

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (“AGREEMENT”) is made this ___ day of _____, 20___ (“**Effective Date**”) by and between **MITCHELL FINEMAN, M.D., LLC**, a Pennsylvania professional company (“**Consultant**”) and _____, a _____ (“**Attorney**”) in reference to _____ vs. _____

_(the “**Matter**”). Consultant and Attorney are hereafter sometimes collectively referred to as the “**Parties**” and individually as a “**Party**.”

BACKGROUND

WHEREAS, Attorney engages **MITCHELL FINEMAN, M.D. (“Fineman”)**, a duly licensed physician in the Commonwealth of Pennsylvania and the State of New Jersey, Board Certified in Ophthalmology, to review medical records, render medical opinions and testify at Daubert Hearings, depositions, conferences, and trial (collectively, “**Appearances**”) in reference to litigation and potential litigation in which ophthalmological medical services (“**OMS**”) are an issue (collectively, the “**Consulting Services**”); and

WHEREAS, Attorney desires to engage Consultant to render the Consulting Services in reference to the Matter subject to the provisions herein.

NOW, THEREFORE, for and in consideration set forth above, the sufficiency of which is hereby acknowledged, and with the intent to be legally bound, the parties hereby agree as follows:

1. Fee For Consulting Services:

- (a) (i) Upon execution of this Agreement, Attorney will pay Consultant the Minimum Fee set forth in Exhibit “A” before Consultant begins to render the Consulting Services
- (ii) The Minimum Fee is non-refundable notwithstanding the number of Hours (defined hereafter) expended by Consultant for the Matter.
- (b) (i) The number of hours the Consultant renders the Consulting Services (the “**Review Hours**”) plus the number of hours that Consultant, at the request of Attorney, suspends the rendering of OMS to patients of the medical practice where Fineman renders OMS to patients (the “**Appearance Hours**”) are collectively referred to as the “**Hours**.”
- (ii) The Hours expended by Consultant are charged by the Consultant in quarter-hour increments.
- (iii) The Hourly Rate for the Hours is set forth on Exhibit “A” attached hereto and made a part hereof.
- (iv) For all Hours expended more than one (1) year after the Effective Date the Hourly Rate for each year following the 1st year after the Effective Date will increase by five (5%) percent from the Hourly Rate for the preceding year.
- (v) The Hours multiplied by the Hourly Rate set forth on Exhibit “A” is the Fee due Consultant for the Hours.
- (c) (i) From time to time, Consultant will send written notice to Attorney that an additional Fee is due Consultant before Consultant expends additional Hours for this Matter (a “**Retainer**”).
- (ii) Consultant will not be obligated to expend additional Hours until receipt of the Retainer.
- (d) Any Fee due Consultant from Attorney that has not been paid in advance by the Minimum Fee or Retainer shall be due and payable to Consultant not later than ten (10) business days after written notice from Consultant to Attorney for the Retainer (the “**Fee Due Date**”).

2. Expenses:

- (a) Attorney shall pay Consultant, in addition to the Fee, those sums paid or reasonably anticipated to be required to be paid, to third parties by Consultant reasonably required by Consultant to expend Hours for the Matter including, but not limited to, travel and accommodations (collectively, the “**CS Expenses**”).
- (b) The CS Expenses due Consultant shall be paid within ten (10) business days after written notice from Consultant to Attorney of the CS Expenses (the “**CS Expenses Due Date**”).

3. Interest On Unpaid Fee & CS Expenses:

If any Fee and CS Service Expenses (collectively “**Compensation**”) remain unpaid after the Fee Due Date or the CS Expenses Due Date (collectively, the “**Due Dates**”), Consultant will be due interest on the outstanding Compensation until paid in full at an interest rate that is three (3%) percent per annum above *The Wall Street Journal* Prime Rate as of the Due Date but in no event less than six (6%) percent nor more than twelve (12%) percent per annum (the “**Interest Rate**”).

4. Scheduling Consulting Services:

Attorney acknowledges that Consultant engages Fineman to render the Consulting Services and Fineman is obligated to render OMS to patients of the medical practice on a full-time basis. Attorney acknowledges that Fineman’s obligation to timely render the OMS to patients of the medical practice takes precedence over the rendering of Hours for the Consultant and Attorney.

5. Termination:

- (a) Either Party may terminate this Agreement at any time for any reason or no reason.
- (b) Notwithstanding termination of this Agreement, Attorney will remain obligated to pay Consultant the Fee and CS Expenses incurred until date of termination.
- (c) Upon termination, any Retainer paid by Attorney to Consultant which is in excess of the Fee and CS Expenses owed by the Attorney to Consultant rendered through date of termination shall be refunded by Consultant to Attorney.

6. Cooperation & Records:

- (a) Attorney shall timely provide Consultant with all medical reports, pleadings, access to parties and other experts represented or engaged by Attorney in reference to the Matter.
- (b) Consultant may destroy any documents provided to Consultant in reference to the Matter after the earlier of: (i) written consent from Attorney; or (ii) ten (10) years after the Effective Date.
- (c) Attorney acknowledges that Consultant is not representing or warranting to the Attorney what the results of the Consulting Services will be, whether the Consulting Services are admissible in any legal proceedings regarding the Matter, and whether or not the Services will be helpful or harmful to the position of the Attorney and parties represented by Attorney in the Matter.

7. Confidentiality:

Except as required by law, Consultant shall not, disclose any of the information regarding the Matter other than to Attorney.

8. Arbitration:

- (a) ANY CONTROVERSY, DISPUTE, CLAIM, OR ALLEGED BREACH ARISING OUT OF, OR RELATING TO THIS AGREEMENT AND THE RELATIONSHIP OF PARTIES HERETO, WHETHER STATUTORY OR SOUNDING IN CONTRACT OR IN TORT, INCLUDING BUT NOT LIMITED TO, ANY DERIVATIVE SUIT, EXCEPTING ACTIONS WITH AN AMOUNT IN DISPUTE OF LESS THAN \$15,000.00, SHALL BE DETERMINED BY ONE ARBITRATOR CONDUCTING AN EXPEDITED COMMON LAW ARBITRATION HEARING IN PHILADELPHIA COUNTY, PA PURSUANT TO THE COMMERCIAL RULES OF THE JUDICIAL ARBITRATION & MEDIATION SERVICE (“**JAMS**”). THE ARBITRATOR SHALL BE CHOSEN BY JAMS UNLESS THE PARTIES TO THE DISPUTE AGREE IN WRITING

TO APPOINT AN ARBITRATOR IN LIEU OF HAVING THE ARBITRATOR APPOINTED BY JAMS. THE AWARD OF THE ARBITRATOR SHALL BE FINAL, BINDING, AND NON-APPEALABLE. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT OF LAW. EITHER PARTY MAY DEMAND ARBITRATION. THE FEES OF JAMS AND THE ARBITRATOR SHALL BE BORNE BY THE NON-PREVAILING PARTY AS DESIGNATED BY THE ARBITRATOR.

- (b) IF THERE IS A DISPUTE OVER THE SCOPE OF THIS ARBITRATION CLAUSE AND/OR WHAT ISSUES ARE TO BE ARBITRATED, SUCH DISPUTES REGARDING ARBITRABILITY ARE TO BE RESOLVED BY THE ARBITRATOR.

9. Miscellaneous:

(a) **Notices**

(i) All notices shall be written and sent by certified mail or commercial courier, postage prepaid, return receipt requested. Any written notice shall be deemed received on the date indicated on the return receipt or three (3) business days after the date on which the notice was sent, whichever is earlier.

(ii) All notices to Consultant shall be sent to 2312 Holly Lane, Lafayette Hill, PA 19444.

(iii) All notices to Attorney shall be sent to _____.

(b) **Waiver**

The waiver by either Party of a breach or violation of any provisions of Agreement shall not operate as or be construed to be a waiver of any such Party's rights with respect to any subsequent breach thereof.

(c) **Modifications and Amendments**

This Agreement may not be modified or amended other than by an agreement in writing signed by both Parties.

(d) **Severability**

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

(e) **Binding**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

(f) **Assignment**

Neither Party may assign this Agreement without the prior written consent of the other Party.

(g) **Provisions Separable**

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

(h) **Time**

Time is of the essence for all date, time periods, and required payments herein.

(i) **Jurisdiction And Venue**

(i) THIS AGREEMENT IS GOVERNED HEREAFTER BY PENNSYLVANIA LAW.

(ii) FOR ANY DISPUTE OR ACTION NOT SUBJECT TO ARBITRATION BETWEEN THE PARTIES, EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY:

(A) SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE COURTS OF PHILADELPHIA COUNTY, PENNSYLVANIA;

(B) WAIVES ANY RIGHT TO A TRIAL BY JURY OR TO A CHANGE IN VENUE OR JURISDICTION FOR ANY DISPUTE; AND

(C) AGREES THAT SERVICE OF PROCESS MAY BE MADE IN THE SAME MANNER AS NOTICES

(j) **Legal Fees And Costs**

THE REASONABLE LEGAL FEES, COSTS, AND EXPENSES OF THE PREVAILING PARTY IN ANY LITIGATION AND ARBITRATION SHALL BE REIMBURSED BY THE NON-PREVAILING PARTY WITH THE COURT AND/OR ARBITRATOR DETERMINING THE AMOUNT OF ANY SUCH REIMBURSEMENT AND WHICH PARTY IS THE PREVAILING PARTY.

(k) **Counterparts And Facsimile**

(i) This Agreement may be executed in one or more counterparts.

(ii) A facsimile signature shall have the same legal effect as an original signature.

(l) **Entire Agreement**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective on the Effective Date.

CONSULTANT:

ATTORNEY:

By: _____
Mitchell Fineman, M.D.
Manager

By: _____
Name: _____
Title: _____

EXHIBIT "A"- PROFESSIONAL FEES FOR SERVICES

| | SERVICE RENDERED | |
|----|---|-------------|
| 1. | Hourly Fee (Review of Records, Telephone Consultation) | \$750.00 |
| 2. | Retainer for Review of Records \$750/hour | \$3,000.00 |
| 3. | Retainer for Deposition (4 hours or less)* | \$4,000.00 |
| 4. | Retainer for Court Testimony, Half Day (4 hours or less)* | \$5,000.00 |
| 5. | Retainer for Court Testimony, Full Day (up to 8 hours)* | \$10,000.00 |

*If scheduled court testimony or deposition is canceled more than four weeks in advance, the fee will be returned. If canceled more than two weeks but less than four weeks in advance, one-half of the fee will be returned. If canceled or rescheduled by you within two weeks of the originally scheduled appointment, the fee will not be reimbursed or applied to the fee for court testimony or deposition that ultimately take place.

CONSULTANT:

By: _____
 Name: Mitchell Fineman, M.D.
 Title: Manager
 Date: _____

ATTORNEY:

By: _____
 Name: _____
 Title: _____
 Date: _____