ Wages, Salaries and Compensations ☐ Secured Creditor  
☐ Services Performed ☐ Taxes  
☐ Money Loaned ☐ Customer Deposit  
☐ Shareholder ☒ Other: Indemnity against liability in Oklahoma County,

4. DATE DEBT WAS INCURRED: Oklahoma District Court Case No. CJ-2018-3605  
July 15, July 20, and September 13, 2016

5. AMOUNT OF CLAIM: see attached Petition

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s):  
No

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. SIGNATURE: Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

DATED: July 11, 2019

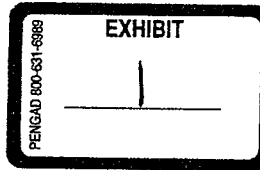
BY: 

Signature of Claimant or Representative

Jeffrey P. Nees, M.D.

Print Name and Title Here

For Assignee's Use Only:  
Claim Number: \_\_\_\_\_  
Date: \_\_\_\_\_



## PROFESSIONAL SERVICES AGREEMENT

Page 1 of 24

Initials Physician JN LSI PPB

## PROFESSIONAL SERVICES AGREEMENT

PHYSICIAN'S PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), is made as of the Effective Date (as defined herein), between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI") (each a "Party," collectively the "Parties").

### WITNESSETH

WHEREAS, Physician is a neurosurgeon currently licensed to practice medicine in the State of Oklahoma (License Number 18022);

WHEREAS, LSI manages medical facilities located throughout the United States providing surgical, medical, and health care services to the general public;

WHEREAS, LSI wishes to employ Physician for the purpose of Physician providing professional medical services to the general public under the terms and conditions set out herein; and

WHEREAS, Physician will provide medical services at LSI's Oklahoma City, Oklahoma location, and Physician may provide medical services at any of LSI's locations upon mutual agreement of the Parties;

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 agree as follows:

### AGREEMENT

1. Recitals Incorporated. The foregoing recitals are incorporated as if they were fully set out in the body of this Agreement and incorporated herein.
2. Agreement. LSI hereby employs Physician and Physician agrees to provide such services as an employee under the terms and conditions hereinafter provided.
3. Term.
  - 3.1 Initial Term. This Agreement will be effective on the 19<sup>th</sup> day of June, 2018 (the "Effective Date"). Physician's employment shall commence on that date and shall continue for three (3) years from that date subject to earlier termination by LSI or Physician as provided for herein.
  - 3.2 Renewal Term. Upon conclusion of the Initial Term, this Agreement shall automatically renew for successive three (3) additional year terms (the "Renewal Term"), unless either party gives notice to the other party of its intention not to renew the Agreement at least ninety (90) days prior to the commencement of any Renewal Term, subject to earlier termination by LSI or Physician as provided for herein.
4. Representations and Warranties.

## PROFESSIONAL SERVICES AGREEMENT

Page 2 of 24

Initials Physician JN LSI LSI

Physician represents and warrants to LSI that:

- 4.1 Physician is qualified and licensed without restriction or limitation in the State of Oklahoma and will continue to maintain that license during the term of this Agreement.
- 4.2 Upon request by LSI, Physician agrees to apply to obtain a license(s) to practice medicine without restriction or limitation in other LSI occupied state(s), and will continue to maintain that license(s) during the term of this Agreement.
- 4.3 Physician has, and shall continue to have, a controlled substance registration certificate issued by the United States Drug Enforcement Agency ("DEA") so that Physician may prescribe controlled substances without restriction or limitation.
- 4.4 Physician has not had any Sanction imposed on Physician's practice of medicine. A Sanction for this paragraph shall include, but shall not be limited to, a suspension, revocation, restriction, limitation, or termination of: (i) Physician's license to practice medicine in any state (or other political subdivision); (ii) Physician's DEA registration; (iii) the imposition of any type of disciplinary or corrective action taken by any medical licensing or certification authority; or (iv) the issuance of any reprimand, monetary fine, or penalty imposed by any medical licensing or certification authority, or governmental payor program.
- 4.5 To the best of Physician's knowledge, there are currently no investigations or proceedings pending or threatened (or facts concerning Physician's medical practice or the operation of Physician's medical offices) which could lead to: (i) a suspension, revocation, restriction, limitation or termination of Physician's license to practice medicine or Physician's Federal DEA registration; (ii) the imposition of any type of disciplinary or corrective action by any medical licensing, certification or regulatory authority; or (iii) any reprimand, monetary fine or penalty imposed by any medical licensing, certification or regulatory authority, in connection with Physician's practice of medicine or the operations of Physician's medical offices.
- 4.6 There are currently no medical negligence or medical malpractice actions against Physician that LSI is not aware of.
- 4.7 Physician either holds active staff privileges at the hospital(s) and health care facilities at which LSI's employees or independent contractors render services or agrees to apply for such privileges as may be reasonably requested by LSI, including without limitation, any designated transfer hospital.
- 4.8 There are currently no investigations or proceedings pending, or to Physician's best knowledge, threatened, the basis of which implicate the professional competence of Physician and which could lead to a suspension, revocation, restriction, limitation, or termination of Physician's medical staff privileges at any hospital or health care facility at which Physician is a member of the medical staff, and that no medical staff privileges of Physician have ever been suspended, restricted, or terminated.
- 4.9 Physician's status as a participating provider in any third party payor program, including any HMO, PPO, or other managed care program, has never been suspended, restricted,

## PROFESSIONAL SERVICES AGREEMENT

Page 3 of 24

Initials Physician LSI FFB

or terminated, and that to Physician's best knowledge, there are currently no investigations or proceedings pending, or to Physician's knowledge, threatened, which could lead to a suspension, restriction, or termination of such provider status.

4.10 Physician is an American citizen or holds a status that permits Physician to permanently reside in the United States.

4.11 Physician has not been:

4.11.1 Convicted of: (a) any offense related to the delivery of an item or service under the Medicare or Medicaid programs, (b) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service, (c) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service, (d) the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) obstructing an investigation of any crime referred to in (a) through (d) immediately above;

4.11.2 Required to pay any civil monetary penalty regarding false, fraudulent, or impermissible claims that were submitted or authorized by Physician in connection with health care services provided to beneficiaries of any state or federal health care program; or

4.11.3 Excluded from participation in the Medicare, Tricare, or Medicaid programs.

4.12 Physician represents and warrants that Physician does not have, and agrees that Physician will not have during the term of this Agreement, a financial relationship within the meaning of 42 U.S.C. 1395nn, or any of the regulations promulgated thereunder (collectively the "Stark Law"), with any person or entity that does not fall within a statutory or regulatory exception to the physician self-referral prohibition, whether or not memorialized in writing. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations. Physician shall participate in Stark Law training as determined by LSI.

4.13 Physician is not aware of any remuneration Physician has received that violates an applicable State statute and/or the federal Medicare and Medicaid anti-kickback statute set forth at 42 U.S.C. 1320a-7b(b) ("Anti-Kickback Statute"), and which do not fall within any safe harbor regulations as set out in 42 C.F.R. 1001.952, 56 Fed. Reg. 35,952. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations. Physician shall participate in training regarding federal and State fraud and abuse laws, including the Anti-Kickback Statute and Stark Law, as determined by LSI.

4.14 Physician will keep current with any continuing medical education required to maintain Physician's license(s) to practice medicine.

4.15 Physician will take all reasonable efforts to comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and related regulations, and Physician shall participate in HIPAA training as determined by LSI.

## PROFESSIONAL SERVICES AGREEMENT

Page 4 of 24

Initials Physician JP LSI FFB

4.16 Physician has not (a) had any final disciplinary action taken against Physician by a specialty board, (b) had any final disciplinary action taken against Physician by a licensing agency, or (c) had any disciplinary action taken against Physician by a health maintenance organization, pre-paid health clinic, nursing home, hospital or ambulatory surgical center.

4.17 Physician is not a party to any contract or other legal agreement which (a) would conflict in any way with the services to be provided hereunder by Physician, or (b) would in any way would affect the ability of LSI to collect fees for Physician's services from any insurance company or federally funded payor. This warranty and representation includes Physician's statement that Physician is not bound by, or subject to, any contract with any health insurer, managed care organization, or any other third party, under which Physician has agreed to limit the charges billed for Physician's services.

4.18 Physician is not subject to any form of contract, legal agreement, non-competition agreement, or other contractual provision that would conflict with the services Physician is providing under this Agreement to LSI or prohibiting Physician from entering into this Agreement.

4.19 Physician will undergo training and such fellowship in minimally invasive spinal surgery as requested by LSI. Physician understands that such training will be provided in Oklahoma City, Oklahoma (or another LSI location, if applicable).

4.20 Physician will immediately notify LSI orally, followed by written notification, of the occurrence of any adverse action or event in relation to any of the matters set forth above as warranties and representations. In the event of such an adverse action or event, or an event which would cause any of the matters set forth above to be false, LSI may, at its sole option, immediately terminate this Agreement.

### 5. Duties.

5.1 Physician will provide the services and perform the duties described in Schedule "A" to this Agreement, which is incorporated herein.

5.2 Physician shall provide professional medical services to, or on behalf of, LSI's patients at LSI's place of business in Oklahoma City, Oklahoma and such other location(s) as mutually agreed upon by the Parties. Physician understands that the services Physician will provide to LSI may include travel.

5.3 Physician acknowledges that quality patient care is contingent upon timely completion of patient records, including without limitation, (i) dictated notes, (ii) required medical information, and (iii) patient charts (collectively the "Records"). Physician agrees to maintain the Records relating to medical services provided hereunder in a timely, accurate, and complete manner. Physician acknowledges and agrees that compensation for Physician's services may be withheld by LSI pending completion of the Records in a timely manner. Pursuant to state law, LSI shall, in all instances, be considered the owner of the Records and any other medical records relating to the performance of medical services provided by Physician under this Agreement.



## PROFESSIONAL SERVICES AGREEMENT

Page 5 of 24

Initials Physician JW LSI FFS

5.4 Physician shall provide all services in full compliance with the applicable canons of professional ethics and in accordance with the appropriate standard of care for the medical profession, and Physician's specialty. The Parties acknowledge and agree that decisions regarding the diagnosis and treatment of patients are the province of a physician and, therefore, all such decisions will be the responsibility of Physician. However, LSI shall have the authority to establish reasonable professional policies and procedures, which Physician shall follow when providing professional services on behalf of LSI. Physician hereby agrees to abide by all reasonable policies, procedures, and protocols adopted by LSI, as well as any reasonable instructions provided by LSI's Chairman of Surgery, Executive Director, or Chief Medical Director.

5.5 Physician shall, in addition to the foregoing, perform such other services as LSI assigns from time to time, which are necessary or appropriate, to effectuate the purposes of this Agreement.

5.6 Physician agrees that all income created, accrued, or derived from the application of Physician's medical knowledge, or other knowledge, including business knowledge, in any form during the term of this Agreement, shall belong exclusively to LSI. Any and all checks and other forms of payment for services provided by Physician during the term of this Agreement shall be promptly forwarded to LSI if received by Physician.

5.7 Physician shall, as directed by LSI, observe the provisions of all managed care contracts which LSI already has, or may in the future, enter into for the provision of health care services with managed care organizations, e.g.; Health Maintenance Organizations (HMO's), Independent Practice Associations (IPA's), Preferred Provider Organizations (PPO's), Medical Service Organizations (MSO's), Integrated Delivery Systems (IDS's) and Physician-Hospital Organizations (PHO's).

5.8 Notwithstanding the foregoing, Physician may engage in charitable, voluntary and/or non-income producing professional activities provided such activities do not materially interfere with the services required to be rendered by Physician under this Agreement. Additionally, the making of personal investments, and the conduct of private business affairs, shall not be prohibited hereunder.

5.9 Physician shall meet and abide by all other reasonable obligations determined by LSI, which are reasonably consistent with this Agreement.

### 6. Fees and Charges.

6.1 LSI shall bill patients for whom services are rendered by Physician on behalf of LSI. Such charges shall be as LSI deems appropriate, and as determined by LSI in its sole discretion. If it is necessary for LSI to use Physician's provider number for billing purposes during the term of this Agreement, Physician agrees in advance to such use. Physician shall be serving as an agent of LSI for the purposes of receiving payment for Physician's professional services.

## PROFESSIONAL SERVICES AGREEMENT

Page 6 of 24

Initials Physician JN LSI FFH

6.2 Physician shall not directly submit a billing or statement of charges to any LSI patient for services arising from the practice of medicine at LSI. In addition Physician will not reduce any charge or give any discount for care provided at LSI without the prior written authorization of LSI. LSI has complete authority to assign patients, set fees, determine write-offs, and to take any other action relating to billing and collection of fees for services provided by Physician.

6.3 Physician will participate in and comply with all compliance programs adopted by LSI.

6.4 Physician shall sign and participate in any contracts to which LSI is a party with any health insurer, managed care organization or any other third party for the provision of medical services. Physician hereby assigns and transfers to LSI all fees and other income on account of professional services rendered by Physician hereunder at the LSI facility or otherwise generated during the term of this Agreement.

6.5 Physician agrees to complete such documents and forms as required by Medicare, Medicaid, or other third-party payors, which allow LSI to receive an assignment of any payments due for professional services rendered by Physician during the term of this Agreement, to the fullest extent permissible under any applicable law. To the extent required by LSI, Physician agrees to obtain provider status from Medicare, Medicaid, any health insurer, any managed care organization, and any other third party payors designated by LSI.

6.6 Physician agrees to promptly remit to LSI all fees and income owing to LSI pursuant to this Section 6, which may be paid to or received by Physician in any form in relation to services provided on behalf of LSI. Physician agrees to execute any and all forms, waivers and other documents that are necessary to allow LSI to bill for, and receive payment from, third party payors, and Physician hereby assigns in advance all such payments to LSI.

6.7 All accruals and accounts receivable generated for services rendered by Physician pursuant to this Agreement are the sole property of LSI. Physician shall have no ownership interest in the receivables of LSI. Physician hereby authorizes any officer of LSI to sign as Physician's designee on insurance and other third-party claim forms and checks for services rendered by Physician to patients of LSI. This authorization shall continue after the expiration or termination of this Agreement.

6.8 In the event that there is a final audit determination of findings by any third party, including, but not limited to, an insurance company, Medicaid, Medicare, or workers compensation, which results in a requirement that LSI repay previously reimbursed amounts, fines, penalties, or interest (the "Impositions") as a result of Physician's gross negligence or the intentional submission by Physician of false or fraudulent claims, Physician agrees to indemnify and hold LSI harmless from such Impositions.

### 7. Compensation and Benefits.

## PROFESSIONAL SERVICES AGREEMENT

Page 7 of 24

Initials Physician DN LSI FF

7.1 In consideration for the services provided by Physician pursuant to this Agreement, LSI will provide the compensation and benefits described in Schedule "B", attached hereto and incorporated herein.

7.2 Physician authorizes LSI to deduct monies which are due and payable to Physician under this Agreement for any outstanding monies that Physician may, for any reason, owe LSI. Physician shall not be entitled to any compensation after the termination or expiration of this Agreement.

7.3 The Parties acknowledge and agree that the compensation payable hereunder is not intended to be an inducement or payment for referral of, or recommending referral of, patients. The Parties intend at all times that payments and other remuneration made pursuant to this Agreement shall be in compliance with the applicable State statutes, Stark Law, the Anti-Kickback Statute and all interpreting regulations. Should Physician become aware that any remuneration received pursuant to this Agreement is or may be in violation of applicable State statutes, Stark Law or the Anti-Kickback Statute, Physician shall notify LSI within three (3) days of discovery. Physician agrees and acknowledges that Physician will use Physician's best efforts to ensure compliance with applicable regulations.

7.4 The Parties expressly acknowledge that nothing contained herein shall require referrals for orders or services between the Parties. The Parties also agree that the benefits to either Party hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral, or other arrangement for the provision of any item or service reimbursed under Medicare, Tricare or Medicaid, or any other third party payers. Any modification in Physician's compensation, bonus or benefits will not be determined in a manner that is directly or indirectly related to the volume or value of "designated health services" as defined by the Stark Law.

8. Relationship of Parties. For all purposes, the relationship between Physician and LSI will be as employee and employer.

9. Professional Liability.

9.1 During the Term of this Agreement, LSI shall provide, at its sole expense, professional liability insurance to Physician on a claims made basis insuring Physician against claims arising out of the performance of professional medical services hereunder in the minimum amount of One Million Dollars (\$1,000,000) per claim and a minimum aggregate annual amount of Three Million Dollars (\$3,000,000) per year.

9.2 In the event of a claim invoking such coverage and involving services performed by Physician during the term of Physician's employment with LSI (a "Claim"), LSI shall have the right to fully direct the defense of the Claim including, but not limited to, directing the settlement of such Claim.

9.3 Upon the termination or expiration of this Agreement, it is understood by Physician that LSI will provide professional medical liability insurance coverage for Physician

## PROFESSIONAL SERVICES AGREEMENT

Page 8 of 24

Initials Physician SN LSI FFB

for the period of time Physician was employed by LSI as part of LSI's global professional liability coverage.

9.4 Physician shall immediately notify LSI in writing: (a) upon Physician's receipt of any notice of a potential professional liability claim in any form regardless of Physician's belief of whether such potential claim has merit, (b) upon Physician's receipt of any document describing or seeking to impose a restriction, limitation, or modification of Physician's license, certification, credentials, hospital privileges or ability to render professional medical services under this Agreement, or (c) on any breach of any of the Representations and Warranties contained above in Section 4.

9.5 In the event of any claim or asserted claim arising out of or in relation to the services provided under this Agreement, Physician agrees to fully cooperate with, assist, and work with LSI's insurers, investigators, claim adjusters and attorneys. This includes, but is not limited to, Physician making himself available for meetings, depositions, court appearances, and assisting in the response to discovery requests.

### 10. Termination.

10.1 By Either Party Without Cause. This Agreement may be terminated without cause at any time by either party upon ninety (90) day written notice to the other party (the "Notice Period").

10.1.1 Should LSI terminate the Agreement pursuant to Section 10.1, LSI reserves the right to compel Physician to vacate LSI's premises and to cease the performance of services on behalf of LSI immediately upon delivery of notice of intent to terminate. However, LSI shall continue to pay Physician the compensation and benefits due hereunder during the Notice Period. Should LSI terminate the Agreement pursuant to Section 10.1, LSI shall have no obligation whatsoever to pay Physician the compensation and benefits due hereunder beyond the Notice Period. During the Notice Period, Physician shall not take any personal time off unless otherwise previously agreed to by LSI in writing. During the Notice Period this Agreement will remain in full effect and the expiration or termination of this Agreement will occur on the last day of the Notice Period.

10.2 By LSI With Cause. At any time during the Term of this Agreement, should any of the following events occur (the "Termination Events"), at the sole discretion of LSI, this Agreement may be terminated by LSI. Such termination shall be effective immediately unless a notice period is provided in the description of the termination event as set out herein. Should LSI terminate the Agreement pursuant to Section 10.2, LSI shall have no obligation to pay Physician the compensation and benefits due hereunder beyond Physician's last day of employment. At its option, LSI may suspend Physician with pay during any such notice period. The Termination Events are:

10.2.1 The death of Physician;

10.2.2 The disability of Physician for a period of more than thirty (30) days in any calendar year. For purposes of this section, disability is defined as the mental or physical

## PROFESSIONAL SERVICES AGREEMENT

Page 9 of 24

Initials Physician SN LSI FF

inability of Physician to perform the medical services for which Physician is contracted under this Agreement. LSI may terminate this Agreement on giving Physician written notice of its intent to terminate pursuant to this paragraph and the effective date of termination shall be the 11<sup>th</sup> day of the month following the giving of such notice by LSI;

10.2.3 Physician fails or neglects to perform, keep, or observe any term, provision, condition, or covenant contained in this Agreement (a "Breach") and the same is not cured to LSI's reasonable satisfaction within thirty (30) days after LSI gives Physician written notice identifying such default, or immediately on notice if the Breach is not capable of being reasonably cured ("Cure Period"). Notwithstanding the foregoing, in the event that Physician cures the Breach but then commits the same or a substantially similar Breach within six (6) months of the date that the Breach was cured, then LSI may terminate this Agreement immediately upon notice, without affording Physician an opportunity to cure;

10.2.4 Any breach by the Physician of the Representations and Warranties set out in Section 4 above, although if immediate written notice of such breach is provided by Physician, and such breach is reasonably curable, then termination shall occur only if such breach continues for a period of thirty (30) days from the date of the act or event giving rise to the breach;

10.2.5 LSI shall commence any case, proceeding or other action, or be the subject of any cause, proceeding or other action commenced (a) seeking to have an order for relief entered on LSI's behalf or against LSI as debtor, (b) to adjudicate LSI as bankrupt or insolvent, or seeking its reorganization, liquidation or dissolution under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) in the event LSI or a third party seeks the appointment of a receiver, trustee, custodian or similar official for LSI or for all or any substantial part of its property or assets;

10.2.6 LSI ceases its operations as a medical facility except for winding up its business affairs so as to be in statutory compliance with any State or Federal statute with respect to a corporate dissolution;

10.2.7 Physician fails to maintain a current, valid and unrestricted license to practice neurosurgery or fails to maintain a current, valid and unrestricted controlled substance registration certificate with the DEA;

10.2.8 Physician's clinical privileges or status as a member of the Medical Staff at any hospital or health care facility at which Physician renders services is terminated, suspended for more than thirty (30) days, or is restricted in any manner pursuant to the applicable staff bylaws or rules and regulations; provided that Physician (a) has had a fair opportunity to contest such action, and (b) the action resulted from a finding that Physician breached the applicable standard of medical care.

10.2.9 Physician fails to dictate and complete appropriate medical records after being advised of such failure in writing;

PROFESSIONAL SERVICES AGREEMENT

Page 10 of 24

Initials Physician JN LSI FFB

10.2.10 Physician fails to report an adverse event as those are defined by either the accrediting body for LSI (AAAHC) or the applicable State Agency for Healthcare Administration;

10.2.11 Any internal LSI peer review process finds that Physician has practiced in a manner at variance to the appropriate standard of care required of LSI physicians;

10.2.12 LSI is no longer able to secure or maintain professional medical liability insurance coverage under Section 9 at a reasonable cost, as a result of Physician's acts of malfeasance or nonfeasance.

10.2.13 Physician's conviction, plea of guilty, plea of no contest, or judicial finding of guilt to a felony or to a misdemeanor committed in the course of the practice of medicine or involving moral turpitude;

10.2.14 Physician performs medical services for compensation outside of the terms of this Agreement, except as otherwise notified in advance and approved in writing by LSI;

10.2.15 Physician fails to satisfy the credentialing and professional standards and requirements of LSI;

10.2.16 Physician ceases or fails to be an approved provider for Medicare, Medicaid, or a state-specific Bureau of Workers' Compensation if required by LSI;

10.2.17 Physician fails to abide by the rules, regulations or established procedures of the medical staff bylaws of LSI or any hospital or health care facility at which Physician renders services during the term of this Agreement. In such event, Physician shall be given written notice of such failure and at least thirty (30) days opportunity to cure such failure, prior to any termination by LSI;

10.2.18 In the event that any agency, department, or political subdivision of the United States, the State of Florida, or of the State where Physician provides services under this Agreement (if not Florida) (collectively the "Government"): (a) commences, or threatens commencement of, any action or proceeding concerning this Agreement or the services provided hereunder; (b) during the course of an investigation, indicates, suggests, or states that this Agreement or the services provided hereunder create legal risk or detriment to LSI under any applicable law; or (c) enters into settlement or reformation discussions with LSI with respect to this Agreement or the services provided hereunder; then this agreement can be reformed or modified by LSI in its absolute discretion so as to bring the Agreement into compliance with the Government's requests or so that the provisions(s) identified by the Government as giving rise to or causing the concern or dispute is modified or removed to the Government's satisfaction. In the event that the Government insists on the cancellation of this Agreement, then LSI may terminate this Agreement immediately subject to applicable provisions which survive termination; and/or

10.2.19 Any violation of Section 6.2 by Physician,

## PROFESSIONAL SERVICES AGREEMENT

Page 11 of 24

Initials Physician JD LSI FFB

10.3 By Physician With Cause. Physician may terminate this Agreement on a breach by LSI in the due observance or performance of any of LSI's obligations under this Agreement, if such default or breach continues for a period of thirty (30) days after written notice of such default or breach is given to LSI by Physician.

10.4 This Agreement may be terminated at any time by the mutual written agreement of LSI and Physician.

10.5 Upon the termination or expiration of this Agreement, Physician shall only be entitled to receive compensation earned up to the date of termination or other expiration of this Agreement. In no event will Physician be entitled to any portion of any post-termination collections of accounting accruals or accounts receivable attributable to Physician's pre-termination services.

10.6 Termination of this Agreement shall be subject to any provisions that survive such termination, including, but not limited to, the provisions of Sections 11 and 12, as well as any other provisions which are only given effect after termination.

### 11. Restrictive Covenant on Physician.<sup>1</sup>

11.1 Trade Secrets, Confidential Information, Patient Goodwill, Patient and Referral Source Relationships. Physician acknowledges and agrees that in addition to being provided such extraordinary and specialized training in minimally invasive spine surgery, Physician is also being provided knowledge of trade secrets of LSI, as defined in Florida Statute §688.002(4) and other valuable confidential business or professional information that otherwise does not qualify as trade secrets. Physician further acknowledges and agrees that LSI has developed substantial goodwill in the markets where LSI operates and that LSI has developed substantial, critical and important business relationships with its patients, prospective patients and referral sources.

11.2 Restrictive Covenant. In order to induce LSI to enter into this Agreement and to protect LSI's legitimate business interests, Physician hereby specifically covenants and agrees to the terms and conditions set forth in this Section 11. Physician covenants, warrants, and agrees that during Physician's employment with LSI and for a period of two (2) years after termination of Physician's employment with LSI, whether with or without cause, voluntary or involuntary, Physician will not under any circumstances:

11.2.1 Directly or indirectly, for Physician's own account or that of another, perform or engage in services or any activity related to the same or similar services offered by LSI within a fifty (50) mile radius of any of LSI's facilities as of the date of termination or expiration of this Agreement (the "Restrictive Area"). This restriction includes, but is not limited to, performing minimally invasive spine surgery at any office, hospital, surgical center, or health care facility of any kind within the Restrictive Area.

<sup>1</sup> Physician understands and agrees that the restrictive covenants contained herein as well as all rights and remedies related to said restrictive covenants as discussed in Sections 11 and 12 hereof are expressly enforceable by all of LSI's related and/or affiliated entities, whether now in existence or hereafter created, and that all such related and/or affiliated entities are intended third party beneficiaries of the restrictive covenants contained herein.

## PROFESSIONAL SERVICES AGREEMENT

Page 12 of 24

Initials Physician JN LSI FFB

11.2.2 Within the Restrictive Area, assist, be or become involved in or associated with, in any capacity whatsoever, including, but not limited to, as an employee, agent, independent contractor, consultant, partner, joint venturer, officer, director, member, or shareholder, any person, corporation, partnership, joint venture, sole proprietorship or other form of business entity that is engaged in or offers the same or similar services offered by LSI.

11.2.3 Divert, or attempt to divert, for Physician's direct or indirect benefit or for the benefit of any other person or entity, any patient of LSI, or any of the business or patronage of any patient of LSI.

11.2.4 Influence, or attempt to influence, any patient of LSI to change or transfer his patronage from LSI directly or indirectly to any other person, corporation, partnership, joint venture, or sole proprietorship, provided however that this provision is not intended to require referrals in the event a patient elects to continue a physician-patient relationship with Physician, if not otherwise in violation of this Agreement.

11.2.5 Interfere, disrupt, or attempt to disrupt the relationship of LSI and any of its suppliers, business contacts, professional service providers, or other valuable business relationships of LSI.

11.2.6 Solicit, engage, hire, employ, or contract with any of LSI's employees, independent contractors, or agents. This restriction applies to all persons who were employees of LSI or rendered services to or on behalf of LSI at any time during the term of Physician's employment.

11.3 Restrictive Covenant: Acknowledgments. Physician specifically agrees and acknowledges that the restrictive covenant as set out in the terms and conditions of this Section 11:

11.3.1 Is reasonable and necessary for the protection of the legitimate business purposes of LSI.

11.3.2 Is reasonable and necessary for the protection of the legitimate business purposes of LSI in both geographic and time limitations as set out herein.

11.3.3 Is not unreasonably burdensome to Physician, Physician's practice, or to Physician's ability to earn a living as Physician.

11.3.4 Applies regardless of which party terminates this Agreement and whether termination was with or without cause.

11.3.5 Physician expressly admits that LSI has legitimate business interests as such interests are provided for under Florida Statute §542.335. These legitimate business interests arise from, but are not limited to, (a) LSI having provided Physician extraordinary or specialized training, (b) LSI having given Physician knowledge of its trade secrets and valuable confidential business or professional information that otherwise does not qualify as trade secrets, (c) LSI's patient goodwill associated with its ongoing professional practice; and (d) LSI's substantial relationship with its patients, prospective patients, and referral sources.



## PROFESSIONAL SERVICES AGREEMENT

Page 13 of 24

Initials Physician JN LSI LSI

11.3.6 Should, for any reason, any court of competent jurisdiction determine that the restrictions contained herein are overbroad or overlong, the Court shall modify the restrictions to protect LSI's legitimate business interests to the greatest extent permissible.

11.3.7 Physician acknowledges that Physician's ability to earn a livelihood without violating the restrictive covenant set out in this Section 11 herein is a material and specific condition precedent to LSI's entering into this Agreement.

11.3.8 Should Physician's title or position change and/or Physician's employment relationship with LSI change to, or be deemed, that of an employment relationship or any other non-employee relationship, such change shall not affect the validity and enforceability of any provision of this Agreement and all references to "Physician" and the "employee relationship" shall be construed as if such terms were replaced by the appropriate title and/or relationship.

11.4 Breach of Restrictive Covenant and Remedies. Should Physician violate this restrictive covenant as set forth in Section 11, then the time applicable restrictions shall be tolled during the period of any breach, and duration of the restrictive covenant will be extended for a period of time equal to the period of time during which Physician is in breach of the restrictive covenant(s).

11.4.1 The existence of any claim or cause of action by Physician against LSI, whether predicated upon this Agreement or accruing otherwise, shall not constitute a defense to the enforcement by LSI of the restrictive covenant.

11.4.2 LSI's rights and remedies herein are cumulative and the exercise or enforcement of any one or more of them will not preclude LSI from exercising or enforcing any other right or remedy.

11.4.3 LSI may pursue any or all equitable or legal remedies available to it for a breach or threatened breach of this Section 11, including without limitation, an injunction, and the recovery of damages from Physician. LSI may pursue any of such rights which shall be considered cumulative and not mutually exclusive in accordance with Section 15 of this Agreement.

11.5 Survivability of Restrictive Covenant. The restrictive covenant set out in this Section 11 shall apply during the term of the Agreement in addition to the above referenced post termination periods. This Section 11 shall survive any expiration or termination of this Agreement.

## 12. Confidential Information.

12.1 Physician recognizes and acknowledges that LSI's lists of patients, its files, its records of all kinds, and other Confidential Information provided to Physician in connection with Physician's performance under this Agreement are a valuable and unique asset of LSI's business.

## PROFESSIONAL SERVICES AGREEMENT

Page 14 of 24

Initials Physician JN LSI LSI

12.2 For purposes of this Section 12, and elsewhere in this Agreement where the capitalized form of the words is used, "Confidential Information" shall include, but shall not be limited to, the following:

12.2.1 The clinical, medical, surgical, training, and research protocols, procedures, methods, and practices of LSI, including, but not limited to, surgical, medical, and clinical techniques, material specifications, and methods employed for spinal surgery and clinical patient care;

12.2.2 The suppliers of services, supplies, and materials to LSI;

12.2.3 The business plans, methods, and practices of LSI;

12.2.4 Any information relating to the financial performance and operation of LSI, including without limitation, all information as to pricing, financing sources, costs of operation, expenses, financial reporting, compensation to employees or independent contractors, revenue generation, and profits or losses;

12.2.5 All corporate records of LSI in any form;

12.2.6 Any data bases, data compilations, and lists in tangible or electronic form belonging to LSI and including, but not limited to, any of those containing patient and employee identifying elements including names, addresses, telephone numbers, or social security numbers;

12.2.7 Contractual arrangements between LSI and insurers, managed care associations and other payors, as well as all contracts relating to marketing materials and/or ideas;

12.2.8 All patient referral sources of LSI.

12.2.9 Any other, (a) company secrets, (b) intellectual property rights, (c) proprietary information, (d) financial information, (e) confidential information, (f) technological knowledge, or (g) any other trade secrets belonging to LSI, its employees or independent contractors; or any other matter or information ascertained by Physician during Physician's relationship with LSI that is not generally known by third parties or available in the public domain; and

12.2.10 The terms and conditions of this Agreement. However, nothing in this Agreement should be construed to prohibit any form of Section 7 activity under the National Labor Relations Act and nothing herein is intended to prevent, deter, or interfere with employees in the exercise of any employee rights under the National Labor Relations Act.

12.3 Physician covenants, warrants, and agrees that during the term of this Agreement, and until ten (10) years have passed after its termination or expiration for any reason, that Physician will not:

## PROFESSIONAL SERVICES AGREEMENT

Page 15 of 24

Initials Physician JN LSI FFB

12.3.1 Disclose, disseminate, transmit, or transfer any Confidential Information, in any form, or in any part, to any third party, including, but not limited to, any person, corporation, partnership, joint venture, sole proprietorship or other form of business entity;

12.3.2 Provide any kind of training or instruction on or regarding LSI's practices to any person who is not an employee of LSI except with the express written permission of LSI;

12.3.3 Disseminate or transmit any information or knowledge of LSI's practices to any third party anywhere including any person, corporation, partnership, joint venture, sole proprietorship or other business entity. This prohibition includes, but is not limited to, the publication of any professional articles, any professional instruction at any school, university, or seminar, and the posting of any information on the internet or any other electronic media;

12.3.4 Claim any right of ownership or dominion over any of LSI's Confidential Information.

12.3.5 Disclose to any third party, including any person, corporation, partnership, joint venture, sole proprietorship or other business entity, the names, addresses, or other confidential information relating to any patient of LSI, the prices charged to patients of LSI, or any other information regarding the business practices and methods of LSI;

12.3.6 Use any of the Confidential Information except in the provision of services pursuant to this Agreement;

12.3.7 Permit, transfer, sell, lease, convey or otherwise allow the use of any of the Confidential Information by any third party, including any other person or entity; and

12.3.8 Apply for any patent, trademark or copyright with respect to any Confidential Information.

12.4 Physician recognizes the need for great security and caution to be taken in connection with the Confidential Information and agrees to take all reasonable steps to ensure that any Confidential Information provided to Physician is kept secure at all times.

12.5 In the event that Physician becomes aware of any dissemination of the Confidential Information through inadvertence, theft or other willful acts, Physician will provide immediate notice in writing to LSI of such dissemination.

12.6 Any violation of this Section 12 may result in any or all of the following actions and remedies being imposed or sought by LSI at its sole option:

12.6.1 The immediate termination of this Agreement by LSI for cause;

12.6.2 The seeking of and the entry of an injunction to prevent or limit any violation; and/or

12.6.3 The initiation of legal proceeding to recover for LSI damages resulting from such violation.

## PROFESSIONAL SERVICES AGREEMENT

Page 16 of 24

Initials Physician JN LSI 4497

12.7 Upon termination or expiration of this Agreement, Physician will immediately turn over to LSI all Confidential Information, in any form, all documents, papers, memorandum and other materials in Physician's possession that are confidential to LSI. In addition, Physician will immediately delete any Confidential Information Physician may have in any computer, electronic device, or electronic media that cannot be physically returned to LSI. Upon termination of Physician's employment, Physician will certify in writing that Physician has complied with this provision.

12.8 Physician agrees to comply with all confidentiality and privacy policies and procedures of LSI in effect now, or promulgated in the future, as well as all applicable federal and state laws related to the privacy and security of protected health information, including patient records and information.

12.9 All medical records, including but not limited to, case records, charts, case histories, radiographic or magnetic resonance imaging records or results, and personal and regular files concerning patients of LSI or patients consulted, interviewed or treated by Physician shall belong to and remain the property of LSI. Upon termination or expiration of this Agreement, Physician will immediately return any such records as may be in Physician's possession to LSI. In addition, Physician will provide or furnish to LSI any missing or incomplete medical chart information or entries within twenty (20) days from the date that this Agreement is terminated or expires. Physician will be given reasonable access to patient charts for the purpose of this record completion. Upon termination or expiration of this Agreement, Physician will certify in writing that Physician has complied with this provision.

12.10 After the termination or expiration of this Agreement, Physician will be entitled to copies of patient charts and records if Physician provides LSI a request in writing from a patient with a HIPAA compliant release acceptable to LSI and so long as Physician is not in violation of the terms of this Agreement. In addition, after the termination or expiration of this Agreement, subject to HIPAA compliance and at Physician's expense, Physician may request in writing access to patient records so long as there is good cause for such access such as for the purpose of responding to a malpractice action or administrative investigation proceeding against Physician. Physician agrees to pay any reasonable copying and administrative changes incurred by LSI in responding to and handling such request.

12.11 The provisions set out in this Section 12 shall apply during the term of the Agreement in addition to the above referenced post termination periods.

12.12 This Section 12 shall survive any expiration or termination of this Agreement.

12.13 Notwithstanding anything to the contrary within this Agreement, in compliance with the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1833 (as amended):

12.13.1 No term or provision of this Agreement is intended to interfere with or discourage a good faith disclosure of a protected trade secret to any government entity related to a suspected violation of the law.

12.13.2 The Physician cannot and will not be held criminally or civilly liable

## PROFESSIONAL SERVICES AGREEMENT

Page 17 of 24

Initials Physician JW LSI FFB

under any federal or state trade secret law for disclosing otherwise protected trade secrets and/or confidential or proprietary information as long as the disclosure is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, as long as such filing is made under seal.

12.13.3 The Company will not retaliate against the Physician in any way for a disclosure made in accordance with the law.

12.13.4 If a disclosure is made, and the Physician files a lawsuit against the Company alleging that the Company retaliated against the Physician because of the Physician's disclosure, the Physician may disclose the relevant trade secret or confidential information to the Physician's attorney and may use the same in the court proceeding only if (1) the Physician ensures that any court filing that includes the trade secret or confidential information at issue is made under seal; and (2) the Physician does not otherwise disclose the trade secret or confidential information, except as required by court order.

### 13. Expense Reimbursement.

13.1 LSI will reimburse Physician for certain practice-connected expenses of Physician as set out in Schedule "B" to this Agreement.

13.2 Any expense reimbursement is provided hereunder is contingent upon Physician providing documentation to substantiate the expense including receipts or proof of payment and expense reports. Expenses incurred must be necessary and reasonable and incurred in the provision of professional services by Physician to or on behalf of LSI or otherwise within the scope of this Agreement. Requests for reimbursement of expenses must be submitted in accordance with LSI's Expense Reimbursement Policy, which may be modified at any time.

14. Use of Name or Likeness. LSI is hereby granted the sole and exclusive right during the term of Physician's employment to make use of and to permit others to make use of Physician's name, pictures, photographs, and other likenesses, and voice, in connection with the advertising and publicity of LSI's services.

### 15. Arbitration.

15.1 The Parties agree that any Controversy shall be settled by arbitration to be held in Tampa, Florida. Such arbitration shall be administered by the American Arbitration Association ("AAA") under the AAA Commercial Arbitration Rules (the "Rules"). If the AAA is unavailable, such arbitration shall be administered by Judicial Arbitration and Mediation Services ("JAMS").

15.1.1 The term "Controversy" as used herein shall include disputes of any kind arising out of, or relating to, this Agreement or any modification or extension thereof, the interpretation or breach thereof, or any other issue arising between the Parties including any claim based on express or implied terms, such as implied covenants of good faith, fair dealing,

## PROFESSIONAL SERVICES AGREEMENT

Page 18 of 24

Initials Physician JEN LSI FFS

commercial reasonableness and including, without limitation, negligence, breach of fiduciary duty, fraud, conversion, duress, interference, fraud in the inducement, or any other tort or breach of statutory or common law duty.

15.1.2 The term "Parties" as used herein shall include the respective employees, officers, directors, members, independent contractors, attorneys and other agents of the parties to this Agreement.

15.2 Any challenge to the validity or enforceability of this Agreement, in whole or in part, must be resolved in the arbitration proceeding called for by this Agreement.

15.3 Except as is otherwise specifically set out below in Section 15.5, the Parties agree that Arbitration shall be the exclusive method of dispute resolution to address any Controversy and they specifically waive the right to seek other legal remedies, including, but not limited to, their right to a jury trial.

15.4 The parties will use a single arbitrator chosen using the Rules.

15.5 Nothing in the preceding paragraph, or otherwise, nor the exercise of any right to negotiation, mediation or arbitration, nor the commencement or pendency of any proceeding, shall limit the right of any party to this Agreement:

15.5.1 To seek judicial equitable relief, or other equitable relief available to it under applicable statutory or case law including, but not limited to, injunctive relief in connection with enforcing the restrictive and confidentiality covenants in Sections 11 and 12 hereof; or

15.5.2 To exercise any other rights or remedies available to it by contract or applicable statutory or case law, including but not limited to the filing of an involuntary petition in bankruptcy, the right of set off, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any arbitration proceeding.

15.5.3 The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies, as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to submit a dispute to arbitration, including disputes that may arise from the exercise of such rights.

15.6 The arbitrator shall not have the power to order specific performance of any obligation or duty of any party to this Agreement or to issue injunctions in connection therewith or otherwise.

15.7 A judgment on any arbitration award resulting from arbitration between the Parties in accordance with this Agreement may be entered by any court of competent jurisdiction.

## PROFESSIONAL SERVICES AGREEMENT

Page 19 of 24

Initials Physician JA LSI LSI

15.8 The substantially prevailing party in the arbitration proceeding, in any action filed to obtain a judgment as a result of such arbitration, in any lawsuit or legal proceeding to enforce this Agreement's restrictive covenants, and in any action to enforce and collect on such judgment, will have its reasonable attorneys' fees and costs paid by the other party. Costs, for purposes of this paragraph, will include AAA/JAMS filing fees, AAA/JAMS facilities fees, AAA/JAMS administrative fees, any other AAA/JAMS fee, and the fees and costs of the Arbitrator(s).

### 16. Indemnification.

#### 16.1 Definitions. As used in this Section 16:

16.1.1 "Claims" means all third-party demands, claims and actions, as well as, all associated liabilities, losses, costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and expenses;

16.1.2 "Indemnifying Party" means the Party providing indemnification; and

16.1.3 "Indemnified Party" means the Party being indemnified.

16.2 Obligation to Indemnify. LSI shall indemnify, reimburse and hold harmless the Physician from and against any and all Claims asserted against, imposed upon or incurred by the Physician arising from any acts within the scope of Physician's employment with LSI in accordance with LSI's insurance policy and as permitted by law. Physician shall indemnify, reimburse and hold harmless LSI from and against any and all Claims asserted against, imposed upon or incurred by LSI arising from any acts of Physician outside of the scope of Physician's employment with LSI as permitted by law.

16.3 Procedure on Claims. Promptly after receipt of any bill or demand that may constitute a Claim, the Indemnified Party shall give to the Indemnifying Party written notice of such Claim. The Indemnifying Party shall be responsible for and control all negotiations and the compromise and/or defense of such Claim. The Indemnifying Party shall have the right to select counsel that is reasonably acceptable to the Indemnified Party, provided the Indemnifying Party promptly shall notify the Indemnified Party of all material developments in the matter. The Indemnifying Party shall have the full right to reasonably compromise or settle any Claim without the prior consent of the Indemnified Party, provided the Indemnifying Party has provided to the Indemnified Party contemporaneous notice of the compromise or settlement and so long as the Indemnifying Party is paying the full amount of the Claim, obtaining a general release for the Indemnified Party as part of such compromise or settlement, and the Indemnifying Party obtains a dismissal with prejudice of any claim in litigation. The Indemnified Party shall have the right to hire their own counsel at their own cost to participate in any claim including litigation.

### 17. Miscellaneous Provisions.

17.1 No Waiver. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

## PROFESSIONAL SERVICES AGREEMENT

Page 20 of 24

Initials Physician JN LSI FFB

No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. Every right and remedy of each of the Parties shall be cumulative and either party, in its sole discretion, may exercise any and all rights or remedies stated in this Agreement or otherwise available at law or in equity.

17.2 Notices. Any notice required or permitted to be given under this Agreement shall be sufficient, if in writing, and sent by hand delivery, recognized courier, or first class mail to the Parties as follows:

*As to Physician:*

Jeffrey P. Nees, M.D.

4380 Covington Way

Norman, OK 73072

*As to LSI:*

Laser Spine Institute, LLC

Attn: Chief Executive Officer

5332 Avion Park Drive

Tampa, Florida 33607

In addition, notice may be provided by hand delivery to Physician or to the LSI Chief Executive Officer at any LSI facility. The Parties agree to provide immediate notice to the other Party if either of the Parties above address information changes.

17.3 Succession. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and upon their successors in interest. Physician expressly agrees that the restrictive covenants contained in Sections 11 and 12 hereof shall inure to the benefit of and be enforceable by LSI's successors and assigns without further consent from Physician.

17.4 Survival of Obligations. The provisions of Sections 11, 12, 16 and 17.7 herein, together with any other portions of this Agreement which by reasonable interpretation would require continued legal effect, shall survive the expiration or termination of this Agreement.

17.5 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties to this Agreement with respect to its subject matter, and the employment of Physician and LSI. Physician and LSI agree that no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained in it as a term shall be valid or binding. Physician agrees that no promises of any kind, that are not included as terms in this Agreement, have been made by LSI or anyone on its behalf to Physician. Physician states that Physician has carefully reviewed this Agreement and affirmatively states that there are no other terms and conditions with respect to Physician's employment by LSI that are not set out in this Agreement. Physician agrees that this Agreement represents the entire and complete agreement between himself and LSI. Physician also understands that any oral representation that is not included as a term in this Agreement cannot be used as a basis under which to claim that LSI has not performed in accordance with this Agreement.

17.6 Assignment. Neither this Agreement nor any duties or obligations under this Agreement shall be assigned, transferred, sold, or otherwise hypothecated by Physician without LSI's specific prior written consent. Such consent may be unreasonably withheld. Any attempt to transfer or assign the duties and obligations of Physician without such consent shall be null and void. In the event of a merger in which LSI is not the surviving entity, or a sale of all or substantially all of LSI's assets, LSI may, at its sole discretion, (a) assign this Agreement, and all rights and obligations under it, to any entity that



PROFESSIONAL SERVICES AGREEMENT

Page 21 of 24

Initials Physician JN LSI FFB

succeeds to all or substantially all of LSI's practice through that merger or sale of asset; or (b) With thirty (30) days prior written notice to Physician, terminate this Agreement as of the effective date of the merger or sale of assets.

17.7 Attorneys' Fees. If any action is instituted to enforce or interpret the provisions of this Agreement the substantially prevailing party will recover from the other party its reasonable attorney's fees and costs incurred in connection with such action, including such fees and costs incurred pre-suit, at the trial level, and at any appellate level.

17.8 Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be governed by the State of Florida without reference to its choice of law provisions.

17.9 Amendment. This Agreement may only be amended by the mutual agreement of the Parties in a writing executed by all Parties hereto.

17.10 Legal Construction. If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it. Section headings are for purposes of reference only and will not affect the meaning or interpretation of any provision of this Agreement.

17.11 Independent Counsel. Physician acknowledges that Physician has been advised to seek the advice of independent counsel and Physician acknowledges that Physician has either obtained such counsel or has knowingly waived such advice. In the event of any dispute concerning the interpretation or construction of this Agreement, the Parties agree that there will be no presumption applied based on the party preparing the Agreement. As a result, this Agreement shall not be construed in favor of or against any party.

17.12 Variation of Pronouns. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

17.13 Execution by Counterpart. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement consisting of twenty-four (24) pages, each of which has been initialed, as of the day and year first above written.

For Physician

Jeffrey P. Nees, M.D.

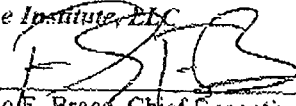
Signature: 

By: Jeffrey P. Nees, M.D.

Date: 10/1/18

For LSI

Laser Spine Institute, LLC

Signature: 

By: Frederic F. Brace, Chief Executive Officer

Date: 10/3/18

**PROFESSIONAL SERVICES AGREEMENT**

Page 22 of 24

Initials Physician JN LSI LSI

**Schedule A**

This is Schedule A to the Professional Services Agreement (the "Agreement") by and between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI"). This Schedule A is incorporated as if fully set forth in the Agreement. In addition to the terms set out in the Agreement, the following are the duties and responsibilities of Physician to LSI under the terms of the Agreement:

1. Provision of Professional Medical Services.

1.1 During the term of the Agreement, Physician shall provide professional medical services exclusively to LSI's patients or prospective patients. Physician will not provide any medical services to any patients other than LSI's patients or prospective patients without LSI's specific advance written authorization.

1.2 Physician shall observe and comply with all policies and procedures of LSI and will follow instructions issued by the Chairman of Surgery, Chief Medical Director, or any Executive Director of LSI.

1.3 Physician's services shall be provided at the highest possible level of professional medical practice and safety to LSI's patients.

1.4 At no time shall Physician engage in any conduct which jeopardizes the health, safety, or privacy of patients, nor shall Physician engage in conduct which may be disruptive, embarrassing, or detrimental to LSI or its employees.

1.5 LSI reserves the sole and unfettered discretion to modify Physician's duties and Physician shall have no recourse against LSI for any such modifications.

2. Service Areas. Physician will provide services to LSI patients in the practice area of neurosurgery, and more specifically minimally invasive spinal surgery. Such services include clinical review and examination, diagnostic testing and the performance of surgical procedures. In addition, LSI may require Physician to provide other services that Physician would be reasonably capable of performing.

3. Hours. LSI has the exclusive right to set the work hours and number of hours to be worked by Physician. The number of hours to be worked each week shall be in proportion to the hours worked by other LSI physicians and it is anticipated that Physician will work between eight (8) and ten (10) hours per day.

## PROFESSIONAL SERVICES AGREEMENT

Page 23 of 24

Initials Physician JN LSI FFB

### Schedule B

This is Schedule B to the Professional Services Agreement (the "Agreement") by and between Jeffrey P. Nees, M.D. ("Physician") and Laser Spine Institute, LLC ("LSI"). This Schedule B is incorporated as if fully set forth in the Agreement. In addition to the terms set out in the Agreement, the following will be paid or provided to Physician by LSI:

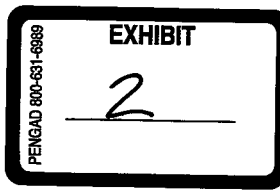
1. Salary. LSI will pay Physician a salary of Eight Hundred Fifty Thousand Dollars (\$850,000.00) for each 365 day period in which the Agreement is in effect. The payment of this salary shall start on the first date that Physician provides services to LSI under the Agreement. This salary shall accrue and be paid in arrears on a bi-weekly basis. Physician will at all times while the Agreement is in effect be paid as an employee of LSI. No payments of any kind under the Agreement will be made to Physician other than in Physician's physical capacity as an employee.
2. Bonus. Physician shall be eligible to receive a bonus from LSI (the "Bonus"). The range of the Bonus paid will vary from zero dollars to Three Hundred Thousand Dollars (\$300,000.00) for the first 365 day period the Agreement is in effect. In all instances, (i) the determination as to whether to pay a Bonus, (ii) the amount of the Bonus and (iii) the review of the Bonus Factors in determining the amount of the Bonus are all left to the sole and absolute discretion of LSI. If one is paid, the Bonus will be paid on a quarterly basis in any quarter when LSI determines in its sole discretion that a Bonus is payable to Physician. The factors that LSI will consider in making the determination to pay a Bonus to Physician and the amount of the Bonus (the "Bonus Factors") include, but are not limited to, (a) the corporate performance of LSI including revenue growth, profitability and cash flow, (b) Clinic and Operating Room group performance in terms of patient outcomes, patient satisfaction, employee satisfaction, efficiency and quality (c) the Physician's individual performance and (d) any LSI Compensation Plan that may be applicable to Physician. It is understood by Physician that no such Compensation Plan is currently in effect. Since the payment of the Bonus and the amount of any Bonus is in the sole discretion of LSI, Physician acknowledges that Physician is not entitled to receive or review any information relating to the Bonus Factors that LSI determines to be confidential. LSI reserves the right, in its sole and absolute discretion, to increase the amount of discretionary bonus each following year this Agreement is in effect.
3. Travel Reimbursement. LSI will reimburse Physician for travel related expenses in accordance with its Expense Reimbursement Policy and Guidelines, which may be modified at any time.
4. Benefits. During the Term of this Agreement, except as otherwise provided herein, Physician will be entitled to participate in employee benefit plans and receive all benefits for which physicians of LSI generally are eligible under any plan or program now existing or later established by LSI on the same basis as other physicians. Nothing in this Agreement will preclude LSI or any of its affiliates from amending or terminating any of the plans or programs applicable to salaried employees or physicians as long as such amendment or termination is applicable to all salaried employees or all physicians, as the case may be.

PROFESSIONAL SERVICES AGREEMENT

Page 24 of 24

Initials Physician JN LSI LEE

5. Expense Reimbursement. LSI will reimburse Physician for travel related expenses in accordance with its Expense Reimbursement Policy and Guidelines, which may be modified at any time.
6. PTO. Physician shall be entitled to be absent from Physician's duties at LSI for a total of one hundred sixty (160) hours per calendar year for personal time off ("PTO") without a reduction in compensation. PTO shall accrue at a rate of 6.16 hours per pay period, and shall include absences for vacation, sick days, and personal days. Physician shall not take more than five (5) days of PTO, or other time off, at a time. The time off allowed in this section (a) cannot be carried over from one calendar year to another, (b) will not be paid to the Physician as compensation if not used in any given calendar year, and (c) will be forfeited if not used by the end of each calendar year, or by the date of termination of employment, whichever first occurs. In the event of any termination of this Agreement, PTO shall be forfeited. The scheduling of any PTO time must be made with the advance written approval of LSI management, obtained a minimum of sixty (60) days prior to the date of the requested time off. LSI, in its sole discretion, may approve or reject the Physician's request for PTO. Physician agrees and understands that if this Section is not strictly complied with that LSI may not allow Physician to take the PTO time.
7. CME. Physician shall also be entitled to be absent from Physician's duties at LSI for a total of forty (40) hours per calendar year for Continuing Medical Education ("CME Time"). This CME Time is subject to the same terms, conditions and restrictions as the PTO described above in Section 6, with the exception that LSI shall not be obligated to compensate Physician for any unused CME Time.
8. Retirement Plan. LSI has a 401K plan (the "Plan") and Physician shall be eligible to participate in the Plan in accordance with its terms, conditions and limitations as they presently exist or are changed by LSI in the future. Physician's participation in the Plan is further subject to any and all applicable limitations under the Internal Revenue Code. Physician understands that Physician will have to contribute to the Plan in order to receive the LSI contribution to the extent a contribution is offered. Physician may review the Plan in advance of signing the Agreement in the event of any questions.
9. Withholding and Deductions. All payments made by LSI to Physician for compensation pursuant to the Agreement are subject to all deductions and withholdings required by federal, state and local law.



CJ-18-3605  
DAVIS

★ 1 0 4 0 8 0 3 5 1 5 ★ THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY  
STATE OF OKLAHOMA

MICHAEL RINKE and  
PANSY RINKE,  
a married couple,  
Plaintiffs,

vs.

JEFFREY MARTIN, M.D.; JEFFREY P.  
NEES, M.D.; LASER SPINE INSTITUTE,  
LLC; LASER SPINE SURGERY CENTER )  
OF OKLAHOMA, LLC, )  
Defendants. )

**CJ-2018-3605**  
FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

Case No.

JUL - 3 2018

RICK WARREN  
COURT CLERK

40

JURY TRIAL DEMANDED  
ATTORNEY LIEN CLAIMED

**PETITION**

COMES NOW, the Plaintiff, Michael and Pansy Rinke, a married couple, by and through their attorney of record, Joel A. LaCourse of LaCourse Law, PLLC, and for their causes of action against the Defendants, Jeffrey Martin, M.D., Jeffrey P. Nees, M.D., and Laser Spine Institute, LLC, would allege and state as follows:

**I. PARTIES**

1. This is an action for medical and corporate negligence arising out of injuries sustained by Michael Rinke as a result of medical treatment received by Rinke before, during, and after surgeries performed by Defendants within Oklahoma County on July 15<sup>th</sup>, July 20<sup>th</sup>, and September 13<sup>th</sup>, 2016.
2. At all times relevant to this action, Michael Rinke and his wife, Pansy Rinke, are residents of Alma, Arkansas.
3. At all times relevant hereto, Jeffrey Martin, M.D., was a physician practicing medicine with Oklahoma County, State of Oklahoma. Upon information and belief, Dr. Martin is

employed by Laser Spine Institute, LLC and holds himself out to the public as a specialist in minimally invasive spinal surgery.

4. At all times relevant hereto, Jeffrey P. Nees, M.D., was a physician practicing medicine within Oklahoma County, State of Oklahoma. Upon information and belief, Dr. Nees is employed by Laser Spine Institute, LLC and holds himself out to the public as being a specialist in minimally invasive spinal surgery.
5. At all times relevant hereto, Laser Spine Institute, LLC ("LSI") is a Foreign Limited Liability Company and medical facility operating in Oklahoma County, State of Oklahoma, whose service agent is listed as The Corporation Company, 1833 S. Morgan Rd., Oklahoma City, Oklahoma, 73128. LSI holds itself out to the public as specialists in minimally invasive spine surgery.
6. At all time relevant to this action, Laser Spine Surgery Center of Oklahoma, LLC is an Oklahoma Limited Liability Company whose service agent is CT Corporation System, 1883 S Morgan Rd., Oklahoma City, OK, 73128. Laser Spine Surgery Center of Oklahoma, LLC holds itself out to the public as specialists in minimally invasive spine surgery.

## **II. JURISDICTION AND VENUE**

7. Pursuant to 12 O.S. § 134, venue to proper for the reason that one or more the defendants has a principle place of business in Oklahoma County, Oklahoma.
8. This action is brought before this Court against a business that is licensed under the laws of the State of Oklahoma for damages and injuries based on torts arising out of patient care. 63 O.S. § 860.4.

9. Pursuant to 12 O.S. § 2004 (F), this Court has subject jurisdiction over the claims asserted herein.
10. The incident out of which this suit arises occurred within the confines of Oklahoma County, State of Oklahoma.
11. This Honorable Court therefore, has Jurisdiction and Venue over the party litigants named herein.

### **III. FACTS**

12. Plaintiff hereby incorporate by reference 1-11 as though fully set forth herein.
13. On July 12<sup>th</sup>, 2016, Plaintiff presented to LSI with lumbar spine pain that had been changing and bringing more severe pain in his legs over the last few months. Michael Rinke talked with Jeffrey Martin, M.D. about the possibility of two surgeries—bilateral on the L4-5 and then the L5-S1 at a separate time. No attempts at conservative treatment were made and Michael was scheduled for surgery.
14. On July 15<sup>th</sup>, 2016, Dr. Martin operated on Michael and performed a bilateral L4-5 laminotomy, foraminotomy and decompression with medial facetectomy, discectomy and annuloplasty from a left approach.
15. Second surgery was scheduled for July 19<sup>th</sup>, 2016 but was postponed as Jeffrey Nees, M.D. was not feeling well. Surgery was postponed until the following day, July 20<sup>th</sup>, 2016.
16. On July 20<sup>th</sup>, 2016, Dr. Nees operated on Michael and performed a laminotomy and medial facetectomy on the left at L5-S1. Michael reported immediately that something was wrong and requested additional care but was denied.

17. On July 21<sup>st</sup>, 2016, Michael was released to go home prematurely after his second surgery.
18. From July 25<sup>th</sup>, 2016 through September 2016, Michael called LSI reporting difficulty, swelling, pain, and wound leakage. LSI failed to respond.
19. On September 12<sup>th</sup>, 2016, Michael returned to LSI to confer with Dr. Nees. Dr. Nees said Michael had a hip problem—not a back problem. Dr. Nees sent Michael to Northwest Community Hospital to get an MRI of Michael's back and then to Mercy Hospital for an x-ray of Michael's hip. Michael was told to come to LSI first thing the following morning.
20. On September 13<sup>th</sup>, 2016, Dr. Nees informed Michael that he had an infection in his back. Michael was sent to Community Hospital, a PICC line was put in, and Dr. Nees performed surgery.
21. On September 23<sup>rd</sup>, 2016, Michael Rinke was discharged to go home and went through months of difficult rehabilitation, antibiotic treatment, and suffered greatly.
22. As a result of Defendants' negligence, Michael was unable to care for his business and interests.
23. At all times relevant hereto, Plaintiff Pansy Rinke was married to Michael Rinke. Plaintiff's wife has suffered a loss of services and consortium and economic loss due to the injuries sustained by Michael Rinke by Defendants' negligence.
24. Further, as a result of the negligence of the Defendants, Plaintiff's have suffered severe and permanent injuries as well as emotional and mental trauma as well as significant past medical expenses plus future medical expenses, loss of consortium and economic loss.

#### **IV. FIRST CAUSE OF ACTION: INFORMED CONSENT**



25. Plaintiff hereby incorporate by reference 1-24 as though fully set forth herein.
26. Defendants owed a duty to Michael to notify him of all of the available treatment methods for his injuries and all relevant information to enable Michael to make an informed decision on whether to consent or reject the physician's proposed treatment or surgery.
27. This duty of disclosure includes advising a patient, when a proposed treatment or surgery involves a known risk of death or serious bodily harm, of the possibility of such outcome and explaining in understandable terms the complications that might occur. The disclosure shall include any alternatives to the proposed treatment or surgery and the risks of each, including the risk in foregoing all treatment or surgery.
28. The Defendants failed to properly inform Michael of alternatives to the proposed surgery, and the failure to do so denied Michael the ability to provide consent to the surgery on July 15<sup>th</sup>, 2016.

### **CAUSE OF ACTION**

#### **FIRST CLAIM FOR RELIEF – BREACH OF THE STANDARD OF CARE**

29. Pursuant to 12 O.S. § 2010 (B) and (C), Plaintiff hereby adopts by reference each and every allegation set forth in detail in 1-28.
30. Michael Rinke suffered injuries, previously described above.
31. The Defendants previously described herein, failed to adhere to the national standard of care in their treatment Mr. Rinke, and either did not possess or exercise that degree of knowledge, skill, care, and diligence possessed and exercised by physicians in their same field of practice.

32. Plaintiff's injuries could have been prevented and were the direct result of the aforementioned acts and omissions of Defendants.
33. The Plaintiff trusted and relied upon the professional opinions rendered by Defendants and followed Defendant's medical advice and treatment.
34. The conduct of Defendants constitutes breach of the standard of care a physician owes to a patient for which they are liable and for which Plaintiff is entitled to recover actual or compensatory damages.

WHEREFORE, premises considered, Plaintiff prays this Court grant him relief in the form of judgment against Defendants for actual and compensatory damages in excess of \$75,000.00, assess exemplary or punitive damages in an amount to be determined by a jury which is commensurate with Defendant's financial status and sufficient to punish and make an example of them, as well as, to deter others similarly situated from like behavior, award attorney's fees and costs, accruing interest and any just further relief as this Court deems equitable and just.

#### **SECOND CLAIM FOR RELIEF – VICARIOUS LIABILITY**


35. Pursuant to 12 O.S. § 2010 (B) and (C), Plaintiff hereby adopts by reference each and every allegation set forth in detail in 1-34.
36. At all times relevant to this action, Jeffrey Martin, M.D., was an employee/agent of Laser Spine Institute, LLC, and was acting within the scope of his employment.
37. At all times relevant to this action, Jeffrey P. Nees, M.D., was an employee/agent of Laser Spine Institute, LLC, and was acting within the scope of his employment.
38. Laser Spine Institute, LLC, as an employer of Dr. Martin and Dr. Nees, is vicariously liable for their acts of negligence against Michael Rinke.

39. At all times relevant to this action, Laser Spine Institute, LLC, was responsible for the actions of their employees/agents who were acting within the scope of their employment.

WHEREFORE, premises considered, Plaintiff prays this Court grant him relief in the form of judgment against Defendants for actual and compensatory damages in excess of \$75,000.00, assess exemplary or punitive damages in an amount to be determined by a jury which is commensurate with Defendant's financial status and sufficient to punish and make an example of them, as well as, to deter others similarly situated from like behavior, award attorney's fees and costs, accruing interest and any just further relief as this Court deems equitable and just.

Respectfully submitted,

LaCourse Law, PLLC



---

Joel A. LaCourse, OBA #17082  
715 S. Elgin Ave  
Tulsa, OK 74120  
Telephone: (918) 744-7100  
Facsimile: (918) 477-2299  
*Attorney for Plaintiff*

*JURY TRIAL DEMANDED  
ATTORNEY LIEN CLAIMED*

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC <sup>1</sup>	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

---

**ORDER SUSTAINING OBJECTION TO CLAIMS OF JEFFREY P. NEES, M.D.**

---

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases (collectively, the “**Assignment Cases**” or the “**Assignment Estates**”) of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, the “**Assignors**”).

THESE CASES came on for hearing on \_\_\_\_\_ upon the Objection to Claims of Jeffrey P. Nees, M.D. (the “**Objection**”). The Objection seeks to disallow the Nees Claims<sup>2</sup>. The Court, having considered the Objection, and being fully advised of the record, finds that the Objection should be sustained. Accordingly, it is

**ORDERED:**

1. The Objection is sustained.
2. The Nees Claims are disallowed.

DONE AND ORDERED in Hillsborough County, Florida this \_\_\_\_\_ day of January, 2024.

---

DARREN FARFANTE  
Circuit Court Judge

Copy to: Counsel of record

---

<sup>2</sup> Capitalized claims not defined in the Order shall have the meaning set forth in the Objection.