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Final Order No. DOH-01-1207-DS-MQA
FILED DATE - 7/24/01
Department of Health
By: _____
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY
STATEMENT OF
HOWARD TEE, M.D.
_____/

FINAL ORDER

The Board of Medicine considered the Petition for Declaratory Statement filed on behalf of Howard Tee, M.D., at a duly-noticed meeting held on February 3, 2001, in Tampa, Florida, and determined that the petition should be denied. A Petition to Intervene was filed on behalf of Arthur L. Glaser, M.D., and Gold, Vann & White, P.A.

Upon consideration of the petition, and the rules cited by petitioner, the Board determined that a response to the petition was not appropriate on the grounds that the purpose for a petition for declaratory statement is to permit licensees to seek advice about proposed action. In this case, Petitioner had participated in the contract at issue since 1997. The legality of the contract is at issue in Gold, Vann & White, P.A. v. Allen P. Friedenstab, M.D., Case No. 98-0472CA22.

Therefore, the Board of Medicine declines to issue a declaratory statement in response to the petition, and the petition is dismissed.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 26th day of June, 2001.

BOARD OF MEDICINE

Tanya Williams, Board Director
for Gaston Acosta-Rua, M.D., Chair

NOTICE TO PARTIES

Pursuant to Section 120.569, Florida Statutes, petitioner is hereby notified that he may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and one copy of a notice of appeal and the filing fee with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to Howard Tee, M.D., c/o Robert Rappel, D.O., J.D., Craig M. Rappel, Esquire, Richard B. Wingate, Esquire, Rappel & Rappel, P.A., 5070 Highway A1A North, Suite 221, Oak Point Professional Center, Vero Beach, Florida 32963-1216, this ____ day of _____, 2001.

_____

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AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to **Howard Tee, M.D.,** 1485 37th. St., Ste. 101, Vero Beach FL 33960,, **Robert Rappel, D.O., J.D., Craig M. Rappel, Esq., and Richard B. Wingate, Esq.,** 5070 Highway A1A North, Ste. 221, Vero Bch FL 32963-1216, and interoffice delivery to at or before 5:00 p.m., this 24th day of July, 2001.

Sandra Jordan

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

IN RE:

Petition for Declaratory
Statement of
Howard Tee, M.D.

_____/

PETITION FOR DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes, Petitioner, HOWARD TEE, M.D. (the "Petitioner"), by and through undersigned counsel, petitions the Board of Medicine for a Declaratory Statement and states:

1. The Petitioner is Howard Tee, M.D. For purposes of this Petition, Petitioner's address is that of undersigned counsel.

2. The governmental entity affected by this Petition is the Department of Health, Board of Medicine (the "Board"). The statutory provisions on which this Declaratory Statement is sought are Sections 458.331(1)(g), 458.331(1)(i) and 817.505, Florida Statutes.

3. Petitioner's multi-specialty group medical practice (the "Practice") entered into and participated in a long-term Management Services Agreement and an Amended Management Services Agreement (collectively the "Management Agreement"), with a practice management company (the

"Company"). (attached as Exhibit "B", Page 1) The Practice consists of approximately forty-four (44) multi-specialty physicians.

4. The Petitioner entered into a non-shareholder employment agreement on November 19, 1996; however, the Petitioner did not actually begin employment until February 1, 1997. The Petitioner became a shareholder of the Practice on July 8, 1998, effective February 1, 1998 and entered into a Stockholder Employment Agreement ("Employment Agreement") (attached as Exhibit "C", Page 1), during said participation in the Management Agreement. The Employment Agreement incorporated the Management Agreement by reference. During the formulation of the Employment Agreement, the Petitioner requested but never received a copy of the Management Agreement.

5. On or about August 2000, the Petitioner became aware mainly through outside sources that the Management Agreement entered into by the Practice may subject the Petitioner to disciplinary action by the Board of Medicine. In addition, the Petitioner obtained a copy of a July 17, 2000 Advisory Bulletin from the Florida Medical Association (attached as Exhibit "A"). The Petitioner, concerned with his reimbursement arrangement and the possible issue of a "split-fee" arrangement with the Company discussed the concerns of the arrangement with the Practice Executive Director. The Petitioner again requested a copy of the Management Agreement and his request was again denied. On September 5, 2000, the Petitioner sought legal counsel. Approximately two weeks after seeking legal counsel, the Petitioner came into

possession of a copy of the Management Agreement from a fellow Practice physician.

6. The Transaction Documents, which includes the Management Agreement (attached as Exhibit "B") and the Employment Agreement - Stockholder (attached as Exhibit "C") contains the following relevant provisions:

a. The Company is the sole and exclusive agent for the administration and management of the Practice. (B, Page 11) The Company is required to provide certain management services, including, but not limited to, practice expansion and increasing profits and revenues through advertising, coordinating managed care relationships (B, Page 13, 5.5(h)), patient fee schedules, strategic planning, ancillary services to which the Practice's physicians may refer and other management services.(B, Page 8-10, Article 4 and 5.1) The Company determines the amount of capital to be invested annually (emphasis added) in the Practice and specifically controls the profit margin (emphasis added) for the Practice. Moreover, the Company determines the form of capital to be invested. (B, Page 11, 5.2)

b. Other management services include the establishment and maintenance of credit, billing and collection policies and procedures, advise and consult with Practice regarding the

fees for Professional Services provided by the Practice, provide all services relating to the billing of patients, insurance companies and other third party payors on behalf of the Practice and other management services as requested by the Practice. Additionally, the Company designs, supervises and maintains custody of all files and records, which relate to the operation of the Practice, including but not limited to accounting, billing, patient medical records and collection records. (B, Page 12, 5.5(b))

c. The Company established and is administering accounting procedures, controls and systems to provide financial records and books of account relating to the operation of the Practice. All financial affairs are prepared and maintained in accordance with the Companies routine accounting practices. Additionally, the Company established, maintains and monitors procedures and policies for the timely filing and retrieval of all medical records generated by the Practice. (B, Page 13, 5.5 (f))

d. The Company also provides certain operational services to the Practice, including the employment of personnel, administration and support in addition to providing the facilities, equipment and supplies as an agent for the

Practice. (B, Page 13, 5.5(d), Page 14, 5.7)

e. The Company controls all advertising, other marketing services and public relations, the cost of which is included in the Practice expenses. (B, Page 9, 4.2.3; Page 10, 5.1)

f. In addition to the reimbursement of advertising and marketing, the Practice must reimburse the Company for Practice expenses ("Expenses") and a Service Fee. First, the Practice must reimburse the Expenses, which consists essentially of all direct and indirect expenses incurred by the Company in the provision of the management and operational services to the Practice. The Expenses also include all salaries, benefits and other direct costs of all employees, with the exception of Technical Employees, which are the responsibility of the Company, and other employees, who are not professional employees, of the Practice at the clinic. (B, Page 20, 8.1(a)) Second, the Practice must pay the Company a monthly Service Fee, which is a percentage of the Net Practice Revenues equal to twelve percent (12%) for the term of the Agreement. (B, Page 20, 8.1(b)) The Practice's net income includes all income derived from the revenues generated by or on behalf of the Practice or its physicians as a direct result of

professional medical services furnished to patients, ancillary services provided to patients, pharmaceuticals and other medical supplies sold to patients and other fees or income generated in an inpatient or outpatient setting, regardless of the source, less Clinic expenses.(B, Page 20, 8.1(b) Additionally, there is a Managed Care Service Fee of twenty-five percent (25%) of all additional Managed Care payments plus, should an Independent Practice Association ("IPA") be established for the Practice, an additional management fee will be provided to the management organization.(B, Page 15, 16, 5.12(a),(b)) Thus, the Service Fee distribution is a direct percentage of the total profits generated by the Practice, which includes all profits generated as a result of the Company's marketing and management efforts, supported totally from all sources of the Practice's physician's revenues.

7. Section 458.331(1), Florida Statutes sets forth a list of acts or omissions for which the Board of Medicine may take disciplinary action against a physician's license. More specifically, the list includes Section 458.331(1)(i), which prohibits "[p]aying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for

patients referred to providers of health care goods and services . . ." Petitioner is concerned that the arrangement provided for in the Management Agreement violates this prohibition, i.e., the percentage payment is not related to the cost of management services provided (the Management Agreement requires the Company's direct cost for the management expenses and Expenses to be compensated from the top of the revenues) and that the Service Fee covers a percentage of the revenues from all services, whether performed inside the physician's clinic or in a hospital, particularly in light of the Board of Medicine's decision in *In Re: Bakarania*, 20 FALR 395 (1998), *aff'd without opinion*, 737 So.2d 588 (Fla. 1st DCA 1999). In *In Re: Bakarania*, the Board of Medicine's decision concerned a group of physicians who were to pay management fees from the group's revenues to a management company that had no correlation to the actual cost of providing management services and appeared to be provided simply to compensate the management company for management services intended to develop more "patient referrals" for the group. The present Management Agreement contains similar terms similar to those described by the Final Order of the Board of Medicine. Moreover, the Company adopted the statement of the case and facts provided by Phymatrix before the First District Court of Appeal.

7. Section 458.331(1)(g), Florida Statutes, states that a physician may be disciplined for "[f]ailing to perform any statutory or legal obligation placed upon a licensed physician." Petitioner is concerned that he is subject to discipline by

the Board of Medicine for the failure to perform a statutory obligation placed upon him by engaging in a split-fee arrangement with the Company.

8. In light of the statutory prohibitions against fee-splitting and the *In Re: Bakarania* Decision, Petitioner requests that the Board of Medicine issue a Declaratory Statement advising the Petitioner as to whether he is subject to discipline for participating in and continuing to participate in the Management Agreement.

Respectfully submitted,

Robert Rappel, D.O., J.D.
Florida Bar No.:0015156
Craig M. Rappel, Esquire
Florida Bar No.: 0752428
Richard B. Wingate, Esquire
Florida Bar No.:0383686
RAPPEL & RAPPEL, P.A.
5070 Highway A1A, North
Suite 221
Oak Point Professional Center
Vero Beach, Florida 32963-1216
(561) 231-7223
(561) 231-8824 (fax)
e-mail: rappellaw@pdmnet.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one (1) copy of the foregoing Petition for Declaratory Statement has been served via United States First Class Certified Mail, Return Receipt Requested, Postage Prepaid, upon: State of Florida, Department of Health, Program Administrators Office, 4052 Bald Cypress Way, BIN-CO3, Tallahassee, Florida 32399-3253 (Receipt Number: 7000-0520-0025-5697-0323), and to the Office of Attorney General, Collins Building, Room 324, Tallahassee, Florida 32308 (Receipt Number: 7000-0520-0025-5697-0316), this 9th day of November, 2000.

Robert Rappel, D.O., J.D.

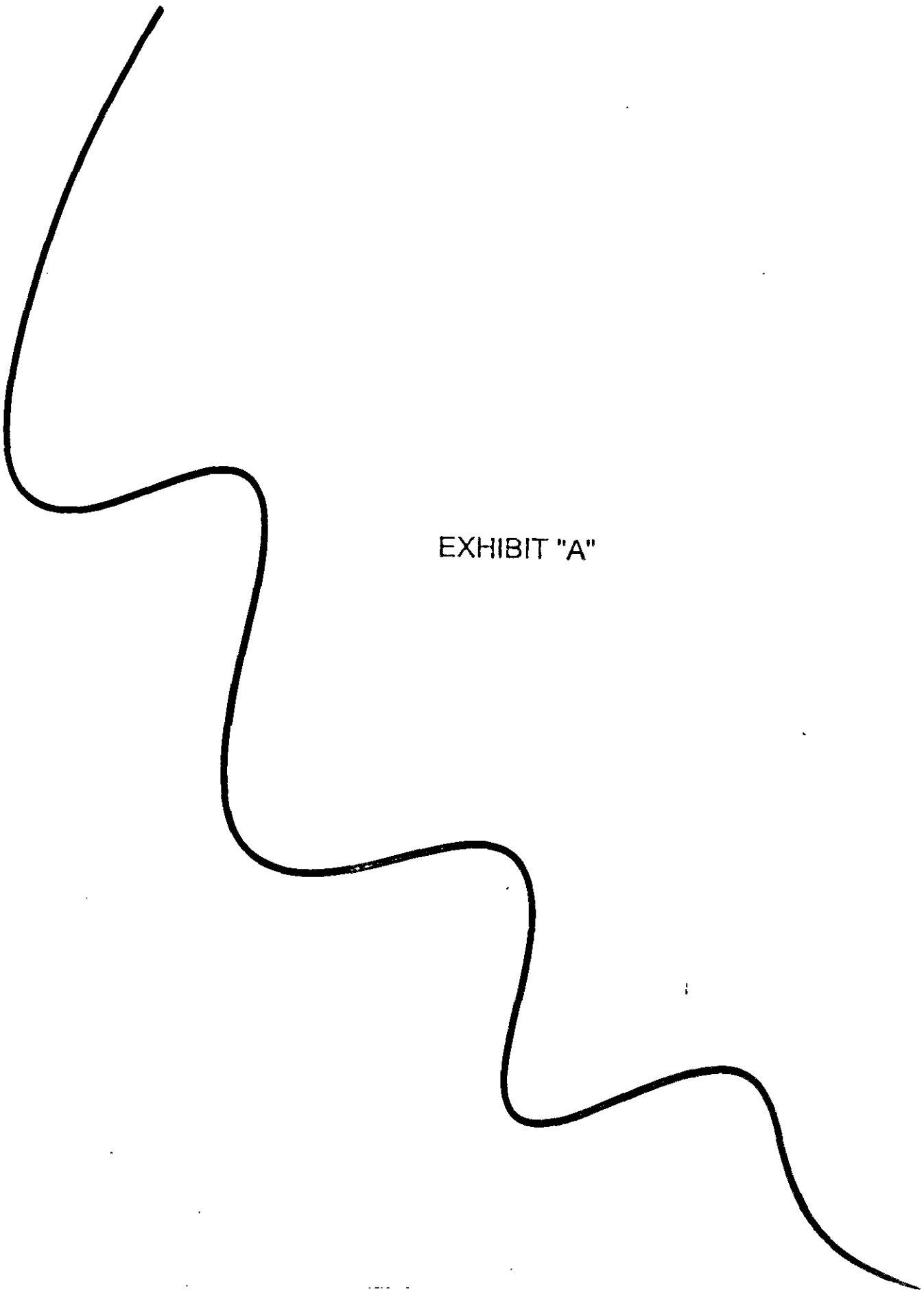

EXHIBIT "A"

Florida Medical Association
Advisory Bulletin

LAWS REGARDING SPLIT FEE AND SELF REFERRALS

- The laws and rules prohibiting self-referrals and split fees are complicated and include both Florida and Federal regulations. Any physician concerned with a reimbursement arrangement should contact an attorney who specializes in the area of health law. Below is a list of the relevant statutes:
  (Florida Statutes can be obtained at www.leg.state.fl.us. Federal statutes and regulations can be obtained at www.hcfa.gov/regs/default.htm)

  - Section 456.054, Florida Statutes (was 455.657) - prohibits a health care professional from paying or receiving kickbacks in exchange for referrals.

  - Section 456.053, Florida Statutes (was 455.654) - "Patient Self-Referral Act" - prohibits the referral of patients to an entity in which the health care provider has an interest. There are exceptions set forth in the statute.

  - Section 458.327(2)(c), Florida Statutes - sets forth criminal penalties for making a self-referral.

  - Section 458.331(1)(i), Florida Statutes - provides for discipline by the Board of Medicine for physicians who accept kick-backs or engage in a split fee arrangement.

  - 42 U.S.C. 1395nn, United States Code - "Stark Laws" - Federal prohibition on referring patients to an entity in which the health care provider has an interest. There are exceptions, known as safe harbors, which are set forth in the regulations.

  The Board of Medicine has issued several declaratory statements on this issue. The most important is *In Re: The Petition for Declaratory Statement of Magan L. Bakarania, M.D.* Copies of declaratory statements may be obtained by contacting the Attorney General's Office at 850-414-3300.

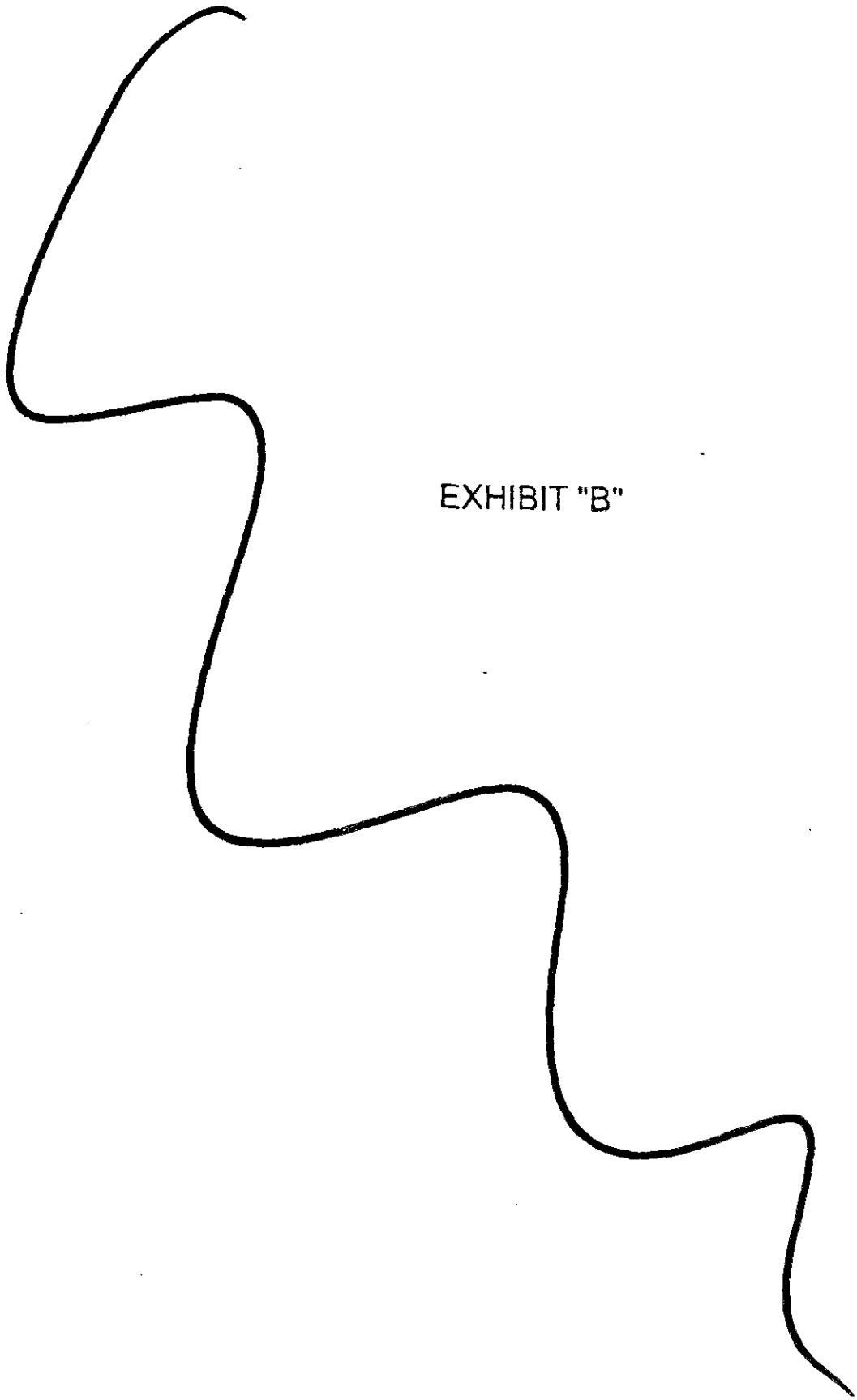

EXHIBIT "B"

PHYCOR OF VERO BEACH, INC.

AMENDED AND RESTATED
SERVICE AGREEMENT

PHYCOR OF VERO BEACH, INC.

AMENDED AND RESTATED
SERVICE AGREEMENT

THIS AMENDED AND RESTATED SERVICE AGREEMENT dated as of January 1, 1997, by and between PHYCOR OF VERO BEACH, INC., a Florida corporation ("PhyCor") and GOLD, VANN & WHITE, P.A., a Florida professional association ("GVW").

RECITALS:

WHEREAS, GVW is a multi-specialty group medical practice in the Vero Beach, Florida area which provides comprehensive professional medical care to the general public;

WHEREAS, PhyCor is in the business of managing medical clinics, and providing support services to and furnishing medical practices with the necessary facilities, equipment, personnel, supplies and support staff;

WHEREAS, GVW desires to obtain the services of PhyCor in performing such management functions so as to permit GVW to devote its efforts on a concentrated and continuous basis to the rendering of medical services to its patients;

WHEREAS, effective January 1, 1989, PhyCor purchased certain assets and assumed certain liabilities of GVW pursuant to the terms of an Asset Purchase Agreement, and PhyCor and GVW entered into a Service Agreement providing for PhyCor to provide certain services to GVW; and

WHEREAS, effective January 1, 1992, PhyCor and GVW amended and restated the Service Agreement;

WHEREAS, PhyCor and GVW each deem it necessary and advisable to amend certain provisions of the Service Agreement and to restate the terms and provisions of the Service Agreement as amended;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Service Agreement is amended and restated as follows and GVW hereby agrees to purchase the management and support services herein described and PhyCor agrees to provide such services on the terms and conditions provided in this Agreement.

ARTICLE 1.

RELATIONSHIP OF THE PARTIES

1.1. Independent Relationship. GVW and PhyCor intend to act and perform as independent contractors and the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the parties. Notwithstanding the authority granted to PhyCor herein, PhyCor and GVW agree that GVW shall retain the authority to direct the medical, professional, and ethical aspects of its medical practice. Each party shall be solely responsible for and shall comply with all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment related statutes applicable to that party.

1.2. Responsibilities of the Parties. As more specifically set forth herein, PhyCor shall provide GVW with offices and facilities, equipment, supplies, support personnel, and management and financial advisory services. As more specifically set forth herein, GVW shall be responsible for the recruitment and hiring of physicians and all issues related to medical practice patterns and documentation thereof. Notwithstanding anything herein to the contrary, any clinical laboratory shall be operated in full compliance with Section 6204 of the Omnibus Budget Reconciliation Act of 1989.

1.3. GVW's Matters. As more specifically set forth herein, matters involving the internal agreements and finances of GVW, including the distribution of professional fee income among the individual Physician Employees and Physician Stockholders (as hereinafter defined), shall remain the sole responsibility of GVW and the individual Physician Employees and Physician Stockholders.

1.4. Patient Referrals. The parties agree that the benefits to GVW hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral or any other arrangement for the provision of any item or service offered by PhyCor to any of GVW's patients in any facility or laboratory operated by PhyCor independently of GVW.

ARTICLE 2.

DEFINITIONS

2.1. Definitions. For the purposes of this Agreement, the following definitions shall apply:

2.1.1. "Additional Managed Care Payments" shall mean (i) all fees and revenues recorded by or on behalf of GVW or PhyCor for profits from the assumption of

institutional or professional risk in managed care risk assumption arrangements or otherwise, including bonus, incentive and surplus payments from capitated services, and (ii) dividends and distributions resulting from an ownership interest by PhyCor and/or GVW in a managed care entity, but excluding Capitation Revenues.

2.1.2. "Adjustments" shall mean any adjustments for uncollectible accounts, discounts, Medicare and Medicaid disallowances, worker's compensation, employee/dependent healthcare benefit programs, professional courtesies and other activities that do not generate a collectible fee.

2.1.3. An "Affiliate" of a corporation means (a) any person or entity directly or indirectly controlled by such corporation, (b) any person or entity directly or indirectly controlling such corporation, (c) any subsidiary of such corporation if the corporation has a fifty percent (50%) or greater ownership interest in the subsidiary, or (d) such corporation's parent corporation if the parent has a fifty percent (50%) or greater ownership interest in the corporation. For purposes of this Section 2.1.3., GVW is not an affiliate of PhyCor.

2.1.4. "Ancillary and Other Revenues" shall mean all fees or revenues actually recorded each month (net of Adjustments) by or on behalf of GVW or PhyCor which are not Physician Services Revenues or Capitation Revenues, including global and technical fees from medical ancillary services, and fees for medical management and utilization, and other distributions to GVW from health care related investments, and including any interest, investment, rental or similar payments or income made or payable to GVW, but excluding rental income on any leases or subleases between PhyCor and GVW, and any investment income on proceeds under the Asset Purchase Agreement.

2.1.5. "Capitation Revenues" shall mean all payments from managed care organizations, such as Blue Cross Health Option, where payment is made periodically on a per member basis for the partial or total medical care needs of a patient, co-payments and all HMO incentive payments including hospital incentive payments (unless such HMO payment or hospital incentive payment is an Additional Managed Care Payment), but excluding Additional Managed Care Payments.

2.1.6. "Clinic" shall mean facilities, including satellite locations, related businesses and all medical group business operations of PhyCor, which are utilized by GVW.

2.1.7. "Clinic Expenses" shall mean all operating and non-operating expenses incurred in the operation of the Clinic, including, without limitation:

(a) salaries, benefits (including contributions under pension and profit-sharing plans) and other direct costs of all employees of PhyCor at the Clinic, and Technical Employees (but excluding all other Physician Employees),

(b) obligations of PhyCor or Parent under leases or subleases provided for herein and relating to the operations of PhyCor or the GVW Clinic,

(c) personal property and intangible taxes assessed against PhyCor's assets commencing on the date of this Agreement and including those taxed on accounts receivable purchased pursuant to Section 8.2 hereof,

(d) interest expense on indebtedness incurred by PhyCor or Parent to finance any of its obligations hereunder or services or services provided hereunder and interest expenses on indebtedness incurred to finance transactions described in Section (g) below occurring after January 1, 1997 (interest expense will be charged for funds borrowed from outside sources as well as from Parent or Parent's finance subsidiary; in the latter case, charges will be computed at a floating rate that is equal to the current blended borrowing rate in effect for actual and available outside borrowings of Parent or its finance subsidiary; and such rate will be computed as the sum of interest and related costs divided by the related total of all borrowings),

(e) malpractice insurance expenses,

(f) other expenses incurred by PhyCor in carrying out its obligations under this Agreement,

(g) In the event after the date of the execution of this Amended and Restated Service Agreement, an opportunity arises for additional physicians in the service area of GVW to become employed by or merge with GVW, and in the event such merger is completed, amortization of intangible asset value as a result of each such merger, provided, however, the first $1,000,000 in aggregate intangible asset value for the foregoing

acquisitions shall not be a Clinic Expense but shall be a PhyCor expense;

(h) the write-off of any asset or any portion thereof on the balance sheet of PhyCor as of January 1, 1997 or incurred thereafter; and

(i) the salaries and benefits of that number of Physician Extender Employees which equal 15% of the total number of providers employed by GVW, however, once the 15% level is reached, the salaries and benefits of all other Physician Extender Employees shall be an expense of GVW.

"Clinic Expenses" shall not include:

(A) any corporate overhead charges (other than interest expense identified above), from the Parent or any corporation affiliated with the Parent,

(B) any federal or state income taxes,

(C) any expenses which are expressly designated herein as expenses or responsibilities of GVW,

(D) any amortization expense resulting from the amortization of "clinic service agreement" on the books of PhyCor relating to the execution of this Agreement,

(E) interest expense on indebtedness incurred by PhyCor or Parent to finance the purchase price paid or withheld at Closing under the Asset Purchase Agreement or the refinancing of any liabilities assumed under the Asset Purchase Agreement, and

(F) amortization of intangible asset value incurred as a result of, and interest expense incurred in connection with, each merger of the type described in section (g) above occurring prior to January 1, 1997, and amortization of intangible asset value incurred as a result of the first $1,000,000 in the aggregate of intangible assets value from transactions occurring thereafter.

2.1.8. "GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and

statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity or other practices and procedures as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination. For purposes of this Agreement, GAAP shall be applied in a manner consistent with the historic practices used by PhyCor or Parent.

2.1.9. "Net Clinic Revenues" shall mean the sum of Ancillary and Other Revenues, Physician Services Revenues and Capitation Revenues. In no event shall Additional Managed Care Payments be included in Net Clinic Revenues.

2.1.10. "Opening Balance Sheet" shall mean the balance sheet of PhyCor as of January 1, 1989:

(a) prepared in accordance with GAAP (except for the absence of certain note information), and

(b) substantially in the form of the attached Exhibit 2.1.13 subject to adjustments in the Purchase Price (as defined in the Asset Purchase Agreement of even date herewith (the "Asset Purchase Agreement") between GVW and Parent pursuant to Section 1.4 of the Asset Purchase Agreement).

2.1.11. "Parent" shall mean PhyCor, Inc., a Tennessee corporation, which is the sole shareholder of PhyCor.

2.1.12. "Physician Employees" shall mean only those individuals who are employees of GVW or are otherwise under contract with GVW to provide professional services to Clinic patients and are duly licensed to provide professional medical services in the State of Florida and Technical Employees. Such definition shall include both shareholders and employees of GVW. Physicians whose services are contracted for under independent contractor agreements or physician provider agreements under an independent practice association and who have not executed employment agreements with GVW shall not be considered Physician Employees.

2.1.13. "Physician Extender Employees" shall mean Nurse Anesthetists, Physician Assistants, Nurse Practitioners, Nurse Mid-Wives, Psychologists, and other such positions, who are employees of the Clinic, but excluding Technical Employees.

2.1.14. "Physician Services Revenues" shall mean all fees actually recorded each month (net of Adjustments) by or on behalf of GVW as a result of professional medical services personally furnished to patients by employees of GVW or other professionals under control of GVW and other fees or income generated in their capacity as professionals, whether rendered in an inpatient or outpatient setting.

2.1.15. "Physician Stockholders" shall mean those physicians who are stockholders of GVW.

2.1.16. "Policy Board" shall mean a six (6) member board established pursuant to Section 4.1. Except as otherwise provided, the act of a majority of the members of the Policy Board shall be the act of the Policy Board.

2.1.17. "Technical Employees" shall mean technicians who provide services in the diagnostic areas of GVW's practice, such as employees of the clinic laboratory, radiology technicians and cardiology technicians. All Technical Employees shall be Physician Employees.

ARTICLE 3.

FACILITIES TO BE PROVIDED BY PHYCOR

3.1. Facilities. PhyCor hereby agrees to provide to GVW offices and facilities for the practice of medicine (for purposes of this Section 3.1, the "facilities"), including but not limited to, all costs of repairs, maintenance and improvements, utility (telephone, electric, gas, water) expenses, normal janitorial services, refuse disposal and all other costs and expenses reasonably incurred in conducting operations in the Clinic during the term of this Agreement, including, but not limited to, related real or personal property lease cost payments and expenses, mortgage payments, taxes and insurance. PhyCor shall consult with GVW regarding the condition, use and needs for the offices, facilities and improvements. PhyCor shall maintain the facilities in keeping with the standards of high quality medical facilities.

Pursuant to the terms and conditions of a certain Lease Agreement dated June 21, 1993, between Healthcare Realty Trust, Incorporated, a Maryland corporation ("HRTI"), as landlord, and PhyCor, as lessee (the "HRTI Lease"), PhyCor is the tenant of certain real estate located in the City of Vero Beach, Indian River County, Florida, as more fully described in Exhibit 3.1 attached hereto (the "Property"), and as long as neither HRTI nor PhyCor is in default under the HRTI Lease and as long as

the HRTI Lease has not terminated, PhyCor agrees to provide to GVW the Property as facilities for the practice of medicine by the physicians in GVW. The HRTI Lease shall provide, subject to various terms and conditions therein, that GVW may sublease the Property upon the termination of this Agreement or lease the Property upon a default by PhyCor under the HRTI Lease. If GVW should elect to lease the Property upon such default, then, before the termination of the HRTI Lease and the surrender by PhyCor of the Property, GVW shall cure PhyCor's default and assume PhyCor's duties and obligations under the HRTI Lease in the form and manner set forth therein. Alternatively, if PhyCor should default under the HRTI Lease, GVW may give to PhyCor written notice to obtain new facilities in which GVW may practice medicine. If GVW elects to notify PhyCor to locate new facilities, PhyCor, upon receipt of such notice, shall promptly obtain facilities for GVW for the remaining term of this Agreement, which facilities shall be similar to or better than the present quality of the Property.

ARTICLE 4.

DUTIES OF THE POLICY BOARD

4.1. Formation and Operation of the Policy Board. The parties shall establish a Policy Board which shall be responsible for developing management and administrative policies for the overall operation of the Clinic. The Policy Board shall consist of six (6) members. PhyCor shall designate, in its sole discretion, three (3) members of the Policy Board. GVW shall designate, in its sole discretion, three (3) members of the Policy Board. The Chairman of the Policy Board shall be elected by a majority of the Policy Board. If the Executive Director is one of the PhyCor Policy Board members and the Policy Board proposes to discuss the status of the Executive Director, then the Executive Director should not vote and should excuse himself, leaving the room on all votes that affect the status of the Executive Director, and his vote shall be cast by the other PhyCor representatives so that at all times, PhyCor shall have three votes and GVW shall at all times have three votes.

4.2. Duties and Responsibilities of the Policy Board. The Policy Board shall have the following duties and obligations:

4.2.1. Capital Improvements and Expansion. Any renovation and expansion plans and capital equipment expenditures with respect to the Clinic shall be reviewed and approved periodically by at least four members of the Policy Board and shall be based upon economic

feasibility, physician support, productivity and then current market conditions.

4.2.2. Annual Budgets. All annual capital and operating budgets prepared by PhyCor, as set forth in Section 5.2, shall be subject to the periodic review, approval and amendment of the Policy Board by vote of four or more members.

4.2.3. Exceptions to Inclusion in Net Clinic Revenues. The exclusion of any revenue from Net Clinic Revenues, whether now or in the future, shall be subject to the approval of the Policy Board. Exhibit 4.2.3 sets forth exclusions approved as of the date hereof. Such amounts must be disclosed by the physician to GVW and by GVW to the Policy Board and the commitment and activities generating such amounts must not have a material adverse impact on the financial operations of GVW or the Clinic.

4.2.4. Advertising. All advertising and other marketing of the services performed at the Clinic shall be subject to the prior review and approval of the Policy Board.

4.2.5. Patient Fees. As a part of the annual operating budget, in consultation with GVW and PhyCor, the Policy Board, by vote of four or more members, shall review and adopt the fee schedule for all physician and ancillary services rendered by the Clinic. The Policy Board shall also approve PhyCor's determination of the collection policies.

4.2.6. Ancillary Services. The Policy Board shall select providers of ancillary services based upon the pricing, access to and quality of such services and shall determine which ancillary services will be provided.

4.2.7. Provider and Payor Relationships. Decisions regarding the establishment or maintenance of relationships with institutional health care providers and payors shall be made by vote of four or more members of the Policy Board in consultation with GVW.

4.2.8. Strategic Planning. The Policy Board shall develop long-term strategic planning objectives.

4.2.9. Capital Expenditures. The Policy Board shall determine the priority of major capital expenditures by a vote of four or more members.

4.2.10. Physician Hiring. After consultation with GVW, and subject to the provisions of Section 5.5(g), the

Policy Board shall determine the number and type of physicians required for the efficient operation of the Clinic. The approval of the Policy Board shall be required for any variations to the restrictive covenants in any physician employment contract.

4.2.11. Executive Director. The selection and retention of the Executive Director pursuant to Section 5.6 by PhyCor shall be subject to the reasonable approval of the Policy Board. If GVW is dissatisfied with the services provided by the Executive Director, GVW shall refer the matter to the Policy Board. PhyCor and the Policy Board shall each in good faith determine whether the performance of the Executive Director could be brought to acceptable levels through counsel and assistance, or whether the Executive Director should be terminated. If GVW continues to be dissatisfied with the Executive Director, GVW may submit a written request to the Policy Board for termination of the Executive Director, and a vote of four or more members of the Policy Board shall be required to retain the Executive Director.

4.2.12. Grievance Referrals. The Policy Board shall consider and make final decisions regarding grievances pertaining to matters not specifically addressed in this Agreement as referred to it by GVW's Board of Directors.

4.2.13. Medical Director/President. The Policy Board shall determine whether to fund a position of Medical Director/President and, if so, it shall be a Clinic Expense.

ARTICLE 5.

ADMINISTRATIVE SERVICES TO BE PROVIDED BY PHYCOR

5.1. Performance of Management Functions. PhyCor shall provide or arrange for the services set forth in this Article 5, the cost of all of which shall be included in Clinic Expenses. PhyCor is hereby expressly authorized to perform its services hereunder in whatever manner it deems reasonably appropriate to meet the day-to-day requirements of Clinic operations in accordance with the general standards approved by the Policy Board, including, without limitation, performance of some of the business office functions at locations other than the Clinic. GVW will not act in a manner which would prevent PhyCor from efficiently managing the day-to-day operations of the Clinic in a business-like manner.

5.2. Financial Planning and Goals. PhyCor shall prepare annual capital and operating budgets reflecting in reasonable detail anticipated revenues and expenses, sources and uses of capital for growth in GVW's practice and medical services rendered at the Clinic. Said budgets shall be presented to the Policy Board at least thirty (30) days prior to the end of the preceding fiscal year. Subject to the obligations set forth in this Section 5.2 and the approvals of the Policy Board required by Article 4, PhyCor shall determine the amount of capital to be invested annually in the Clinic and shall specify the targeted profit margin for the Clinic which shall be reflected in the overall budget. PhyCor shall determine the form of capital to be invested.

5.3. Audits and Statements. PhyCor shall furnish to GVW monthly and annual income statements and balance sheets reflecting the financial status of clinic operations. Such reports shall be furnished as soon as practical following the end of such period of business. GVW shall have the right to audit PhyCor's financial records pertaining to billings, charges, collections and payments at reasonable intervals at GVW expense.

5.4. Inventory and Supplies. PhyCor shall order and purchase all reasonable and requested medical and office inventory and supplies required in the day to day operation of the medical practice of GVW to provide quality services. PhyCor's purchasing standards shall apply to inventory or supply purchases.

5.5. Management Services and Administration.

(a) GVW hereby appoints PhyCor as its sole and exclusive manager and administrator of all day-to-day business functions. GVW agrees that the purpose and intent of this Service Agreement is to relieve the Physician Stockholders and Physician Employees to the maximum extent possible of the administrative, accounting, personnel and business aspects of its practice, with PhyCor assuming responsibility and being given all necessary authority to perform these functions. PhyCor agrees that GVW and only GVW will perform the medical functions of its practice. PhyCor will have no authority, directly or indirectly, to perform, and will not perform, any medical function. PhyCor may, however, advise GVW as to the relationship between its performance of medical functions and the overall administrative and business functioning of its practice. To the extent that they assist GVW in performing medical functions, all clinical personnel performing patient care services obtained and provided by PhyCor shall be subject to the professional direction and supervision of GVW and, in the performance of such medical functions, shall not be subject to any direction or control by, or liability to, PhyCor, except as may be specifically authorized by GVW.

(b) PhyCor shall, on behalf of GVW, bill patients and collect the professional fees for medical services rendered by GVW in the Clinic, for services performed outside the Clinic for GVW's hospitalized patients, and for all other professional and Clinic services except money received for chart review performed for PROS and honoraria paid for time spent away from the patient practice for research protocols. GVW hereby appoints PhyCor for the term hereof to be its true and lawful attorney-in-fact, for the following purposes: (i) to bill patients in GVW's name and on its behalf; (ii) to collect accounts receivable resulting from such billing in GVW's name and on its behalf; (iii) to receive payments from Blue Shield, insurance companies, prepayments received from health care plans, Medicare, Medicaid and all other third party payors and GVW covenants to direct all such payments to PhyCor for deposit in bank accounts designated by PhyCor; (iv) to take possession of and endorse in the name of GVW (and/or in the name of an individual physician, such payment intended for purpose of payment of a physician's bill) any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; and (v) subject to the provisions of Section 4.2.5 to initiate the institution of legal proceedings in the name of GVW to collect any accounts and monies owed to the Clinic, to enforce the rights of GVW as creditors under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payors. This power of attorney shall be special in nature and shall be limited to the aforementioned purposes. The power of attorney shall terminate upon termination of this Agreement. All adjustments made for uncollectible accounts, professional courtesies and other activities that do not generate a collectible fee shall be done within one year from the date of service, unless PhyCor and GVW agree in writing to extend such period; and shall be done in a reasonable and consistent manner approved by PhyCor's independent certified public accountants. In the event such adjustments are not made within such one year period or the extended period if agreed to, such adjustments shall not be Adjustments as defined hereunder and PhyCor shall bear the cost of such Adjustments, which amount shall not be a Clinic Expense.

(c) PhyCor shall design, supervise and maintain custody of all files and records relating to the operation of the Clinic, including but not limited to accounting, billing, patient medical records, and collection records. Patient medical records shall at all times be and remain the property of GVW and shall be located at Clinic facilities so that they are readily accessible for patient care. The management of all files and records shall comply with applicable state and federal statutes. PhyCor shall use its best efforts to preserve the confidentiality of patient medical records and use information contained in such records only for the limited purpose necessary to perform the services set forth

herein; provided, however, in no event shall a breach of said confidentiality be deemed a default under this Agreement.

(d) PhyCor shall supply to GVW necessary clerical, accounting, bookkeeping and computer services, printing, postage and duplication services, medical transcribing services and any other ordinary, necessary or appropriate service for the operation of the Clinic. PhyCor intends to maintain the level of service at January 1, 1989 absent a determination by PhyCor, with the concurrence of the Policy Board, that such services are not necessary to support the practice.

(e) Subject to the provisions of Section 4.2.4, PhyCor shall design and implement an adequate and appropriate public relations program on behalf of GVW, with appropriate emphasis on public awareness of the availability of services at the Clinic. The public relations program shall be conducted in compliance with applicable laws and regulations governing advertising by the medical profession.

(f) PhyCor shall develop and operate a suitable accounting system consistent with its business needs that shall enable GVW to prepare GVW annual income tax returns.

(g) Upon GVW's request, PhyCor agrees to perform administrative services regarding the recruitment of potential physician personnel for GVW. After consultation with GVW, the Policy Board and GVW shall jointly determine the need for additional physician personnel. However, it shall be and remain GVW's responsibility to interview and select physician personnel for GVW. All such physician personnel recruited by PhyCor as may be accepted by GVW through whatever additional interview/hiring procedure they may devise, shall be the sole employees of GVW, to the extent such physicians are hired as employees. Any expenses incurred in the recruitment of physicians shall have been reviewed and approved by the Policy Board prior to their incurrence. These expenditures shall be a Clinic Expense. In the case of a physician with an existing practice in the immediate vicinity, PhyCor may negotiate on behalf of GVW a separate independent contractor agreement with such physician, provided however, in every event GVW has the right to approve the selection of the independent contracting physician as other physicians are approved. Such approval shall be consistent with the approval mechanism that GVW uses to hire physician employees.

(h) Subject to the provisions of Section 4.2.7, PhyCor shall negotiate and administer all managed care contracts on behalf of GVW.

(i) PhyCor shall pay, as a Clinic Expense, for GVW accounting, legal and other professional fees related to clinic operations, incurred traditionally in the ordinary course of

business. Such providers shall be recommended by GVW and approved by the Policy Board.

(j) PhyCor shall provide, as a Clinic Expense, for the proper cleanliness of the premises, and maintenance and cleanliness of the equipment, furniture and furnishings located upon such premises.

(k) PhyCor shall make payment, as a Clinic Expense, for the cost of professional licensure fees and board certification fees of physicians associated with GVW.

(l) PhyCor shall negotiate for and cause premiums to be paid with respect to the insurance provided for in Section 10.1. Premiums and deductibles with respect to such policies shall be a Clinic Expense.

(m) PhyCor shall provide and maintain medical and other equipment in keeping with standard equipment provided in similar facilities. To the extent PhyCor determines that different or additional equipment may be required in the future, PhyCor shall consult with the Policy Board with respect to the suppliers, prices and specifications of such equipment. PhyCor's purchasing standards shall apply to all equipment purchases. All equipment provided under this Agreement shall remain the property of PhyCor and shall be used by GVW only during the term of this Agreement.

5.6. Executive Director. Subject to the provisions of Section 4.2.11, PhyCor shall hire and appoint an Executive Director to manage and administer all of the day-to-day business functions of the Clinic. PhyCor shall determine the salary and fringe benefits of the Executive Director. At the direction, supervision and control of PhyCor, the Executive Director, subject to the terms of this Agreement, shall implement the policies established by the Policy Board and shall generally perform the duties and have the responsibilities of an administrator. If requested by the Chairman of the Policy Board, the Executive Director shall be responsible for organizing the agenda for the meetings of the Policy Board referred to in Article 4.

5.7. Personnel. PhyCor shall provide nursing and other non-physician professional support (other than Physician Extender Employees and Technical Employees) and administrative personnel, clerical, secretarial, bookkeeping and collection personnel reasonably necessary for the conduct of the Clinic operations. PhyCor shall determine and cause to be paid the salaries and fringe benefits of all such personnel. Such personnel shall be under the direction, supervision and control of PhyCor, with those personnel performing patient care services subject to the professional supervision of GVW. If GVW is dissatisfied with the services of any person, GVW shall consult with PhyCor. PhyCor shall, through its local administration, in good faith determine whether the

performance of that employee could be brought to acceptable levels through counsel and assistance, or whether such employee should be terminated. The Policy Board shall provide recommendations on salary range for employees. If a physician is dissatisfied with an employee action by PhyCor relating to an employee who works directly under the supervision of such physician, said physician may appeal the action to the Policy Board for final resolution of the matter. All of PhyCor's obligations regarding staff shall be governed by the overriding principle and goal of providing high quality medical care. Employee assignments shall be made to assure consistent and continued rendering of high quality medical support services and to ensure prompt availability and accessibility of individual medical support personnel to physicians in order to develop constant, familiar and routine working relationships between individual physicians and individual members of the medical support personnel. PhyCor shall maintain established working relationships wherever possible and PhyCor shall make every effort consistent with sound business practices to honor the specific requests of GVW with regard to the assignment of its employees.

5.8. Events Excusing Performance. PhyCor shall not be liable to GVW for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies or other events over which PhyCor has no control for so long as such events continue, and for a reasonable period of time thereafter.

5.9. Compliance with Applicable Laws. PhyCor shall comply with all applicable federal, State of Florida and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.

5.10. Quality Assurance. PhyCor shall assist GVW in fulfilling its obligations to its patients to maintain a high quality of medical and professional services. The individual Physician Stockholders acknowledge their obligations to each other and to the public to maintain appropriate standards of medical care.

5.11. Ancillary Services. PhyCor shall operate such ancillary services as approved by the Policy Board.

5.12 Certain Contracting. (a) The parties agree that in the event the Policy Board determines to pursue the formation of an IPA or other physician organization or enter into risk assumption contractual arrangements, the parties will structure the IPA or such arrangements in accordance with the provisions of this Section 5.12 unless the Policy Board otherwise determines. Subject to Section 5.12(b), any payments made by the IPA to GVW or its physicians pursuant to any provider agreements between the IPA and GVW or its physicians, whether for physician services or incentive payments, will be Net Clinic Revenues hereunder. The IPA will be

managed by PhyCor or an Affiliate of PhyCor. In the event a management agreement is entered into for the management of an IPA, the management agreement will provide for a management fee to be paid to the management organization.

(b) Subject to the provisions of Section 2.1.1 hereof, in the event PhyCor and/or GVW has the opportunity to assume risk, whether through an IPA, other contractual arrangement or otherwise, any payments made as a result of profits from the assumption of such risk shall be treated as Additional Managed Care Payments and PhyCor shall receive a portion of such amounts as set forth in Section 8.1(d). PhyCor and GVW shall be responsible for 65% and 35%, respectively, of any losses from the assumption of such risks. In subsequent years if losses have been incurred as a result of the assumption of risk, PhyCor shall receive 65% of any profits from the assumption of risk until the amount of such profits fully reimburses PhyCor for the prior losses, and thereafter, PhyCor shall receive the portion of Additional Managed Care Payments set forth in Section 8.1(d). PhyCor agrees to loan to GVW an amount equal to GVW's share of any losses incurred from the assumption of risk, and any profits thereafter allocated to GVW shall be used first to repay any such loan. In the event no profit exists within four (4) years after the first loan is made as described above, GVW will repay PhyCor any amounts loaned in respect of GVW losses in equal monthly installments over a five year period, bearing interest at the rate of eight (8%) percent per annum.

ARTICLE 6.

OBLIGATIONS OF GVW

6.1. Professional Services. GVW shall provide professional services to patients in compliance at all times with ethical standards, laws and regulations applying to the medical profession. GVW shall ensure that each physician associated with GVW to provide medical care to patients of GVW is licensed by the State of Florida. In the event that any disciplinary actions or medical malpractice actions are initiated against any such physician, GVW shall immediately inform the Executive Director of such action and the underlying facts and circumstances. GVW shall carry out a program to monitor the quality of medical care practiced at the Clinic and PhyCor agrees to render administrative assistance to GVW on an as-requested basis to assist GVW in performing its obligations under this paragraph.

6.2. Medical Practice. GVW shall use and occupy the Clinic exclusively for the practice of medicine, and shall comply with all applicable local rules, ordinances and all standards of medical care. It is expressly acknowledged by the parties that the medical practice or practices conducted at the Clinic shall be conducted solely by physicians associated with GVW, and no other

physician or medical practitioner shall be permitted to use or occupy the Clinic without the prior written consent of PhyCor and GVW.

6.3. Employment of Physician Employees. GVW shall have complete control of and responsibility for the hiring, compensation, supervision, evaluation and termination of its Physician Employees, although at the request of GVW, PhyCor shall consult with GVW respecting such matters. GVW shall be responsible for the payment of such Physician Employees' salaries and wages, payroll taxes, Physician Employee benefits and all other taxes and charges now or hereafter applicable to them. With respect to physicians, GVW shall only employ and contract with licensed physicians meeting applicable credentialling guidelines established by GVW.

6.4. Professional Dues and Education Expenses. GVW and its Physician Employees shall be solely responsible for the cost of membership in professional associations, and continuing professional education. GVW shall ensure that each of its Physician Employees participates in such continuing medical education as is necessary for such physician to remain current.

6.5. Professional Insurance Eligibility. GVW shall cooperate in the obtaining and retaining of professional liability insurance by assuring that its Physician Employees are insurable, and participating in an on-going risk management program.

6.6. Events Excusing Performance. GVW shall not be liable to PhyCor for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies or other events over which GVW has no control for so long as such events continue, and for a reasonable period of time thereafter.

6.7. Clinic Profit Sharing Plan.

(a) Effective October 1, 1989, GVW became an adopting employer to the PhyCor, Inc. Savings and Profit Sharing Plan ("PhyCor Plan") and amended the GVW Profit Sharing Plan ("GVW Plan") to make it a "Supplemental Plan". GVW will not make contributions to the GVW Plan or any Supplemental Plan that would cause either the GVW Plan or the PhyCor Plan to become disqualified.

(b) Unless such action would have no adverse effect on the PhyCor Plan whatsoever, GVW shall not enter into any new "employee benefit plan" within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), without the express written agreement of PhyCor. GVW shall not amend the GVW Plan, except as required by law after

consultation with PhyCor, without the express written agreement of PhyCor to such amendment.

(c) The compensation of counsel, accountants, corporate trustees, and other agents necessary in the administration of the GVW Plan or any subsequent plan or supplemental plan adopted by GVW shall be an expense of GVW or the GVW Plan and not a Clinic Expense or an expense of PhyCor. All such expenses necessary in the administration of the PhyCor Plan, which are not, pursuant to the terms of the PhyCor Plan, expenses of the PhyCor Plan or of individual participants, shall be a Clinic Expense.

(d) Parent shall have the sole and exclusive authority to appoint the Trustees, Custodian and Administrator of the PhyCor Plan and to remove the Trustees, Custodian and Administrator of the PhyCor Plan and appoint successor Trustees, Custodians and Administrators.

(e) PhyCor shall make contributions to the PhyCor Plan, as a Clinic Expense, on behalf of eligible employees of PhyCor who perform services at the Clinic. GVW shall be responsible and liable for contributions to the PhyCor Plan on behalf of Physician Employees who are participating in the PhyCor Plan.

ARTICLE 7.

RESTRICTIVE COVENANTS AND LIQUIDATED DAMAGES

The parties recognize that the services to be provided by PhyCor shall be feasible only if GVW operates an active medical practice to which the physicians associated with GVW devote their full time and attention. To that end:

7.1. Restrictive Covenants by GVW. During the term of this Agreement, GVW shall not, unless pursuant to the Agreement, establish, operate or provide physician services at any medical office, clinic or other health care facility providing services substantially similar to those provided by GVW pursuant to this Agreement anywhere within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility.

7.2. Restrictive Covenants By Current Physician Stockholders and Physician Employees. GVW shall enforce (subject to PhyCor's obligations under Section 5.5(i) of this Agreement) formal agreements from its current Physician Stockholders and Physician Employees (other than Technical Employees, Physician Extender Employees and founding physicians Drs. Vann, Gold and White), pursuant to which the Physician Stockholders and Physician Employees agree not to establish, operate or provide physician

services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by GVW pursuant to this Agreement within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility or any location within a 15 mile radius of any satellite facility during the term of this Agreement and for a period of eighteen (18) months after any termination of employment with GVW.

7.3. Restrictive Covenants By Future Physician Employees. GVW shall obtain and enforce formal agreements from each of its future Physician Employees (and future Physician Stockholders who are not currently Physician Employees), other than Technical Employees and Physician Extender Employees, hired or contracted, pursuant to which such physicians agree not to establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by GVW pursuant to this Agreement within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility or any location within a 15 mile radius of any satellite facility during the term of said Physician Employee's contract with GVW and for a period of eighteen (18) months thereafter.

7.4. Damages for Breach. Any payments received by GVW as damages for breach of any of the foregoing covenants shall be paid to PhyCor by GVW simultaneously with the amount being paid to GVW. Such payment shall be first applied to all costs incurred by PhyCor or GVW in the enforcement of the restrictive covenants for that departing physician and in recruiting a replacement physician for that departing physician. The remainder, if any, shall, with respect to Physician Employees employed by GVW as of December 31, 1996 or who become employed by GVW in a transaction involving proceeds being paid by PhyCor, become an additional service fee to be paid to PhyCor pursuant to Article 8 hereof; and with respect to all other Physician Employees, shall be shared by PhyCor and GVW in the amount of 12% retained by PhyCor and 88% retained by GVW. The accounting treatment of such funds shall be consistently applied and approved by PhyCor's independent certified public accountants and the Policy Board. Nothing contained herein shall authorize GVW to negotiate settlements of, or otherwise release the physicians from, the foregoing covenants without the express written consent of PhyCor.

7.5. Restrictive Covenants of PhyCor. During the term of this Agreement, PhyCor shall not establish, operate or enter into a service agreement with, or provide services similar to those provided under this Agreement to, any multi-specialty or single specialty group within Indian River County, Florida or the immediate surrounding three county area. In addition, PhyCor will

not enter into any agreement with any physician to occupy the clinic facilities.

7.6. Enforcement. PhyCor and GVW acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Article 7 shall be inadequate, either party shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. If any provision of Article 7 relating to the restrictive period, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Article 7. The invalidity or non-enforceability of this Article 7 in any respect shall not affect the validity or enforceability of the remainder of this Article 7 or of any other provisions of this Agreement.

ARTICLE 8.

FINANCIAL ARRANGEMENTS

8.1. Service Fees: PhyCor shall receive a service fee annually as follows:

(a) PhyCor shall be reimbursed the amount of all Clinic Expenses less (i) Clinic Expenses associated with Technical Employees that are the responsibility of GVW hereunder and (ii) $12,000;

(b) During each year of the Agreement, PhyCor shall receive a fee equal to 12% of Net Clinic Revenues less Clinic Expenses; and

(c) PhyCor shall receive 25% of Additional Managed Care Payments plus any additional amounts that may be paid to PhyCor pursuant to Section 5.12(b) hereof.

(d) Notwithstanding the foregoing, in no event shall the funds available to GVW after payment of PhyCor's fee hereunder and before payment of any expenses which are the responsibility of GVW

hereunder, be less than (1) during the first three years of this Agreement commencing January 1, 1997, the sum of (i) 35% of Net Clinic Revenues, (ii) 75% of Additional Managed Care Payments, and (iii) salaries and benefits of Technical Employees, and (2) during the fourth, fifth and sixth years of this Agreement, the sum of (i) 35% of Net Clinic Revenues, (ii) 75% of Additional Managed Care Payments and (iii) salaries and benefits of Technical Employees, however, in the event Clinic Expenses exceed 62.5% of Net Clinic Revenues, the foregoing 35% under this Clause (2) shall be reduced pro rata by the amount by which Clinic Expenses exceeds 62.5% of Net Clinic Revenues; provided, further, however, the foregoing 35% shall not be reduced below 34.5%. For example, in the event at the end of the fifth year, Clinic Expenses equal 63% of Net Clinic Revenue, then the foregoing 35% shall be reduced to 34.5%.

(e) The service fee shall be payable monthly. The service fee shall be estimated based upon the previous month's operating results of the Clinic. Adjustments to the estimated payments shall be made to reconcile actual amounts due under this Section 8.1, by the end of the following month during each calendar year. Upon preparation of annual financial statements as provided in Section 5.3, final adjustments to the amounts payable under this Article 8 for the preceding year shall be made and any additional payments owing to PhyCor or GVW shall then be made.

8.2. Accounts Receivable. On the first business day of each month, PhyCor shall purchase the accounts receivable of GVW arising during the previous month, by payment of cash or cash equivalents into an account of GVW. The consideration for the purchase shall be an amount equal to all fees recorded each month (net of Adjustments) less service fees due to PhyCor under Section 8.1. PhyCor shall pay or reimburse GVW, as a clinic expense, any Florida Intangible Tax imposed on the accounts receivable so sold. Although it is the intention of the parties that PhyCor purchase and thereby become owner of the accounts receivable of GVW, in case such purchase shall be ineffective for any reason, GVW is concurrently herewith entering into a Security Agreement in the form attached as Exhibit 8.2 to grant a security interest in the accounts receivable to PhyCor. In addition, GVW shall cooperate with PhyCor and execute all necessary documents in connection with the pledge of such accounts receivable to PhyCor or at PhyCor's option, its lenders. To the extent GVW comes into possession of any payments in respect of such accounts receivable, GVW shall

direct such payments to PhyCor for deposit in bank accounts designated by PhyCor.

ARTICLE 9.

RECORDS

9.1. Patient Records. Upon termination of this Agreement, GVW shall retain all patient medical records maintained by GVW or PhyCor in the name of GVW. GVW shall, at its option, be entitled to retain copies of financial and accounting records relating to all services performed by GVW.

9.2. Records Owned by PhyCor. All records relating in any way to the operation of the Clinic which are not the property of GVW under the provisions of Section 9.1 above, shall at all times be the property of PhyCor.

9.3. Access to Records. During the term of this Agreement, and thereafter, GVW or its designee shall have reasonable access during normal business hours to GVW's and PhyCor's financial records, including, but not limited to, records of collections, expenses and disbursements as kept by PhyCor in performing PhyCor's obligations under this Agreement, and GVW may copy any or all such records the cost of which shall be a Clinic Expense.

ARTICLE 10.

INSURANCE AND INDEMNITY

10.1. Insurance to be Maintained by GVW. Throughout the term of this Agreement, PhyCor shall, as a Clinic Expense, provide and/or maintain comprehensive professional liability insurance for GVW and the Physician Employees of GVW with limits of greater than or equal to One Million Dollars ($1,000,000) per occurrence and with aggregate policy limits of greater than or equal to Three Million Dollars ($3,000,000) per physician. PhyCor shall have the right to select a nationally recognized malpractice carrier licensed to do business in the state of Florida. Such policies shall name PhyCor as an additional insured. The Policy Board shall review the coverage needs of the Clinic on an annual basis. Any awards for damages above and outside the policy limits and policy retention amounts shall be the responsibility of GVW. If at any time PhyCor is unable to obtain or maintain the insurance coverage required by this Section 10.1 and GVW shall obtain or maintain said insurance coverage, then adjustments shall be made to the amounts set forth in Section 8.1 in an amount equal to the cost of obtaining or maintaining said insurance coverage provided said coverage is not less than that coverage in force at commencement of this Agreement. If PhyCor is unable to obtain and maintain the

insurance coverage required by this Section 10.1, such failure shall not constitute a breach of this Agreement; provided, however, PhyCor shall at all times diligently and in good faith attempt to obtain the insurance coverage required by this Section 10.1 and shall advise GVW on at least a monthly basis of its progress in that regard when the required insurance coverage is not in full force and effect. PhyCor shall have the option of providing such professional liability insurance through a self-insured program, which program meets any requirements of the Insurance Commissioner of Florida and is approved by seventy-five percent (75%) vote of Physician Stockholders.

10.2. Insurance to be Maintained by PhyCor. Throughout the term of this Agreement, PhyCor shall use its best efforts to provide and maintain comprehensive professional liability insurance for all professional employees of PhyCor with limits as determined reasonable by PhyCor provided that such amount shall be greater than or equal to than One Million Dollars ($1,000,000). In addition, PhyCor shall also provide and maintain reasonable amounts greater than or equal to One Million Dollars ($1,000,000) of general liability and property insurance in amounts not less than now in force, as adjusted for Facilities improvements covering the activity and property of GVW within the clinic an its satellite offices.

10.3. Tail Insurance Coverage. After the termination of this Agreement, GVW shall have PhyCor added as an additional insured, at PhyCor's expense, on any replacement or "tail" coverage purchased by GVW. PhyCor shall use its best efforts to obtain tail coverage for those physicians who cease to practice medicine in any location for a period of five (5) years due to retirement, a legal disability or death. If PhyCor is unable to obtain such coverage and the physician shall obtain such coverage, then PhyCor shall pay for the cost, as a Clinic Expense, of obtaining the tail coverage so long as PhyCor is added as an additional insured on any replacement or tail coverage. If such physician returns to practice within five (5) years, the cost of the tail coverage shall be prorated between PhyCor, as a Clinic Expense, and the physician.

10.4. Additional Insureds. GVW and PhyCor agree to use their best efforts to have each other named as an additional insured on the other's respective professional liability insurance programs at PhyCor's expense.

10.5. Indemnification. GVW shall indemnify, hold harmless and defend PhyCor, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of medical services or any other acts or omissions by GVW and/or its shareholders, agents, employees and/or

subcontractors (other than PhyCor) during the term hereof. PhyCor shall indemnify, hold harmless and defend GVW, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any intentional acts, negligent acts or omissions by PhyCor and/or its shareholders, agents, employees and/or subcontractors (other than GVW) during the term of this Agreement.

ARTICLE 11.

TERM AND TERMINATION

11.1. Term of Agreement. This Amended and Restated Service Agreement shall commence on January 1, 1997 and shall expire on the 40th anniversary hereof unless earlier terminated pursuant to the terms hereof.

11.2. Extended Term. Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall be automatically extended for additional terms of five (5) years each, unless either party delivers to the other party, not less than eighteen (18) months nor earlier than twenty (20) months prior to the expiration of the preceding term, written notice of such party's intention not to extend the term of this Agreement.

11.3. *Bankruptcy and Insolvency.*

(a) This Agreement shall terminate automatically upon the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by either party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of insolvents by either party, except for the filing of a petition in involuntary bankruptcy against either party with the dismissal thereof within thirty (30) days thereafter.

(b) In the event of bankruptcy or insolvency of PhyCor or GVW, GVW shall, provided the HRTI Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions

thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

In the event this Agreement terminates under the provisions of this Section 11.3, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.3 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.4. *Specified Failure of Performance by PhyCor.*

(a) In the event PhyCor shall materially default in the performance of its duties under Section 5.2 of this Agreement and shall not remedy such default within twelve (12) months of notice of default by GVW; or shall fail to remit the services fees required by Section 8.1 hereof and such failure to remit shall continue for a period of fifteen (15) days after written notice thereof; or shall materially default under the provisions of the Lease included as Appendix I; or shall be convicted of a felony offense and such conviction has a material adverse effect on

the physician/patient relationships, GVW may terminate this Agreement and recover damages caused by PhyCor. PhyCor shall use its best efforts to obtain the consents, licenses or approvals of any public or regulatory agency; however, failure to obtain the consents, licenses or approvals of any such public or regulatory agency shall not be deemed a material default under the provisions of this Article 11. Termination of this Agreement by GVW shall require the vote of seventy five percent (75%) of GVW's Physician Stockholders for termination.

(b) In the event of a default under this Section 11.4, GVW shall, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

In the event this Agreement terminates under the provisions of this Section 11.4, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset

Purchase Agreement; provided, however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.4 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.5. *General Failure of Performance by PhyCor.*

(a) In the event PhyCor shall materially default in its performance under this Agreement and such default shall continue for a period of forty-five (45) days after written notice thereof has been given to PhyCor by GVW, GVW may terminate this Agreement and recover damages caused by PhyCor. PhyCor shall use its best efforts to obtain the consents, licenses or approvals of any public or regulatory agency, however, failure to obtain the consents, licenses or approvals of any such public or regulatory agency shall not be deemed a material default under the provisions of this Article 11. Termination of this Agreement by GVW shall require the vote of seventy-five percent (75%) of GVW's Physician Stockholders for termination.

(b) Upon such termination, GVW shall, subject to obtaining all necessary governmental consents and approvals, and to the extent legally permissible, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic,

depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

If required by the lender or landlord, GVW shall cause at least seventy-five percent (75%) of its shareholders to guarantee the debt or lease on Facilities.

In the event this Agreement terminates under the provisions of this Section 11.5, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with their obligations as set forth in this Section 11.5 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.6. *Failure of Performance by GVW.*

(a) In the event GVW shall materially default any duty or obligation imposed upon it by this Agreement, and such default shall continue for a period of forty-five (45) days after written notice thereof has been given to GVW by PhyCor, PhyCor may terminate this Agreement and recover damages caused by GVW.

(b) Upon such termination, GVW shall, subject to obtaining all necessary governmental consents and approvals, and to the extent legally permissible, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10,

including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

If required by the lender or landlord, GVW shall make a good faith effort to cause at least seventy-five percent (75%) of its shareholders to guarantee the debt or lease on Facilities.

In the event this Agreement terminates under the provisions of this Section 11.6, and GVW has complied with their obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.6 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.7. Purchase of Assets. The closing date for the purchase by GVW of assets hereunder shall occur no later than one hundred and eighty (180) days from the date of the notice of termination of this Service Agreement. Expenses attributable to such closing shall be shared equally by the parties in the event of a termination hereof under Sections 11.3, 11.4, 11.5 or 11.6.

11.8. Recordation of Notice of Termination. Upon termination of this Agreement, either party may record evidence of such termination by executing and filing, among other things, an instrument deleting from that certain Memorandum of the HRTI Lease, dated June 21, 1993, recorded in the Public Records of Indian River County, Florida any and all references to this Agreement and all rights, duties and obligations hereunder set forth therein.

ARTICLE 12.

GENERAL PROVISIONS

12.1. Assignment. PhyCor shall have the right to assign its rights hereunder to any person, firm or corporation under common control with PhyCor and to any lending institution, for security purposes or as collateral, from which PhyCor or the Parent obtains financing, including without limitation, Citibank, N.A., as agent, or its successors and assigns under the credit agreement between the Parent, Citibank, N.A., for itself and as agent, and the banks parties thereto. Except as set forth above, neither PhyCor nor GVW shall have the right to assign their respective rights and obligations hereunder without the written consent of the other party. In the event of a permitted assignment by PhyCor, Parent shall not be relieved of its guaranty obligations under this Agreement.

12.2. Whole Agreement; Modification. This Agreement supersedes all prior agreements between the parties, including the Service Agreement, dated as of January 1, 1989, and there are no other agreements or understandings, written or oral, between the parties regarding this Agreement, the Exhibits and the Schedules, other than as set forth herein. This Agreement shall not be modified or amended except by a written document executed by both parties to this Agreement, and such written modification(s) shall be attached hereto.

12.3. Notices. All notices required or permitted by this Agreement shall be in writing and shall be addressed as follows:

To PhyCor:

PhyCor of Vero Beach, Inc.
c/o PhyCor, Inc.
30 Burton Hills Blvd., Suite 400
Nashville, Tennessee 37215

Attn: Joseph Hutts, President

To GVW: Gold, Vann & White, P.A.
2300 Fifth Avenue
Vero Beach, Florida 32960

Attn: President

or to such other address as either party shall notify the other.

12.4. Binding on Successors. Subject to Section 12.1, this Agreement shall be binding upon the parties hereto, and their successors, assigns, heirs and beneficiaries.

12.5. Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing, and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions hereof.

12.6. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties acknowledge that PhyCor is not authorized or qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent any act or service required of PhyCor in this Agreement should be construed or deemed, by any governmental authority, agency or court to constitute the practice of medicine, the performance of said act or service by PhyCor shall be deemed waived and forever unenforceable.

12.7. Severability. The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

12.8. Additional Documents. Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement.

12.9. Attorneys' Fees. If legal action is commenced by either party to enforce or defend its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees in addition to any other relief granted.

12.10. Time is of the Essence. Time is hereby expressly declared to be of the essence in this Agreement.

12.11. Confidentiality. Except for disclosure to its bankers, underwriters, lenders, attorneys and accountants, or as necessary or desirable for conduct of business, including negotiations with other acquisition candidates, neither party

hereto shall disseminate or release to any third party any information regarding any provision of this Agreement, or any financial information regarding the other (past, present or future) that was obtained by the other in the course of the negotiations of this Agreement or in the course of the performance of this Agreement, without the other party's written approval.

12.12. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, GVW and PhyCor shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between GVW and PhyCor.

12.13. Remedies Cumulative. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to any party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient.

12.14. Language Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

12.15. No Obligation to Third Parties. None of the obligations and duties of PhyCor or GVW under this Agreement shall in any way or in any manner be deemed to create any obligation of PhyCor or of GVW to, or any rights in, any person or entity not a party to this Agreement.

12.16. Communications. GVW and PhyCor agree that good communication between the parties is essential to the successful performance of this Agreement, and each pledges to communicate fully and clearly with the other on matters relating to the successful operation of GVW's practice at the Clinic.

12.17. Right of First Refusal. In the event PhyCor or its successor determines to sell, whether by sale of stock or assets, the Vero Beach clinic operations including satellites and associated facilities, as a going concern, independent of its other operations, during the term of this Agreement, GVW shall have a right of first refusal to purchase the Vero Beach clinic and

associated facilities at the purchase price and on the same terms, as described herein, of a bona fide written offer to PhyCor by a third party; provided, however, GVW shall have no rights of first refusal hereunder or otherwise to purchase any of the foregoing assets under the same terms and conditions as provided in (a) that certain Agreement of Sale and Purchase dated March 26, 1993 between PhyCor and HRTI, as may be amended from time to time, or (b) the HRTI Lease, as amended, modified or extended, except as otherwise set forth therein. PhyCor shall provide GVW with the names and addresses of any prospective third-party purchaser and shall provide to GVW all necessary releases and documentation to allow GVW to verify the amount and veracity of a third-party purchase offer. The first refusal right shall be granted by written notice of intention to make a bona fide disposition by PhyCor furnishing a copy of said offer to GVW. GVW shall have sixty (60) days from the furnishing of such offer to exercise its right of first refusal. The closing for the purchase of the equipment and assets shall be, no later than one hundred eighty (180) days from GVW's exercise of its right of first refusal. Until the closing, the terms of this Agreement shall continue to be in effect. If the offer from the prospective transferee (purchaser) includes terms and conditions that are not stated in monetary units or payments over time, PhyCor must be able to provide and prove by reasonably accepted accounting principles the United States currency equivalent of the offer. The U.S. currency equivalent must be verified by a "nationally recognized accounting firm" of both parties mutual consent and the expense for such verification shall be borne equally by the parties.

12.18. Board Representation. During the time this Agreement is in effect, the management of Parent shall present one nominee designated by GVW for election to its Board of Directors. Such nominee shall be approved by Parent, which approval shall not be unreasonably withheld.

12.19. HRTI Lease. If, during the period that the HRTI Lease is in full force and effect, a conflict should arise between the terms of the HRTI Lease and the terms hereof, other than the terms specifically defined herein, the HRTI Lease shall be controlling.

12.20. Consideration. In consideration for the execution and delivery by GVW of this Amended and Restated Service Agreement, PhyCor hereby agrees to pay GVW $2,700,000 on January 7, 1997.

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

GOLD, VANN & WHITE, P.A.:

By: _____

Title: President / Medical Director

PhyCor:

PHYCOR OF VERO BEACH, INC.

By: _____

Title: Vice President / Treasurer

EXHIBIT "C"

EMPLOYMENT AGREEMENT - STOCKHOLDER

THIS AGREEMENT, made on this, the ____ day of ____July____, 1998, by and between ____Howard T. Tee, M.D.____, of Indian River County, Florida, a physician duly licensed and authorized to practice medicine in the State of Florida, hereinafter referred to as "PHYSICIAN", and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, with its principal office in Vero Beach, Florida, hereinafter referred to as the "P.A.";

WHEREAS, the P.A. is a multi-specialty group providing medical services to patients in and around Indian River County, Florida; and

WHEREAS, PHYSICIAN is duly licensed to practice medicine in the State of Florida; and

WHEREAS, P.A. has entered into a management services agreement for the provision of facilities, management, equipment, and personnel support by PHYCOR OF VERO BEACH, INC., a Florida corporation, hereinafter referred to as "PHYCOR," PURSUANT TO AMENDED AND RESTATED SERVICE AGREEMENT dated January 1, 1997, between PHYCOR OF VERO BEACH, INC. and GOLD, VANN & WHITE, P.A., hereinafter referred to as "Service Agreement"; and

WHEREAS, both P.A. and PHYSICIAN desire to enter into this Employment Agreement to set forth in writing the terms and conditions of their mutual interests.

NOW, THEREFORE, in consideration of mutual promises and other monies in hand paid, the parties agree as follows:

1. SCOPE AND TERM

1.1. P.A. hereby employs the PHYSICIAN, and the PHYSICIAN accepts employment to render medical services effective February 1, 19 98.

1.2 PHYSICIAN shall devote his full working time and attention to the practice of medicine for the P.A. Physician will maintain office hours to meet the needs of the P.A.'s patients, existing and future. During the PHYSICIAN's period of employment, he will not directly or indirectly render services of a professional nature to or for any person or firm for compensation, except military reserve duties, or engage in any practice that competes with the interest of the P.A. PHYSICIAN agrees to perform his duties in accordance with the rules of ethics of the medical profession.

1.3 Subject to the provisions for termination as hereinafter provided, this contract shall continue in force until terminated as hereinafter provided.

2. COMPENSATION AND BENEFITS

2.1 The PHYSICIAN's compensation and benefits will be based upon the formula for determining shareholder compensation and benefits as voted upon by the P.A.'s shareholders from time to time. Physician acknowledges and accepts the formula shareholder compensation plan as approved and as may be amended from time to time by the P.A.

2.2 Insurance: The P.A. shall provide proof of insurance to the PHYSICIAN of a claims made policy of insurance against professional liability with limits of $1 million per occurrence, $3 million aggregate. PHYSICIAN acknowledges that PHYCOR provides such insurance for all P.A. physicians pursuant to the Service Agreement. The PHYSICIAN agrees to attend a loss control risk management seminar as specified by and at the request of P.A. or PHYCOR so as to influence a lesser premium for professional liability insurance provided to the PHYSICIAN. PHYCOR pursuant to the Service Agreement shall provide tail professional liability insurance

interest in connection therewith, the Board of Directors is authorized to reimburse PHYSICIAN for expenses incurred on behalf of the P.A. as set out in Attachment A, attached hereto and made a part hereof, not as ordinary and necessary expenses incurred in earning of their salaries but rather as corporate expenses which should be submitted for reimbursement on a regular basis as explained in said Attachment A. P.A. shall provide specific requirements for recording reimbursable expenses, and submission of forms. Levels of reimbursement may be modified annually by action of the Board of Directors without further modification to this Employee Agreement.

4. FACILITIES, RECORDS, AND FEES

4.1 Facilities: PHYCOR pursuant to the Service Agreement with the P.A. shall operate and maintain facilities and shall provide at its costs, equipment, drugs, and supplies suitable to PHYSICIAN's position and adequate for the performance of his duties. Further, PHYCOR pursuant to the Service Agreement with the P.A. shall supply and pay for nurses, technicians, and other personnel reasonably needed by PHYSICIAN in connection with his employment hereunder.

4.2 Records: All case records, charts, and personal files concerning patients of PHYSICIAN shall be and remain the property of the P.A. On termination of PHYSICIAN's employment, he shall not be entitled to keep or reproduce records or charts related to any patient unless the patient shall specifically request the records to be transmitted to PHYSICIAN.

4.3 Fees: Any fees or honorariums received by PHYSICIAN for professional services or other professional activities performed by PHYSICIAN shall belong to the P.A.; provided, however, that legacies and gifts or specific chattels received by the PHYSICIAN from patients or former patients of the P.A. may be retained by the PHYSICIAN as his separate property.

5. TERMINATION

5.1 This Agreement may be terminated by either party by the giving of six (6) month's notice in writing.

(a) If PHYSICIAN becomes disqualified to practice medicine in the State of Florida;

(b) on the death of the PHYSICIAN;

(c) If P.A. and PHYSICIAN mutually agree in writing;

(d) If the PHYSICIAN is absent from his employment without the P.A.'s Board of Directors' authorization for a period of thirty (30) consecutive days;

(e) if the PHYSICIAN fails or refuses to perform faithfully or diligently the duties of his employment or any of his obligations under this Agreement;

(f) for cause, which shall include but not necessarily be limited to the addiction to the use of intoxicants or narcotics, chemical dependency, medical incompetence, immorality, insanity, the conviction of a felony violation, or the loss of privileges to practice medicine at any hospital because of events that are reportable to the DPR during the term of this Agreement, or a violation of this Employment Agreement;

(g) if the PHYSICIAN conducts himself in an unprofessional, unethical, or fraudulent manner, or is publicly reprimanded for unethical conduct by any hospital or institution with which the P.A. or PHYSICIAN is associated or any board or group having any privilege or right to pass upon the conduct of the PHYSICIAN, or should the PHYSICIAN's conduct discredit the P.A. or be detrimental to the reputation, character, or standing of the P.A.

5.3 On termination, for any reason, the PHYSICIAN shall be entitled to the compensation due up to the date of such termination, which shall be full compensation in payment for all claims under this Agreement.

5.4 PHYSICIAN acknowledges that he may directly receive payments from patients

... at Doctors ... after he terminates employment with the P.A. and further agrees to promptly forward said payments directly to the P.A.

5.5 PHYSICIAN acknowledges that his compensation as a shareholder is based upon the P.A.'s formula compensation and benefits plan; and that, upon notice of termination of this Agreement in the event there are contractual adjustments, discounts, and bad debts owed by the Physician to the P.A., the Physician agrees to pay back such amounts to the P.A. within thirty (30) days from the receipt of billing. The billing shall be accompanied by documentation similar to that which Physician has received during his tenure as a shareholder/physician with the P.A.

6. COVENANTS OF PHYSICIAN

PHYSICIAN covenants that during the term of this Agreement:

6.1 he shall perform his duties hereunder in accordance with the Rules of Ethics of the medical profession;

6.2 he shall work with the P.A. in an effort to achieve a harmonious atmosphere;

6.3 he shall not interfere directly or indirectly with recruiting by the P.A.;

6.4 he will conduct himself and encourage PHYCOR's employees to conduct themselves in a professional manner during the term of this Agreement and shall not, directly or indirectly, commit any act that negatively impacts on the professional reputation or operation of the P.A. or PHYCOR.

7. COVENANT NOT TO COMPETE

7.1 The terms and provisions of the covenant restricting the practice of medicine as set forth in the initial Employment Agreement or any renewals, amendments, or modifications thereof between the parties, shall be null and void and said restrictive covenant shall hereafter be as follows: The PHYSICIAN and P.A. agree that during the period of employment, as defined above, the PHYSICIAN shall not undertake any professional service except for the benefit of the

principal business or profession other than the rendition of the professional services of the P.A. for and on behalf of the P.A. In addition, the PHYSICIAN agrees that upon termination of this Agreement, or in the event employment is terminated by the P.A. during the period of employment, whether or not it be voluntarily or involuntarily, the PHYSICIAN agrees not to enter into the employ of any person, firm, professional association, hospital, or corporation engaged in a similar profession in competition with the P.A. for a period of eighteen (18) months next after the date of such termination, nor himself engage, during such period, directly or indirectly, as principal, agent, or employee in any such profession in competition with the P.A. within a thirty-five (35) mile radius of the P.A.'s business location, the Doctors' Clinic, located at 2300 Fifth Avenue, Vero Beach, Florida and any location within fifteen (15) miles of any satellite location.

7.2 The PHYSICIAN and the P.A. have examined in detail this restrictive covenant and agree that the restraint imposed herein on PHYSICIAN is reasonable in the sense that it is no greater than necessary to protect the P.A. in its legitimate business interests, and the restrictive covenant is reasonable in the sense that it is not unduly harsh and repressive. Any breach or invasion of any terms of this covenant shall be deemed to have caused immediate and irreparable injury to the P.A. and will authorize recourse by the P.A. to injunctive relief and/or specific performance, as well as to all other legal and equitable remedies to which the P.A. may be entitled.

7.3 The P.A. and PHYSICIAN agree that in the event a court of competent jurisdiction should determine that either the time of this covenant is too lengthy, and/or the area from which competition is restricted is too broad, that they hereby stipulate and agree that the court may modify the limits of time and area to the extent that the court deems reasonable so that this covenant shall not be voided.

7.4 The P.A. shall be entitled to damages and injunctive relief against the

reasonable attorney's fee and court costs shall be recoverable.

8. GENERAL PROVISIONS

8.1 To further provide for disability income to the PHYSICIAN, the P.A. will utilize the PHYSICIAN's prior twelve (12) months of adjusted charges for the purposes of determining compensation to be paid the PHYSICIAN for up to a three (3) month period prior to the PHYSICIAN being eligible under the P.A.'s long-term disability coverage. In addition, thereto, the P.A. shall pay the necessary premium costs in order that the PHYSICIAN starting with the fourth month of disability shall be eligible to receive disability income under the P.A.'s disability program in effect at the time of disability, and the P.A. shall further pay the premiums necessary in order that commencing with the sixth month the PHYSICIAN shall be eligible to receive disability income under any corresponding disability program in effect at the time of disability. The total amount of compensation continuation on the disability provisions for the PHYSICIAN shall be limited to the three (3) months as herein provided for the PHYSICIAN. Any payments made by any P.A. adopted disability plan shall not reduce any payments otherwise due the PHYSICIAN under any other provisions of this Agreement.

8.2 This Employment Agreement is not assignable by the PHYSICIAN.

8.3 The PHYSICIAN and the P.A. acknowledge that an earlier Employment Agreement dated November 19, 19 96 between the parties to be no longer in force and effect upon the effective date of this Agreement.

8.4 The PHYSICIAN agrees to be bound by the Articles of Organization, By-laws and Policies of the P.A. as may be amended from time to time.

8.5 The PHYSICIAN warrants that he is free to enter into this Agreement without any restrictions whatsoever.

8.6 Any notice required or permitted to be given under this Agreement shall be

known address.

8.7 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Indian River County, Florida. Arbitration shall be governed by the rules of the American Arbitration Association, and the procedure herein set forth. Three (3) arbitrators shall be selected to hear such controversies or claims. One arbitrator shall be selected by the P.A. and one shall be selected by the PHYSICIAN. The third arbitrator shall be selected by the arbitrators. Any decision made by the arbitrators under this provision shall be entered in any court of competent jurisdiction.

8.8 In the event either party is required to retain the services of an attorney to enforce the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee together with costs incurred, including appellate proceedings.

8.9 In the event notice of termination is given either by PHYSICIAN or P.A., then from that date until termination PHYSICIAN waives his rights to attend shareholder and/or director meetings of the P.A.

8.10 Upon termination of this Employment Agreement, PHYSICIAN agrees to return all of his shares in the P.A. in return for amounts provided for in the Stock Purchase Agreement entered into between the parties.

PHYSICIAN agrees to transfer all of the common stock which he owns in Gold, Vann & White, P.A. at the time of payment, to P.A. or to such entity or person as is designated by the P.A. PHYSICIAN agrees to execute all documents reasonably required by the P.A. in connection with the transfer.

8.11 This instrument contains the entire agreement of the parties with respect to the employment of PHYSICIAN. No prior or present agreements, or representations, either written or oral, shall be binding upon any of the parties hereto unless incorporated and made a part of this

...ding upon the parties

unless in writing, executed by the parties to be bound thereby. This Agreement binds and inures to the benefit of both the P.A. and PHYSICIAN and their respective successors, heirs, and legal representatives.

8.12 This Agreement and all of its provisions shall be construed according to the laws of the State of Florida.

8.13 This Agreement and the terms hereof supersedes and overrides any agreements or provisions of other agreements in conflict herewith.

8.14 It is understood and agreed between the parties hereto that time is of the essence of this agreement.

8.15 The masculine pronoun has been used throughout this Agreement but shall be construed to mean the feminine wherever the context shall warrant.

8.16 Legal Construction: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

8.17 The PHYSICIAN shall have no authority to enter into any contracts binding upon the P.A., or to create any obligations on the part of the P.A.

and year first above written.

Witnesses:

GOLD, VANN & WHITE, P.A.

By: _____
Arthur L. Glaser, M.D.
President/Medical Director

As to P.A.

_____

_____
As to Physician

By: _____
Howard T. Tee, M.D.

The following items have been approved by the Board of Directors and you will be reimbursed for properly documented expenses.

Expense Category	Amount Reimbursed	Documentation Required
Automobile: Lease Payment	Lease payment x business use percentage	Submit beginning of year for full year form 2106 page 2
Depreciation	Percentage allowed for business portion	Prior year or statement from accountant.
Fuel Car Phone Repairs or warranty License tax Oil and lube Car wash Insurance Car phone charges Tires and batteries Tolls	Amount spent x business percentage " " " " " " " "	Submit monthly or quarterly. Copy of actual receipts attached to expense statement.
Actual mileage	$0.30 per business mile for autos not previously depreciated, no other auto expense may be reimbursed	Mileage reimbursement form
Continuing Education: Registration fee Airline bill Auto rental Hotel bills Meals	Actual, limited to $10,000 per year	Submit as incurred. Actual receipts and if spouse attends reason for their attendance
Entertainment: Meals or recreation charges	Actual, limited to $10,000 per year. Actual, limited to business use percentage.	Submit monthly or quarterly Actual receipts
Office Supplies Professional journals Furniture and equipment or lease thereof Magazines Professional dues	Amounts incurred Actual, limited to $10,000 per year.	Receipts submitted monthly or quarterly

For entertainment purposes the IRS says that a "business associate" who may be entertained is a person wit whom the taxpayer could reasonably expect to engage or deal in the active conduct of his professior Examples, are patients, suppliers, referring physicians, employees, agents, partners, or professional advisors whether established or prospective.

THIS AGREEMENT, made this _____ day of July, 19 98, by and between Howard T. Tee, M.D., hereinafter referred to as the "Stockholder"; and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, hereinafter referred to as the "Company".

W I T N E S S E T H:

WHEREAS, STOCKHOLDER shall receive 100 shares in the above corporation for a paid-in capital contribution of Six Thousand Seven Hundred Dollars and 00/100 ($6,700.00) for all shares of stock; and

WHEREAS, the parties to this Agreement believe that it is to their best interests to provide for non-transferability and redemption of STOCKHOLDER's one hundred (100) shares, in the event of sale or the termination of employment with the COMPANY.

NOW, THEREFORE, in consideration of the mutual covenants herein set out, the parties hereto do hereby agree as follows:

1. No STOCKHOLDER shall, during the period of his employment by the COMPANY, sell or dispose of his stock in the COMPANY without the consent of the COMPANY pursuant to the terms of this Agreement. A legend to this effect shall appear on the Stock Certificate.

2. SHAREHOLDER shall pay the paid-in capital amount of Six Thousand Seven Hundred Dollars ($6,700.00) on or before August 1, 1998, payable in one installment.

ALTERNATIVE PROVISION

2. SHAREHOLDER shall pay the paid-in capital amount of Six Thousand Seven Hundred Dollars ($6,700.00) in monthly installments of $558.33 for twelve (12) consecutive months.

3. If the STOCKHOLDER's employment by the COMPANY is terminated pursuant to the terms of STOCKHOLDER's employment agreement with COMPANY, such STOCKHOLDER, his heirs

... shares of stock he then owns in the COMPANY for STOCKHOLDER's original purchase price plus the amount attributable to any increase in the All Urban Consumer Price Index (CPI) when considering the year of acquisition as the base year. Payment of the redemption amount shall be in the same manner as COMPANY was paid, i.e. in cash or over twelve (12) months calculated consistent with the following example. For example, if the STOCKHOLDER purchased shares for $6,000.00, on redemption he would receive $6,000.00 plus the CPI increase from January of the year of purchase.

4. This Agreement shall be binding on the parties, their heirs and assigns, and may be terminated or modified only by mutual agreement between them.

5. This Agreement shall be governed by the laws of the State of Florida.

6. The parties agree that the amount of capital contribution and method of valuation and repayment shall be reviewed by the Board of Directors of COMPANY annually.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the day and year first above written.

WITNESS:

_____ _____
Howard T. Tee, M.D.

_____
As to Stockholder

GOLD, VANN & WHITE, P.A.

_____ By: _____
Arthur L. Glaser, M.D.
President/Medical Director

_____
As to Company

07/08/98

STOCK PURCHASE CHOICE

I, Howard T. Tee, M.D., have selected the following option for the purchase of one hundred (100) shares of Gold, Vann & White, P.A.

_____ One installment of $ 6,700.00 to be paid on or before March 1, 1998.

_____ Twelve (12) consecutive monthly installments of $ 558.33.

I hereby authorize the amount(s) as selected above to be deducted from my paycheck.

_____ _____

Signature Date

07/08/98

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY
STATEMENT OF HOWARD TEE, M.D. CASE NO.:

Petitioner.
_____/

PETITION TO INTERVENE FOR DECLARATORY STATEMENT

Pursuant to Sections 120.565, Florida Statutes, and Rule Chapter 28-105,Florida Administrative Code, Janet Anderson, M.D., petitions the Board of Medicine to intervene with and on behalf of Petitioner for a Final Order setting forth a Declaratory Statement on the facts and law presented in the original petition and herein, attached as Exhibit "A".

1. Intervener, Janet Anderson, M.D., is a physician licensed pursuant to Chapter 458, Florida Statutes, (ME61810) and is practicing cardiology with Petitioner at 2300 Fifth Avenue, FL 32960. The office telephone number is (561) 567-7111 and the fax number is (561) 770-0589. Intervener and Petitioner are represented in this matter by undersigned counsel and requests that all correspondence and other communications related to this matter be conducted through undersigned counsel.

2. The agency affected by this Petition is the Board of Medicine of the State of Florida (hereafter the "Board of Medicine"). Intervener joins Petitioner in seeking a declaration from the Board of Medicine addressing the application of a specific statutory provision and a previous final order over which the Board of Medicine has authority. The statutory provision upon which this Declaratory Statement is sought is contained in Section 458.331 (1)(i), Florida Statutes. The order being addressed is the Board of Medicine's Final Order in, *In re Petition for Declaratory*

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and the Board of Medicine's Final Order are attached hereto for easy reference as Composite Exhibit "B".

FACTS

1. In 1989, Intervener and Petitioner's multi-specialty group, Gold, Vann & White, P.A. ("GV&W") entered into a long-term Management Service Agreement, as amended in 1992 and 1997 ("Management Agreement") with PhyCor of Vero Beach, Inc. (hereinafter "PhyCor"), attached as Exhibit "C". More important, in 1997, during negotiations and drafting of an amendment to the Management Agreement between GV&W and PhyCor, Intervener was not informed of the question of the Management Agreement's legality in regard to fee splitting and its consequences since *Bakarania*.

2. On January 1, 1994, Intervener entered into a shareholder employment agreement ("Employment Agreement") with GV&W attached as Exhibit "D". The Management Agreement is incorporated into the Employment Agreement by reference and made a part thereof. On March 6, 1996, Intervener entered into a Stock Purchase and Redemption Agreement ("Stock Purchase Agreement") effective retroactively to January 1, 1994, attached as Exhibit "E". The Employment Agreement was amended on October 14, 1996 and again on February 2, 1999. Again, more specifically, in 1999, during negotiations and drafting of amendments to the Employment Agreement, neither GV&W nor PhyCor informed the Intervener that pursuant to *Bakarania* the present Management Agreement might subject the Intervener to disciplinary action by the Board of Medicine.

3. In 1998, Intervener was appointed to the Board of Directors ("Board") of GV&W. The Intervener resigned her position on November 21, 2000. Intervener notified GV&W of her intention to join Petitioner in seeking a declaratory statement from the Board of Medicine in

regard to the legality of the Management Agreement. Intervener sought legal counsel, due in part to Petitioner's concern about the legality of the management arrangement and possible discipline by the Board of Medicine. On November 21, 2000, GV&W declined to voluntarily terminate the management arrangement and notified Intervener that the Management Agreement does not violate Florida law.

4. Intervener and Petitioner believe that the Board of Medicine's Final Order in *In re Petition for Declaratory Statement of Magan L. Bakarania, M.D.*, 20 FALR 395 (1998), expresses the Board of Medicine's application of Section 458.331 (1)(i), Florida Statutes, in the factual circumstances such as those of Intervener and Petitioner and that Intervener and Petitioner believe that the Management Agreement between GV&W and PhyCor is in violation of Section 458.331(1)(i), Florida Statutes, as interpreted by the Board of Medicine. GV&W and PhyCor continue to assert that the terms of the Management Agreement do not violate Section 458.331 (1)(i), Florida Statutes.

5. Resolution of this matter will have a significant effect on the manner in which Intervener and Petitioner will conduct themselves in any future proceeding pursuant to the Management Agreement.

6. GV&W consists of a multi-specialty practice of approximately forty-four physicians with a main clinic facility and satellite clinic in Vero Beach, Florida[1] and a satellite facility in Sebastian, Florida. Intervener and Petitioner provided and continue to provide cardiology services at the main clinic facility in Vero Beach.

8. PhyCor, Inc. ("Parent"), a Tennessee Corporation, was doing substantial business

[1] In 1989, PhyCor of GV&W accomplished this through an asset purchase and assumption of certain liabilities pursuant to the terms of an Asset Purchase Agreement. In addition, PhyCor and GV&W entered into a Service Agreement whereby PhyCor would provide certain services to GV&W.

in Florida as a practice management company engaged in the business of acquiring the assets of and operating multi-specialty practices. A number of their multi-specialty practices have repurchased their assets while others remain in litigation. Additionally, PhyCor, Inc. is and remains the sole shareholder of PhyCor.

9. Pursuant to the various agreements that make up the practice management arrangement, PhyCor purchased the assets of GV&W and took over the ownership of its clinics. The Management Agreement specifically requires PhyCor to provide GV&W's providers, which includes Intervener and Petitioner, with appropriate offices and all supplies and materials necessary for the successful operation of the multi-specialty practice.

10. In addition to and among other duties, the Management Agreement provides for PhyCor to:

- negotiate, establish, supervise, maintain and administrate all contracts and relationships with all insurers, national health care providers and payers, health maintenance organizations, preferred provider organizations, exclusive provider organizations, Medicare, Medicaid and all other managed care contracts and managed care payors;
- approve, disapprove, terminate, or amend any and all contracts or relationships with managed care payers;
- design and implement an adequate and appropriate public relations program on behalf of GV&W with emphasis on public awareness of the availability of services at the Clinic, the cost of which shall be paid as an expense of the practice;
- conduct all patient billing and collections;
- set annual capital and operating budgets which reflect in reasonable detail

anticipated revenues and expenses, sources and uses of capital for growth for the operation of the medical practice; and

- Order, purchase and provide necessary and requested inventory and medical supplies at cost to the medical practice applying PhyCor's purchasing standards. All such costs being paid by the medical practice as operating expenses.

11. Pursuant to the Management Agreement, PhyCor may establish and maintain an Independent Practice Association (IPA) in which Intervener and Petitioner and all other providers in the medical practice would be members. The IPA, when established would be managed by PhyCor or an Affiliate of PhyCor. In addition, when established, a separate management agreement would be entered into which would provide for an additional percentage management fee.

12. Pursuant to the Management Agreement, GV&W is required to provide medical services only to PhyCor for a period of forty (40) years. Additionally, GV&W shall not operate or provide a similar health care facility within Indian River County, Florida or any location within a thirty-five (35) mile radius of the main Clinic facility. Moreover, the Intervener and Petitioner, following termination of their Employment Agreement, while the Management Agreement is full force and affect, is prohibited from practicing cardiology anywhere within a thirty-five (35) mile radius of main Clinic facility and fifteen (15) miles of any satellite Clinic facility for a period of eighteen (18) months.

13. The compensation provision in the Management Agreement requires GV&W (Intervener and Petitioner) to pay PhyCor no less than twelve percent (12%) for non-managed care and twenty-five percent (25%) for managed care net Clinic patient and ancillary professional fee component revenues, for a potential total of up to thirty-seven percent (37%) of

the net fee revenues of the Clinic. Net Clinic revenues are defined in the Management Agreement as monthly professional revenues, made up of patient and ancillary professional fees, less monthly expenses of the Clinic. Monthly expenses of the Clinic include all costs generated by PhyCor in the operation of the Clinics and its other Clinic related responsibilities. Nothing in the Management Agreement, the actual practice management arrangement, ties the potential thirty-seven percent (37%) of monthly earnings from all sources of professional fees to the value of the administrative services provided by PhyCor. It is clear and obvious that the potential thirty-seven percent (37%) share of monthly earnings is intended as PhyCor's remuneration for bringing and enhancing revenues to the medical practice. Officers of PhyCor have specifically represented to Petitioner and Intervener in testimony obtained from outside legal proceedings[2], which involved GV&W and PhyCor, that increased revenues derived from practice growth were a direct result from increased access to patients provided by PhyCor's marketing and networking efforts, and would more than exceed PhyCor's potential annual thirty-seven percent (37%) management fee. (See Exhibit "F") PhyCor's efforts in this regard relate to obtaining and maintaining various third-party payor contracts and relationships that provide patient referrals to the medical practice and for the development of satellite sites for patient care.

DISCUSSION

14. Section 458.331(1)(i), Florida Statutes bars physicians from:

> Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a

[2] We specifically refer to Gold, Vann & White, P.A. v. Allen P. Friedenstab, M.D., Case No.: 98-0472CA22 (1998) noticed in the "Voluntary Disclosure Statement" submitted to the Board of Medicine by Howard Tee, M.D. and its attached Exhibits.

physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, ...

15. In *Bakarania*, the Board of Medicine determined that a management agreement providing for the manager to receive, among other things, thirty percent (30%) of the enhancement of the medical practice's operating profits in return for management services that included efforts to bring more patient referrals to the medical practice, is a violation of the fee-splitting prohibition contained in Section 458.331(1)(i), Florida Statutes. The Board of Medicine determined that a physician's participation in such an agreement could subject him to discipline pursuant to Section 458.331(1), Florida Statutes.

16. In Intervener and Petitioner's situation, as in *Bakarania*, the manager's costs and expenses are paid by the medical practice prior to the percentage split of operating profits and the percentage split is not tied in any way to the actual market value of the management services provided.[3] In both *Bakarania*, and Intervener and Petitioner's situation, a significant portion of the manager's services are directed to increasing the number of patients coming to the practice through marketing and developing other relationships negotiated, established, and maintained by the practice management company.

17. When reduced to its essential elements, the Board of Medicine's previous final order in *Bakarania*, found that a management contract that required the management company to provide services that included usual and customary business management activities, such as billing, clerical personnel, office maintenance, inventory supply, and payment of the practice's operating expenses, as well as additional duties involving practice expansion efforts such as

[3] In applying §458.331(1)(i), Florida Statutes, the Board of Medicine, in *In re Petition for Declaratory Statement of Jeffrey Fernyhough, M.D.(Unpublished)* DOH-97-0332(November 11, 1997), specifically included consideration of fair market value in determining its application.

marketing, obtaining managed care contracts, creating referral networks and developing and providing ancillary services could not also provide for the management company to receive, in return for such services, a percentage of the medical practice's net revenues.

18. The basis for the Board's decision was based upon the concept that percentage payments in return for practice expansion efforts, that either directly or indirectly rely upon increased referrals of patients from the sources developed by the management company, would violate the prohibition against spitting fees, in any form whatsoever, with any organization or person for patients referred to the health care provider, as set forth in Section 458.331(1)(i), Florida Statutes.

19. The Board of Medicine, in *Bakarania*, reached such a conclusion. In *Bakarania*, the Board of Medicine concluded that percentage arrangements between medical practices and practice management companies result in violation of the respective state laws that prohibit fee splitting. In this specific setting, it is the existence of the practice management company's interest in the increase in practice revenues in conjunction with the practice management company's control of referral sources, ancillary sources, billing and collection services, practice networks and other integral aspects of the practice's business decisions, that leads to concerns about illegal fee-splitting.

20. The Board of Medicine and the OIG[4] has reached the conclusion that such percentage arrangements between medical practices and practice management companies result in violation of the respective state and federal laws prohibiting fee splitting. In both settings, it is the existence of the practice management company's interest in the increase in practice revenues in conjunction with the practice management company's control of referral

[4] Advisory Opinion 98-4, issued by the OIG and attached as Exhibit "G".

sources, billing and collection services, practice networks and other integral aspects of the practice's business decisions, that leads to concerns about illegal fee-splitting.

21. In this case, the relationship between GV&W (Intervener and Petitioner's practice) and PhyCor, entitles PhyCor to receive up to thirty-seven percent (37%) of Intervener and Petitioner's revenues generated from professional fees (less specific expenses) in return for administrative services that include, billing; collections; ancillary services; marketing; negotiating, obtaining, supervising, maintaining third-party payor contracts, and when available in and around Indian River County, managed care relationships; and to establish a provider network in which Intervener, Petitioner and other client medical providers participate. These characteristics described in the relationship between GV&W (Intervener and Petitioner) and PhyCor, appear to be identical to those found in *Bakarania* to be prohibited by Section 458.331(1)(i), Florida Statutes.

CONCLUSION

WHEREFORE, Intervener, with and on behalf of the Petitioner, seeks a Final Order of the Board of Medicine stating whether or not the practice management arrangement described herein is in violation of Section 458.331(1)(i), Florida Statutes and the Board of Medicine's interpretation and application of that statutory provision as set forth in the Board of Medicine's Final Order in *Bakarania*. Based on the Board of Medicine's determination in the instant petition, both Intervener and Petitioner will be able to more appropriately determine their best course of action in reaching an acceptable resolution relating to the present practice management arrangement between GV&W and PhyCor without creating further personal risk of disciplinary action by the Board of Medicine.

interpretation and application of that statutory provision as set forth in the Board of Medicine's Final Order in *Bakarania*. Based on the Board of Medicine's determination in the instant petition, both Intervener and Petitioner will be able to more appropriately determine their best course of action in reaching an acceptable resolution relating to the present practice management arrangement between GV&W and PhyCor without creating further personal risk of disciplinary action by the Board of Medicine.

Respectfully submitted this 27th day of November 2000.

Robert Rappel, D.O., J.D.
Florida Bar No.:0015156
Craig M. Rappel, Esquire
Florida Bar No.: 0752428
Richard B. Wingate, Esquire
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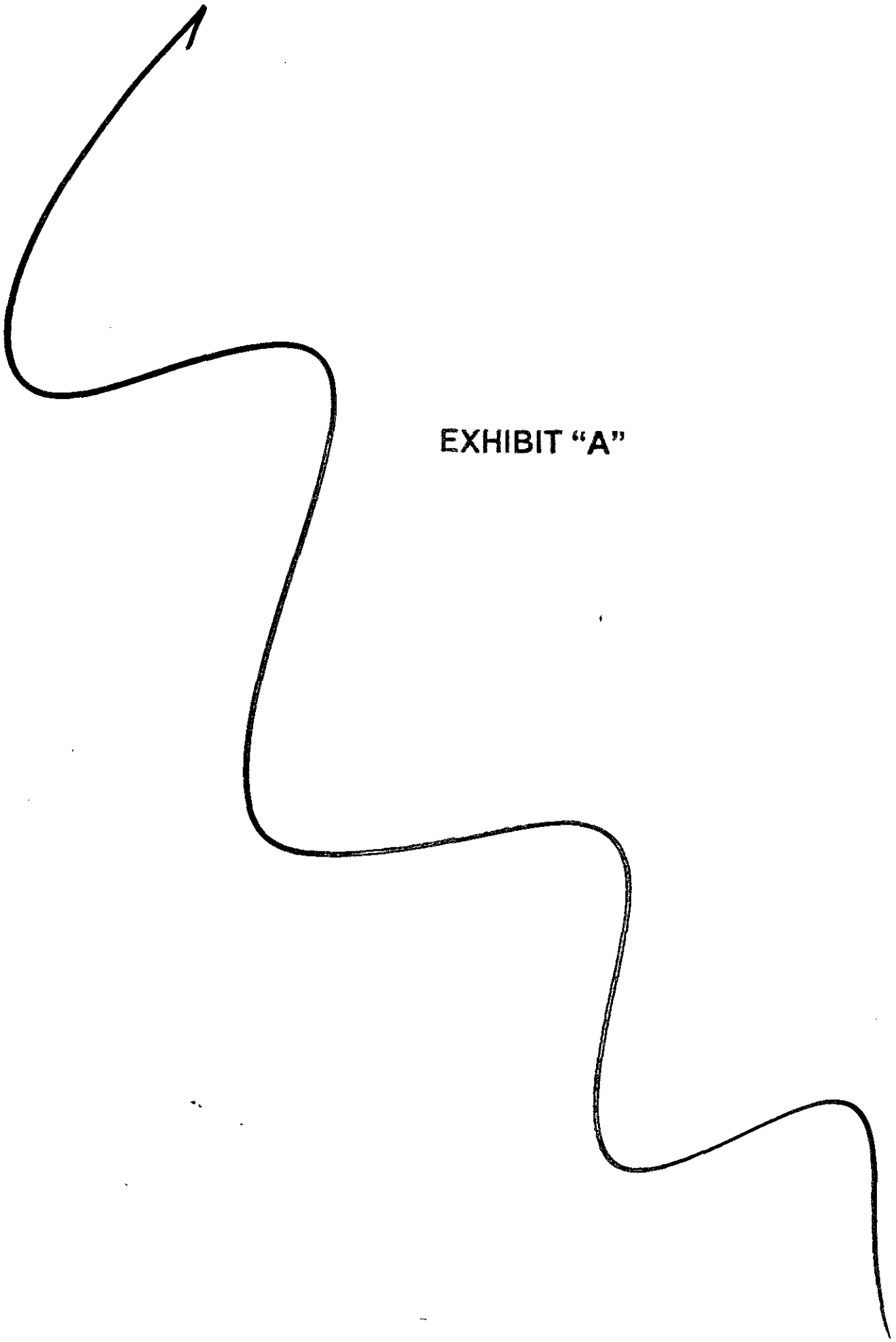

EXHIBIT "A"

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

IN RE:

Petition for Declaratory
Statement of
Howard Tee, M.D.

_____/

PETITION FOR DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes, Petitioner, HOWARD TEE, M.D. (the "Petitioner"), by and through undersigned counsel, petitions the Board of Medicine for a Declaratory Statement and states:

1. The Petitioner is Howard Tee, M.D. For purposes of this Petition, Petitioner's address is that of undersigned counsel.

2. The governmental entity affected by this Petition is the Department of Health, Board of Medicine (the "Board"). The statutory provisions on which this Declaratory Statement is sought are Sections 458.331(1)(g), 458.331(1)(i) and 817.505, Florida Statutes.

3. Petitioner's multi-specialty group medical practice (the "Practice") entered into and participated in a long-term Management Services Agreement and an Amended Management Services Agreement (collectively the "Management Agreement"), with a practice management company (the

"Company"). (attached as Exhibit "B", Page 1) The Practice consists of approximately forty-four (44) multi-specialty physicians.

4. The Petitioner entered into a non-shareholder employment agreement on November 19, 1996; however, the Petitioner did not actually begin employment until February 1, 1997. The Petitioner became a shareholder of the Practice on July 8, 1998, effective February 1, 1998 and entered into a Stockholder Employment Agreement ("Employment Agreement") (attached as Exhibit "C", Page 1), during said participation in the Management Agreement. The Employment Agreement incorporated the Management Agreement by reference. During the formulation of the Employment Agreement, the Petitioner requested but never received a copy of the Management Agreement.

5. On or about August 2000, the Petitioner became aware mainly through outside sources that the Management Agreement entered into by the Practice may subject the Petitioner to disciplinary action by the Board of Medicine. In addition, the Petitioner obtained a copy of a July 17, 2000 Advisory Bulletin from the Florida Medical Association (attached as Exhibit "A"). The Petitioner, concerned with his reimbursement arrangement and the possible issue of a "split-fee" arrangement with the Company discussed the concerns of the arrangement with the Practice Executive Director. The Petitioner again requested a copy of the Management Agreement and his request was again denied. On September 5, 2000, the Petitioner sought legal counsel. Approximately two weeks after seeking legal counsel, the Petitioner came into

possession of a copy of the Management Agreement from a fellow Practice physician.

6. The Transaction Documents, which includes the Management Agreement (attached as Exhibit "B") and the Employment Agreement - Stockholder (attached as Exhibit "C") contains the following relevant provisions:

a. The Company is the sole and exclusive agent for the administration and management of the Practice. (B, Page 11) The Company is required to provide certain management services, including, but not limited to, practice expansion and increasing profits and revenues through advertising, coordinating managed care relationships (B, Page 13, 5.5(h)), patient fee schedules, strategic planning, ancillary services to which the Practice's physicians may refer and other management services.(B, Page 8-10, Article 4 and 5.1) The Company determines the amount of capital to be invested annually (emphasis added) in the Practice and specifically controls the profit margin (emphasis added) for the Practice. Moreover, the Company determines the form of capital to be invested. (B, Page 11, 5.2)

b. Other management services include the establishment and maintenance of credit, billing and collection policies and procedures, advise and consult with Practice regarding the

fees for Professional Services provided by the Practice, provide all services relating to the billing of patients, insurance companies and other third party payors on behalf of the Practice and other management services as requested by the Practice. Additionally, the Company designs, supervises and maintains custody of all files and records, which relate to the operation of the Practice, including but not limited to accounting, billing, patient medical records and collection records. (B, Page 12, 5.5(b))

c. The Company established and is administering accounting procedures, controls and systems to provide financial records and books of account relating to the operation of the Practice. All financial affairs are prepared and maintained in accordance with the Companies routine accounting practices. Additionally, the Company established, maintains and monitors procedures and policies for the timely filing and retrieval of all medical records generated by the Practice. (B, Page 13, 5.5 (f))

d. The Company also provides certain operational services to the Practice, including the employment of personnel, administration and support in addition to providing the facilities, equipment and supplies as an agent for the

Practice. (B, Page 13, 5.5(d), Page 14, 5.7)

e. The Company controls all advertising, other marketing services and public relations, the cost of which is included in the Practice expenses. (B, Page 9, 4.2.3; Page 10, 5.1)

f. In addition to the reimbursement of advertising and marketing, the Practice must reimburse the Company for Practice expenses ("Expenses") and a Service Fee. First, the Practice must reimburse the Expenses, which consists essentially of all direct and indirect expenses incurred by the Company in the provision of the management and operational services to the Practice. The Expenses also include all salaries, benefits and other direct costs of all employees, with the exception of Technical Employees, which are the responsibility of the Company, and other employees, who are not professional employees, of the Practice at the clinic. (B, Page 20, 8.1(a)) Second, the Practice must pay the Company a monthly Service Fee, which is a percentage of the Net Practice Revenues equal to twelve percent (12%) for the term of the Agreement. (B, Page 20, 8.1(b)) The Practice's net income includes all income derived from the revenues generated by or on behalf of the Practice or its physicians as a direct result of

professional medical services furnished to patients, ancillary services provided to patients, pharmaceuticals and other medical supplies sold to patients and other fees or income generated in an inpatient or outpatient setting, regardless of the source, less Clinic expenses.(B, Page 20, 8.1(b) Additionally, there is a Managed Care Service Fee of twenty-five percent (25%) of all additional Managed Care payments plus, should an Independent Practice Association ("IPA") be established for the Practice, an additional management fee will be provided to the management organization.(B, Page 15, 16, 5.12(a),(b)) Thus, the Service Fee distribution is a direct percentage of the total profits generated by the Practice, which includes all profits generated as a result of the Company's marketing and management efforts, supported totally from all sources of the Practice's physician's revenues.

7. Section 458.331(1), Florida Statutes sets forth a list of acts or omissions for which the Board of Medicine may take disciplinary action against a physician's license. More specifically, the list includes Section 458.331(1)(i), which prohibits "[p]aying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for

patients referred to providers of health care goods and services . . ." Petitioner is concerned that the arrangement provided for in the Management Agreement violates this prohibition, i.e., the percentage payment is not related to the cost of management services provided (the Management Agreement requires the Company's direct cost for the management expenses and Expenses to be compensated from the top of the revenues) and that the Service Fee covers a percentage of the revenues from all services, whether performed inside the physician's clinic or in a hospital, particularly in light of the Board of Medicine's decision in *In Re: Bakarania*, 20 FALR 395 (1998), *aff'd without opinion*, 737 So.2d 588 (Fla. 1st DCA 1999). In *In Re: Bakarania*, the Board of Medicine's decision concerned a group of physicians who were to pay management fees from the group's revenues to a management company that had no correlation to the actual cost of providing management services and appeared to be provided simply to compensate the management company for management services intended to develop more "patient referrals" for the group. The present Management Agreement contains similar terms similar to those described by the Final Order of the Board of Medicine. Moreover, the Company adopted the statement of the case and facts provided by Phymatrix before the First District Court of Appeal.

7. Section 458.331(1)(g), Florida Statutes, states that a physician may be disciplined for "[f]ailing to perform any statutory or legal obligation placed upon a licensed physician." Petitioner is concerned that he is subject to discipline by

the Board of Medicine for the failure to perform a statutory obligation placed upon him by engaging in a split-fee arrangement with the Company.

8. In light of the statutory prohibitions against fee-splitting and the *In Re: Bakarania* Decision, Petitioner requests that the Board of Medicine issue a Declaratory Statement advising the Petitioner as to whether he is subject to discipline for participating in and continuing to participate in the Management Agreement.

Respectfully submitted,

Robert Rappel, D.O., J.D.
Florida Bar No.:0015156
Craig M. Rappel, Esquire
Florida Bar No.: 0752428
Richard B. Wingate, Esquire
Florida Bar No.:0383686
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Oak Point Professional Center
Vero Beach, Florida 32963-1216
(561) 231-7223
(561) 231-8824 (fax)
e-mail: rappellaw@pdmnet.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one (1) copy of the foregoing Petition for Declaratory Statement has been served via United States First Class Certified Mail, Return Receipt Requested, Postage Prepaid, upon: State of Florida, Department of Health, Program Administrators Office, 4052 Bald Cypress Way, BIN-CO3, Tallahassee, Florida 32399-3253 (Receipt Number: 7000-0520-0025-5697-0323), and to the Office of Attorney General, Collins Building, Room 324, Tallahassee, Florida 32308 (Receipt Number: 7000-0520-0025-5697-0316), this 9th day of November, 2000.

Robert Rappel, D.O., J.D.

EXHIBIT "B"

Florida Statutes 2000 / Chapter 458 / 458.331 Grounds for disciplinary action; action by the board and department.

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

(d) False, deceptive, or misleading advertising.

(e) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. A treatment provider approved pursuant to s. 456.076 shall provide the department or consultant with information in accordance with the requirements of s. 456.076(3), (4), (5), and (6).

(f) Aiding, assisting, procuring, or advising any unlicensed person to practice medicine contrary to this chapter or to a rule of the department or the board.

(g) Failing to perform any statutory or legal obligation placed upon a licensed physician.

(h) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.

(i) Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

(j) Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

(k) Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.

(l) Soliciting patients, either personally or through an agent, through the use of fraud,

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-97-0713 Date 11-12-97
FILED
Department of Health
AGENCY CLERK
By: [signature]
Deputy Agency Clerk

IN RE: THE PETITION
FOR DECLARATORY
STATEMENT OF
MAGAN L. BAKARANIA, M.D.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, on October 17, 1997, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed on behalf of Magan L. Bakarania, M.D. (hereinafter Petitioner). Having considered the petition, the arguments submitted by counsel for Petitioner, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

PROCEDURAL MATTERS

Several individuals and entities interested in the circumstances described in this petition moved to intervene in the matter before the Board.[1] Each Intervenor agreed to adopt the stated facts as set forth in the Petition and each intervenor was permitted to join as a party[2].

[1]There were numerous other motions filed by the various parties seeking to intervene. Dr. Goldman's and Phymatrix's Alternative Petition for Declaratory Statement was withdrawn. The Petitions for an administrative hearing to resolve disputed issues of material fact were denied as being antithetical to a declaratory statement and not authorized pursuant to the Uniform Rules of Procedure as codified at Rule 28-105.003, Florida Administrative Code. Dr. Goldman's and Phymatrix's Motion for Attorneys Fees was withdrawn.

[2]Two entities, Phymatrix and Medpartners were granted leave to intervene through physicians with which they have employment or contractual relationships. Without those licensed physicians neither of these entities would have been granted intervenor status.

a. The Company is required to provide general management services, including but not limited to, practice expansion. The agreement contemplates achieving such expansion by developing "relationships and affiliations with other physicians and other specialists, hospitals, networks, health maintenance organizations, and preferred provider organizations." The Company is also required to attempt to develop a physician provider network in the group practice's service area and to incorporate the group practice into existing networks. Other general management services required of the Company include strategic planning, coordinating managed care relationships, consulting with regard to fee schedules, and other management services as requested by the group practice.

b. The Company is required also to provide operational services including employing personnel, providing facilities and equipment, assisting in developing ancillary services, bookkeeping, billing, collecting, and financial reporting.

c. The Company may also provide unspecified ancillary services to which the group practice physicians may refer.

d. In return, the group practice is required to pay three separate fees. First is an operations fee which is equivalent to the actual expenses incurred by the Company in the provision of the operational services provided for the group practice. Second is a general management fee in the amount of $450,000.00, paid annually to the Company. Finally, the group practice is required to pay an annual performance fee equal to 30% of the group practice's net income each year.[3]

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[3]The group practice's net income is defined in the agreement as all of the revenue's generated by or on behalf of the group practice or its physician members "as a result of professional medical services furnished to patients, ancillary services provided to patients, pharmaceuticals and other items or supplies sold to patients and other fees or income generated .

e. In addition, the group practice will sell the assets of the group practice to the Company and the group practice will then lease back those assets for daily use by the group practice. At the termination of the management agreement, the group practice will buy back all of the assets pursuant to a formula set forth in the agreement.

6. Petitioner is concerned that the proposed arrangement might be found to be in violation of §458.331(1)(t), Florida Statutes, and the Board's position on split-fees as expressed in, In re the Petition for Declaratory Statement of Gary R. Johnson and the Green Clinic, 14 FALR 3935, (July 11, 1992). Petitioner is also concerned about the prohibitions set forth in §817.505, Florida Statutes.

7. This petition was noticed by the Board in Vol. 23, No. 34, dated August 22, 1997, of the Florida Administrative Weekly (p. 4471).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The Petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code. The Board is aware of the prohibition against using a declaratory statement as a vehicle for the adoption of broad agency policies as discussed in Agency for Health Care Administration v. Wingo, 697 So. 2d 1231 (Fla. 1st DCA 1997), and Florida Optometric Association v. DPR, Board of Opticianry,

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. . in an inpatient or outpatient setting" regardless of the source, less the operations fee, the management fee, and an amount that approximately equals the group practice's profits prior to entering into the agreement.

567 So. 2d 928 (Fla. 1st DCA 1990). Some of the Intervenors have suggested that because other licensees have chosen to enter contracts similar to the one that is the basis of this Petition, that the Board's ruling on this Petition would be more appropriate if done in the form of rule making. In response the Board notes that Section 120.54, Florida Statutes, requires that each agency statement defined as a rule shall be adopted as soon as feasible and practicable. This Declaratory Statement addresses only the specific facts set forth in this Petition and is not intended to be a general statement of policy and therefore does not meet the statutory definition of a rule. However, even if this Declaratory Statement were to have a general application to licensees of the Board, the Board is being asked this particular question for the first time in this Petition and finds that it would be neither feasible nor practicable to enter into rulemaking on this issue at this time. The Board also notes that with the current status of the law prohibiting agencies from adopting rules based solely on the reasonableness or necessity for such rules and requiring instead that an agency have a specific statutory directive for such rulemaking as set forth in Section 120.536(1), Florida Statutes, it is not clear that the Board would have the authority to adopt rules addressing the same issues set forth in the Petition.

3. Section 458.331(1)(i), Florida Statutes, provides in pertinent part that it is grounds for disciplinary action by the Board if a licensee is:

> Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, . . .

4. Section 817.505(1)(a), Florida Statutes, provides in pertinent part that it is unlawful for any person, including a health care provider, to:

> Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or

indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage from a health care provider or health care facility;

5. In a declaratory statement issued on July 11, 1992, the Board interpreted §458.331(1)(i), Florida Statutes, to prohibit an arrangement whereby a clinic retains a specified percentage (54%) of the physician's billings without regard to the cost of providing services by the clinic to the physician and without regard to whether the billings are for services performed by the physician in or out of the clinic. Green, *supra*

6. In accord with its previous decision in Green, the Board concludes that this agreement, which requires Petitioner or Petitioner's group practice to pay a specified percentage of their net income without regard to the cost of providing services supplied by the Company, and without regard to whether the income is from services performed either by Petitioner or under Petitioner's supervision or direction is a split-fee arrangement that is in violation of §458.331(1)(i), Florida Statutes.

7. Furthermore, payment of fees to the Company, that are based upon revenue generated, at least in part, because of the referrals that the Company has helped to generate is a violation of §458.331(1)(i), Florida Statutes. Although payment of a reasonable flat fee in return for the provision of management services, including practice enhancement, is appropriate and allowable under Florida law, payment of a percentage of the revenue the management services and practice enhancement generate is not permissible. In coming to this conclusion, the Board is aware of the line of cases from the Second District Court of Appeal in Florida[4] which have set forth that

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[4]Practice Management Associates v. Orman, 614 So. 2d 1155 (Fla. 2d DCA 1993); Practice Management Associates v. Gulley, 618 So. 2d 259 (Fla. 2d DCA 1993); and Practice Management Associates, Inc. v. Bitet, 654 So. 2d 966 (Fla. 2d DCA 1995).

contracts with a management company that call for payment of either a flat fee or a specific percentage of gross income, which ever is greater, are not traditional fee-splitting and therefore do not violate the fee-splitting prohibition contained in many of Florida's practice acts regulating health care professionals.[5] The Board concludes that those cases are distinguished by both fact and law. Factually, each of those cases involved management services, but did not identify as an obligation of the management company any activity that could be construed as providing more extensive referrals of patients. The agreement in this situation specifically requires the company to create a physician provider network; develop relationships and affiliations with other physician provider networks; develop and provide ancillary services including pharmacy, laboratory, and diagnostic services; and evaluate, negotiate, and administer managed care contracts. Each of these activities is involved in the development of a greater number of patient referrals to Petitioner's practice.[6] As a matter of law, the cases in the Second District Court of Appeal all predated the Legislature's 1996 enactment of the Patient Brokering Act at §817.505, Florida Statutes. Although the Board does not choose to interpret the application of §817.505, Florida Statutes[7], it is clear that the Legislature intends that payment of fees or other

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[5]Each of the cases in the Second District Court of Appeal involved language in the Chiropractic practice act that is virtually identical to the language set forth in §458.331(1)(i), Florida Statutes.

[6]The thirteen Intervenor physician members of the group practice Petitioner is contemplating joining, brought to the Board's attention the case of Lieberman & Kraff M.D. S.C. v. Destrick, 614 N.E. 2d 379 (Ill. App. 1 DCA 1993), in which the Illinois Court of Appeals rejected the Florida District Court's interpretation of the Illinois law at issue in the seminal case in Florida's Second District Court of Appeal. The Illinois court found that the practice described in the Florida cases would violate the fee-splitting provisions of Illinois law.

[7]It was suggested by some of the Intervenors that the Board does not have jurisdiction to interpret and apply the provisions of §817.505, Florida Statutes, because it is a criminal statute and not within the purview of the Board. The Board acknowledges and agrees with that

remuneration directly or indirectly related to the referral of patients to health care providers is no longer to be permitted in Florida. Furthermore, the Board notes the similarity in the language and apparent intent between the provisions in §458.331(1)(i), Florida Statutes, and §817.505, Florida Statutes. Clearly, any licensee convicted pursuant to §817.505, Florida Statutes, would be subject to discipline by the Board pursuant to §458.331(1)(e), Florida Statutes.

8. This Final Order responds only to the specific facts set forth and specific questions set forth by Petitioner in his Petition for Declaratory Statement. The conclusions of the Board are with regard to the specific statutory provisions addressed and should not be interpreted as commenting on whether the proposed facts may or may not violate other provisions of Chapter 458, Florida Statutes, or other related obligations placed on physicians in Florida. Furthermore, this Declaratory Statement is not a ruling on the legal validity or enforceability of the described contract or any similar contract between a physician or physician group and a practice management company.

WHEREFORE, the Board hereby finds that under the specific facts of the petition, as set forth above, the contractual arrangement described by Petitioner is prohibited pursuant to §458.331(1)(i), Florida Statutes, and declines to address the application of §817.505, Florida Statutes, through §458.331(1)(g), Florida Statutes.[1]

DONE AND ORDERED this 3rd day of November, 1997.

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argument and therefore is not providing an interpretation of the application of that particular statutory provision.

[1]Section 458.331(1)(g), Florida Statutes, provides for discipline against the license of any physician who fails to perform any statutory or legal obligation placed upon a licensed physician. The Board does not believe that a reasonable reading of this section would provide a basis for interpreting and applying §817.505, Florida Statutes.

BOARD OF MEDICINE

Edward A Dauer M.D.

EDWARD A. DAUER, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS MAY BE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED AS SET FORTH ABOVE AND WITHIN THIRTY (30) DAYS OF RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to, Charles A. Buford, Esquire, 2560 Gulf to Bay Blvd., Suite 300, Clearwater, Florida 33765, and to Alan S. Gassman, Esquire, 1245 Court Street, Suite 102, Clearwater, Florida 34616, Counsel for Petitioner and for the thirteen intervenor physician members of Access Medical, Inc.; and to Michael J. Cherniga, Esquire, 101 E. College Avenue, Post Office Drawer 1838, Tallahassee, Florida 32302, Counsel for Intervenors Dr. Goldman and Phymatrix; and to Craig H. Smith, Esquire, NationsBank Building, Third Floor, 3600 North Federal Highway, Ft. Lauderdale, Florida 33308, this _____ day of _____, 1997.

_____

C:\FLOCLAMS\OFFICE\WPDOCS\FINALORD.WPD

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to Magan L. Bakarania, M.D., 320 Oakfield Drive, Suite A, Brandon, FL 33511-5706, Charles A. Buford, Esquire, 2560 Gulf to Bay Blvd., Suite 300, Clearwater, FL 33765, Alan S. Gassman, Esquire, 1245 Court Street, Suite 102, Clearwater, FL 34616, Counsel for Petitioner and for the thirteen Intervenor physician members of Access Medical, Inc.; to Michael J. Cheniga, Esquire, 101 E. College Avenue, Post Office Drawer 1838, Tallahassee, FL 32302, Counsel for Intervenors Dr. Goldman and Phymatrix, and to Craig H. Smith, Esquire, NationsBank Building, Third Floor, 3600 North Federal Highway, Ft. Lauderdale, FL 33308 at or before 5:00 p.m., this 12th day of November, 1997.

Vicki A. Wilson

EXHIBIT "C"

PHYCOR OF VERO BEACH, INC.

AMENDED AND RESTATED
SERVICE AGREEMENT

PHYCOR OF VERO BEACH, INC.

AMENDED AND RESTATED
SERVICE AGREEMENT

THIS AMENDED AND RESTATED SERVICE AGREEMENT dated as of January 1, 1997, by and between PHYCOR OF VERO BEACH, INC., a Florida corporation ("PhyCor") and GOLD, VANN & WHITE, P.A., a Florida professional association ("GVW").

RECITALS:

WHEREAS, GVW is a multi-specialty group medical practice in the Vero Beach, Florida area which provides comprehensive professional medical care to the general public;

WHEREAS, PhyCor is in the business of managing medical clinics, and providing support services to and furnishing medical practices with the necessary facilities, equipment, personnel, supplies and support staff;

WHEREAS, GVW desires to obtain the services of PhyCor in performing such management functions so as to permit GVW to devote its efforts on a concentrated and continuous basis to the rendering of medical services to its patients;

WHEREAS, effective January 1, 1989, PhyCor purchased certain assets and assumed certain liabilities of GVW pursuant to the terms of an Asset Purchase Agreement, and PhyCor and GVW entered into a Service Agreement providing for PhyCor to provide certain services to GVW; and

WHEREAS, effective January 1, 1992, PhyCor and GVW amended and restated the Service Agreement;

WHEREAS, PhyCor and GVW each deem it necessary and advisable to amend certain provisions of the Service Agreement and to restate the terms and provisions of the Service Agreement as amended;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Service Agreement is amended and restated as follows and GVW hereby agrees to purchase the management and support services herein described and PhyCor agrees to provide such services on the terms and conditions provided in this Agreement.

ARTICLE 1.

RELATIONSHIP OF THE PARTIES

1.1. Independent Relationship. GVW and PhyCor intend to act and perform as independent contractors and the provisions hereof are not intended to create any partnership, joint venture, agency or employment relationship between the parties. Notwithstanding the authority granted to PhyCor herein, PhyCor and GVW agree that GVW shall retain the authority to direct the medical, professional, and ethical aspects of its medical practice. Each party shall be solely responsible for and shall comply with all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment related statutes applicable to that party.

1.2. Responsibilities of the Parties. As more specifically set forth herein, PhyCor shall provide GVW with offices and facilities, equipment, supplies, support personnel, and management and financial advisory services. As more specifically set forth herein, GVW shall be responsible for the recruitment and hiring of physicians and all issues related to medical practice patterns and documentation thereof. Notwithstanding anything herein to the contrary, any clinical laboratory shall be operated in full compliance with Section 6204 of the Omnibus Budget Reconciliation Act of 1989.

1.3. GVW's Matters. As more specifically set forth herein, matters involving the internal agreements and finances of GVW, including the distribution of professional fee income among the individual Physician Employees and Physician Stockholders (as hereinafter defined), shall remain the sole responsibility of GVW and the individual Physician Employees and Physician Stockholders.

1.4. Patient Referrals. The parties agree that the benefits to GVW hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral or any other arrangement for the provision of any item or service offered by PhyCor to any of GVW's patients in any facility or laboratory operated by PhyCor independently of GVW.

ARTICLE 2.

DEFINITIONS

2.1. Definitions. For the purposes of this Agreement, the following definitions shall apply:

2.1.1. "Additional Managed Care Payments" shall mean (i) all fees and revenues recorded by or on behalf of GVW or PhyCor for profits from the assumption of

institutional or professional risk in managed care risk assumption arrangements or otherwise, including bonus, incentive and surplus payments from capitated services, and (ii) dividends and distributions resulting from an ownership interest by PhyCor and/or GVW in a managed care entity, but excluding Capitation Revenues.

2.1.2. "Adjustments" shall mean any adjustments for uncollectible accounts, discounts, Medicare and Medicaid disallowances, worker's compensation, employee/dependent healthcare benefit programs, professional courtesies and other activities that do not generate a collectible fee.

2.1.3. An "Affiliate" of a corporation means (a) any person or entity directly or indirectly controlled by such corporation, (b) any person or entity directly or indirectly controlling such corporation, (c) any subsidiary of such corporation if the corporation has a fifty percent (50%) or greater ownership interest in the subsidiary, or (d) such corporation's parent corporation if the parent has a fifty percent (50%) or greater ownership interest in the corporation. For purposes of this Section 2.1.3., GVW is not an affiliate of PhyCor.

2.1.4. "Ancillary and Other Revenues" shall mean all fees or revenues actually recorded each month (net of Adjustments) by or on behalf of GVW or PhyCor which are not Physician Services Revenues or Capitation Revenues, including global and technical fees from medical ancillary services, and fees for medical management and utilization, and other distributions to GVW from health care related investments, and including any interest, investment, rental or similar payments or income made or payable to GVW, but excluding rental income on any leases or subleases between PhyCor and GVW, and any investment income on proceeds under the Asset Purchase Agreement.

2.1.5. "Capitation Revenues" shall mean all payments from managed care organizations, such as Blue Cross Health Option, where payment is made periodically on a per member basis for the partial or total medical care needs of a patient, co-payments and all HMO incentive payments including hospital incentive payments (unless such HMO payment or hospital incentive payment is an Additional Managed Care Payment), but excluding Additional Managed Care Payments.

2.1.6. "Clinic" shall mean facilities, including satellite locations, related businesses and all medical group business operations of PhyCor, which are utilized by GVW.

2.1.7. "Clinic Expenses" shall mean all operating and non-operating expenses incurred in the operation of the Clinic, including, without limitation:

(a) salaries, benefits (including contributions under pension and profit-sharing plans) and other direct costs of all employees of PhyCor at the Clinic, and Technical Employees (but excluding all other Physician Employees),

(b) obligations of PhyCor or Parent under leases or subleases provided for herein and relating to the operations of PhyCor or the GVW Clinic,

(c) personal property and intangible taxes assessed against PhyCor's assets commencing on the date of this Agreement and including those taxed on accounts receivable purchased pursuant to Section 8.2 hereof,

(d) interest expense on indebtedness incurred by PhyCor or Parent to finance any of its obligations hereunder or services or services provided hereunder and interest expenses on indebtedness incurred to finance transactions described in Section (g) below occurring after January 1, 1997 (interest expense will be charged for funds borrowed from outside sources as well as from Parent or Parent's finance subsidiary; in the latter case, charges will be computed at a floating rate that is equal to the current blended borrowing rate in effect for actual and available outside borrowings of Parent or its finance subsidiary; and such rate will be computed as the sum of interest and related costs divided by the related total of all borrowings),

(e) malpractice insurance expenses,

(f) other expenses incurred by PhyCor in carrying out its obligations under this Agreement,

(g) In the event after the date of the execution of this Amended and Restated Service Agreement, an opportunity arises for additional physicians in the service area of GVW to become employed by or merge with GVW, and in the event such merger is completed, amortization of intangible asset value as a result of each such merger, provided, however, the first $1,000,000 in aggregate intangible asset value for the foregoing

acquisitions shall not be a Clinic Expense but shall be a PhyCor expense;

(h) the write-off of any asset or any portion thereof on the balance sheet of PhyCor as of January 1, 1997 or incurred thereafter; and

(i) the salaries and benefits of that number of Physician Extender Employees which equal 15% of the total number of providers employed by GVW, however, once the 15% level is reached, the salaries and benefits of all other Physician Extender Employees shall be an expense of GVW.

"Clinic Expenses" shall not include:

(A) any corporate overhead charges (other than interest expense identified above), from the Parent or any corporation affiliated with the Parent,

(B) any federal or state income taxes,

(C) any expenses which are expressly designated herein as expenses or responsibilities of GVW,

(D) any amortization expense resulting from the amortization of "clinic service agreement" on the books of PhyCor relating to the execution of this Agreement,

(E) interest expense on indebtedness incurred by PhyCor or Parent to finance the purchase price paid or withheld at Closing under the Asset Purchase Agreement or the refinancing of any liabilities assumed under the Asset Purchase Agreement, and

(F) amortization of intangible asset value incurred as a result of, and interest expense incurred in connection with, each merger of the type described in section (g) above occurring prior to January 1, 1997, and amortization of intangible asset value incurred as a result of the first $1,000,000 in the aggregate of intangible assets value from transactions occurring thereafter.

2.1.8. "GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and

statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity or other practices and procedures as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination. For purposes of this Agreement, GAAP shall be applied in a manner consistent with the historic practices used by PhyCor or Parent.

2.1.9. "Net Clinic Revenues" shall mean the sum of Ancillary and Other Revenues, Physician Services Revenues and Capitation Revenues. In no event shall Additional Managed Care Payments be included in Net Clinic Revenues.

2.1.10. "Opening Balance Sheet" shall mean the balance sheet of PhyCor as of January 1, 1989:

(a) prepared in accordance with GAAP (except for the absence of certain note information), and

(b) substantially in the form of the attached Exhibit 2.1.13 subject to adjustments in the Purchase Price (as defined in the Asset Purchase Agreement of even date herewith (the "Asset Purchase Agreement") between GVW and Parent pursuant to Section 1.4 of the Asset Purchase Agreement).

2.1.11. "Parent" shall mean PhyCor, Inc., a Tennessee corporation, which is the sole shareholder of PhyCor.

2.1.12. "Physician Employees" shall mean only those individuals who are employees of GVW or are otherwise under contract with GVW to provide professional services to Clinic patients and are duly licensed to provide professional medical services in the State of Florida and Technical Employees. Such definition shall include both shareholders and employees of GVW. Physicians whose services are contracted for under independent contractor agreements or physician provider agreements under an independent practice association and who have not executed employment agreements with GVW shall not be considered Physician Employees.

2.1.13. "Physician Extender Employees" shall mean Nurse Anesthetists, Physician Assistants, Nurse Practitioners, Nurse Mid-Wives, Psychologists, and other such positions, who are employees of the Clinic, but excluding Technical Employees.

2.1.14. "Physician Services Revenues" shall mean all fees actually recorded each month (net of Adjustments) by or on behalf of GVW as a result of professional medical services personally furnished to patients by employees of GVW or other professionals under control of GVW and other fees or income generated in their capacity as professionals, whether rendered in an inpatient or outpatient setting.

2.1.15. "Physician Stockholders" shall mean those physicians who are stockholders of GVW.

2.1.16. "Policy Board" shall mean a six (6) member board established pursuant to Section 4.1. Except as otherwise provided, the act of a majority of the members of the Policy Board shall be the act of the Policy Board.

2.1.17. "Technical Employees" shall mean technicians who provide services in the diagnostic areas of GVW's practice, such as employees of the clinic laboratory, radiology technicians and cardiology technicians. All Technical Employees shall be Physician Employees.

ARTICLE 3.

FACILITIES TO BE PROVIDED BY PHYCOR

3.1. Facilities. PhyCor hereby agrees to provide to GVW offices and facilities for the practice of medicine (for purposes of this Section 3.1, the "facilities"), including but not limited to, all costs of repairs, maintenance and improvements, utility (telephone, electric, gas, water) expenses, normal janitorial services, refuse disposal and all other costs and expenses reasonably incurred in conducting operations in the Clinic during the term of this Agreement, including, but not limited to, related real or personal property lease cost payments and expenses, mortgage payments, taxes and insurance. PhyCor shall consult with GVW regarding the condition, use and needs for the offices, facilities and improvements. PhyCor shall maintain the facilities in keeping with the standards of high quality medical facilities.

Pursuant to the terms and conditions of a certain Lease Agreement dated June 21, 1993, between Healthcare Realty Trust, Incorporated, a Maryland corporation ("HRTI"), as landlord, and PhyCor, as lessee (the "HRTI Lease"), PhyCor is the tenant of certain real estate located in the City of Vero Beach, Indian River County, Florida, as more fully described in Exhibit 3.1 attached hereto (the "Property"), and as long as neither HRTI nor PhyCor is in default under the HRTI Lease and as long as

the HRTI Lease has not terminated, PhyCor agrees to provide to GVW the Property as facilities for the practice of medicine by the physicians in GVW. The HRTI Lease shall provide, subject to various terms and conditions therein, that GVW may sublease the Property upon the termination of this Agreement or lease the Property upon a default by PhyCor under the HRTI Lease. If GVW should elect to lease the Property upon such default, then, before the termination of the HRTI Lease and the surrender by PhyCor of the Property, GVW shall cure PhyCor's default and assume PhyCor's duties and obligations under the HRTI Lease in the form and manner set forth therein. Alternatively, if PhyCor should default under the HRTI Lease, GVW may give to PhyCor written notice to obtain new facilities in which GVW may practice medicine. If GVW elects to notify PhyCor to locate new facilities, PhyCor, upon receipt of such notice, shall promptly obtain facilities for GVW for the remaining term of this Agreement, which facilities shall be similar to or better than the present quality of the Property.

ARTICLE 4.

DUTIES OF THE POLICY BOARD

4.1. Formation and Operation of the Policy Board. The parties shall establish a Policy Board which shall be responsible for developing management and administrative policies for the overall operation of the Clinic. The Policy Board shall consist of six (6) members. PhyCor shall designate, in its sole discretion, three (3) members of the Policy Board. GVW shall designate, in its sole discretion, three (3) members of the Policy Board. The Chairman of the Policy Board shall be elected by a majority of the Policy Board. If the Executive Director is one of the PhyCor Policy Board members and the Policy Board proposes to discuss the status of the Executive Director, then the Executive Director should not vote and should excuse himself, leaving the room on all votes that affect the status of the Executive Director, and his vote shall be cast by the other PhyCor representatives so that at all times, PhyCor shall have three votes and GVW shall at all times have three votes.

4.2. Duties and Responsibilities of the Policy Board. The Policy Board shall have the following duties and obligations:

4.2.1. Capital Improvements and Expansion. Any renovation and expansion plans and capital equipment expenditures with respect to the Clinic shall be reviewed and approved periodically by at least four members of the Policy Board and shall be based upon economic

feasibility, physician support, productivity and then current market conditions.

4.2.2. Annual Budgets. All annual capital and operating budgets prepared by PhyCor, as set forth in Section 5.2, shall be subject to the periodic review, approval and amendment of the Policy Board by vote of four or more members.

4.2.3. Exceptions to Inclusion in Net Clinic Revenues. The exclusion of any revenue from Net Clinic Revenues, whether now or in the future, shall be subject to the approval of the Policy Board. Exhibit 4.2.3 sets forth exclusions approved as of the date hereof. Such amounts must be disclosed by the physician to GVW and by GVW to the Policy Board and the commitment and activities generating such amounts must not have a material adverse impact on the financial operations of GVW or the Clinic.

4.2.4. Advertising. All advertising and other marketing of the services performed at the Clinic shall be subject to the prior review and approval of the Policy Board.

4.2.5. Patient Fees. As a part of the annual operating budget, in consultation with GVW and PhyCor, the Policy Board, by vote of four or more members, shall review and adopt the fee schedule for all physician and ancillary services rendered by the Clinic. The Policy Board shall also approve PhyCor's determination of the collection policies.

4.2.6. Ancillary Services. The Policy Board shall select providers of ancillary services based upon the pricing, access to and quality of such services and shall determine which ancillary services will be provided.

4.2.7. Provider and Payor Relationships. Decisions regarding the establishment or maintenance of relationships with institutional health care providers and payors shall be made by vote of four or more members of the Policy Board in consultation with GVW.

4.2.8. Strategic Planning. The Policy Board shall develop long-term strategic planning objectives.

4.2.9. Capital Expenditures. The Policy Board shall determine the priority of major capital expenditures by a vote of four or more members.

4.2.10. Physician Hiring. After consultation with GVW, and subject to the provisions of Section 5.5(g), the

Policy Board shall determine the number and type of physicians required for the efficient operation of the Clinic. The approval of the Policy Board shall be required for any variations to the restrictive covenants in any physician employment contract.

4.2.11. Executive Director. The selection and retention of the Executive Director pursuant to Section 5.6 by PhyCor shall be subject to the reasonable approval of the Policy Board. If GVW is dissatisfied with the services provided by the Executive Director, GVW shall refer the matter to the Policy Board. PhyCor and the Policy Board shall each in good faith determine whether the performance of the Executive Director could be brought to acceptable levels through counsel and assistance, or whether the Executive Director should be terminated. If GVW continues to be dissatisfied with the Executive Director, GVW may submit a written request to the Policy Board for termination of the Executive Director, and a vote of four or more members of the Policy Board shall be required to retain the Executive Director.

4.2.12. Grievance Referrals. The Policy Board shall consider and make final decisions regarding grievances pertaining to matters not specifically addressed in this Agreement as referred to it by GVW's Board of Directors.

4.2.13. Medical Director/President. The Policy Board shall determine whether to fund a position of Medical Director/President and, if so, it shall be a Clinic Expense.

ARTICLE 5.

ADMINISTRATIVE SERVICES TO BE PROVIDED BY PHYCOR

5.1. Performance of Management Functions. PhyCor shall provide or arrange for the services set forth in this Article 5, the cost of all of which shall be included in Clinic Expenses. PhyCor is hereby expressly authorized to perform its services hereunder in whatever manner it deems reasonably appropriate to meet the day-to-day requirements of Clinic operations in accordance with the general standards approved by the Policy Board, including, without limitation, performance of some of the business office functions at locations other than the Clinic. GVW will not act in a manner which would prevent PhyCor from efficiently managing the day-to-day operations of the Clinic in a business-like manner.

5.2. Financial Planning and Goals. PhyCor shall prepare annual capital and operating budgets reflecting in reasonable detail anticipated revenues and expenses, sources and uses of capital for growth in GVW's practice and medical services rendered at the Clinic. Said budgets shall be presented to the Policy Board at least thirty (30) days prior to the end of the preceding fiscal year. Subject to the obligations set forth in this Section 5.2 and the approvals of the Policy Board required by Article 4, PhyCor shall determine the amount of capital to be invested annually in the Clinic and shall specify the targeted profit margin for the Clinic which shall be reflected in the overall budget. PhyCor shall determine the form of capital to be invested.

5.3. Audits and Statements. PhyCor shall furnish to GVW monthly and annual income statements and balance sheets reflecting the financial status of clinic operations. Such reports shall be furnished as soon as practical following the end of such period of business. GVW shall have the right to audit PhyCor's financial records pertaining to billings, charges, collections and payments at reasonable intervals at GVW expense.

5.4. Inventory and Supplies. PhyCor shall order and purchase all reasonable and requested medical and office inventory and supplies required in the day to day operation of the medical practice of GVW to provide quality services. PhyCor's purchasing standards shall apply to inventory or supply purchases.

5.5. Management Services and Administration.

(a) GVW hereby appoints PhyCor as its sole and exclusive manager and administrator of all day-to-day business functions. GVW agrees that the purpose and intent of this Service Agreement is to relieve the Physician Stockholders and Physician Employees to the maximum extent possible of the administrative, accounting, personnel and business aspects of its practice, with PhyCor assuming responsibility and being given all necessary authority to perform these functions. PhyCor agrees that GVW and only GVW will perform the medical functions of its practice. PhyCor will have no authority, directly or indirectly, to perform, and will not perform, any medical function. PhyCor may, however, advise GVW as to the relationship between its performance of medical functions and the overall administrative and business functioning of its practice. To the extent that they assist GVW in performing medical functions, all clinical personnel performing patient care services obtained and provided by PhyCor shall be subject to the professional direction and supervision of GVW and, in the performance of such medical functions, shall not be subject to any direction or control by, or liability to, PhyCor, except as may be specifically authorized by GVW.

(b) PhyCor shall, on behalf of GVW, bill patients and collect the professional fees for medical services rendered by GVW in the Clinic, for services performed outside the Clinic for GVW's hospitalized patients, and for all other professional and Clinic services except money received for chart review performed for PROS and honoraria paid for time spent away from the patient practice for research protocols. GVW hereby appoints PhyCor for the term hereof to be its true and lawful attorney-in-fact, for the following purposes: (i) to bill patients in GVW's name and on its behalf; (ii) to collect accounts receivable resulting from such billing in GVW's name and on its behalf; (iii) to receive payments from Blue Shield, insurance companies, prepayments received from health care plans, Medicare, Medicaid and all other third party payors and GVW covenants to direct all such payments to PhyCor for deposit in bank accounts designated by PhyCor; (iv) to take possession of and endorse in the name of GVW (and/or in the name of an individual physician, such payment intended for purpose of payment of a physician's bill) any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; and (v) subject to the provisions of Section 4.2.5 to initiate the institution of legal proceedings in the name of GVW to collect any accounts and monies owed to the Clinic, to enforce the rights of GVW as creditors under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payors. This power of attorney shall be special in nature and shall be limited to the aforementioned purposes. The power of attorney shall terminate upon termination of this Agreement. All adjustments made for uncollectible accounts, professional courtesies and other activities that do not generate a collectible fee shall be done within one year from the date of service, unless PhyCor and GVW agree in writing to extend such period, and shall be done in a reasonable and consistent manner approved by PhyCor's independent certified public accountants. In the event such adjustments are not made within such one year period or the extended period if agreed to, such adjustments shall not be Adjustments as defined hereunder and PhyCor shall bear the cost of such Adjustments, which amount shall not be a Clinic Expense.

(c) PhyCor shall design, supervise and maintain custody of all files and records relating to the operation of the Clinic, including but not limited to accounting, billing, patient medical records, and collection records. Patient medical records shall at all times be and remain the property of GVW and shall be located at Clinic facilities so that they are readily accessible for patient care. The management of all files and records shall comply with applicable state and federal statutes. PhyCor shall use its best efforts to preserve the confidentiality of patient medical records and use information contained in such records only for the limited purpose necessary to perform the services set forth

herein; provided, however, in no event shall a breach of said confidentiality be deemed a default under this Agreement.

(d) PhyCor shall supply to GVW necessary clerical, accounting, bookkeeping and computer services, printing, postage and duplication services, medical transcribing services and any other ordinary, necessary or appropriate service for the operation of the Clinic. PhyCor intends to maintain the level of service at January 1, 1989 absent a determination by PhyCor, with the concurrence of the Policy Board, that such services are not necessary to support the practice.

(e) Subject to the provisions of Section 4.2.4, PhyCor shall design and implement an adequate and appropriate public relations program on behalf of GVW, with appropriate emphasis on public awareness of the availability of services at the Clinic. The public relations program shall be conducted in compliance with applicable laws and regulations governing advertising by the medical profession.

(f) PhyCor shall develop and operate a suitable accounting system consistent with its business needs that shall enable GVW to prepare GVW annual income tax returns.

(g) Upon GVW's request, PhyCor agrees to perform administrative services regarding the recruitment of potential physician personnel for GVW. After consultation with GVW, the Policy Board and GVW shall jointly determine the need for additional physician personnel. However, it shall be and remain GVW's responsibility to interview and select physician personnel for GVW. All such physician personnel recruited by PhyCor as may be accepted by GVW through whatever additional interview/hiring procedure they may devise, shall be the sole employees of GVW, to the extent such physicians are hired as employees. Any expenses incurred in the recruitment of physicians shall have been reviewed and approved by the Policy Board prior to their incurrence. These expenditures shall be a Clinic Expense. In the case of a physician with an existing practice in the immediate vicinity, PhyCor may negotiate on behalf of GVW a separate independent contractor agreement with such physician, provided however, in every event GVW has the right to approve the selection of the independent contracting physician as other physicians are approved. Such approval shall be consistent with the approval mechanism that GVW uses to hire physician employees.

(h) Subject to the provisions of Section 4.2.7, PhyCor shall negotiate and administer all managed care contracts on behalf of GVW.

(i) PhyCor shall pay, as a Clinic Expense, for GVW accounting, legal and other professional fees related to clinic operations, incurred traditionally in the ordinary course of

business. Such providers shall be recommended by GVW and approved by the Policy Board.

(j) PhyCor shall provide, as a Clinic Expense, for the proper cleanliness of the premises, and maintenance and cleanliness of the equipment, furniture and furnishings located upon such premises.

(k) PhyCor shall make payment, as a Clinic Expense, for the cost of professional licensure fees and board certification fees of physicians associated with GVW.

(l) PhyCor shall negotiate for and cause premiums to be paid with respect to the insurance provided for in Section 10.1. Premiums and deductibles with respect to such policies shall be a Clinic Expense.

(m) PhyCor shall provide and maintain medical and other equipment in keeping with standard equipment provided in similar facilities. To the extent PhyCor determines that different or additional equipment may be required in the future, PhyCor shall consult with the Policy Board with respect to the suppliers, prices and specifications of such equipment. PhyCor's purchasing standards shall apply to all equipment purchases. All equipment provided under this Agreement shall remain the property of PhyCor and shall be used by GVW only during the term of this Agreement.

5.6. Executive Director. Subject to the provisions of Section 4.2.11, PhyCor shall hire and appoint an Executive Director to manage and administer all of the day-to-day business functions of the Clinic. PhyCor shall determine the salary and fringe benefits of the Executive Director. At the direction, supervision and control of PhyCor, the Executive Director, subject to the terms of this Agreement, shall implement the policies established by the Policy Board and shall generally perform the duties and have the responsibilities of an administrator. If requested by the Chairman of the Policy Board, the Executive Director shall be responsible for organizing the agenda for the meetings of the Policy Board referred to in Article 4.

5.7. Personnel. PhyCor shall provide nursing and other non-physician professional support (other than Physician Extender Employees and Technical Employees) and administrative personnel, clerical, secretarial, bookkeeping and collection personnel reasonably necessary for the conduct of the Clinic operations. PhyCor shall determine and cause to be paid the salaries and fringe benefits of all such personnel. Such personnel shall be under the direction, supervision and control of PhyCor, with those personnel performing patient care services subject to the professional supervision of GVW. If GVW is dissatisfied with the services of any person, GVW shall consult with PhyCor. PhyCor shall, through its local administration, in good faith determine whether the

performance of that employee could be brought to acceptable levels through counsel and assistance, or whether such employee should be terminated. The Policy Board shall provide recommendations on salary range for employees. If a physician is dissatisfied with an employee action by PhyCor relating to an employee who works directly under the supervision of such physician, said physician may appeal the action to the Policy Board for final resolution of the matter. All of PhyCor's obligations regarding staff shall be governed by the overriding principle and goal of providing high quality medical care. Employee assignments shall be made to assure consistent and continued rendering of high quality medical support services and to ensure prompt availability and accessibility of individual medical support personnel to physicians in order to develop constant, familiar and routine working relationships between individual physicians and individual members of the medical support personnel. PhyCor shall maintain established working relationships wherever possible and PhyCor shall make every effort consistent with sound business practices to honor the specific requests of GVW with regard to the assignment of its employees.

5.8. Events Excusing Performance. PhyCor shall not be liable to GVW for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies or other events over which PhyCor has no control for so long as such events continue, and for a reasonable period of time thereafter.

5.9. Compliance with Applicable Laws. PhyCor shall comply with all applicable federal, State of Florida and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.

5.10. Quality Assurance. PhyCor shall assist GVW in fulfilling its obligations to its patients to maintain a high quality of medical and professional services. The individual Physician Stockholders acknowledge their obligations to each other and to the public to maintain appropriate standards of medical care.

5.11. Ancillary Services. PhyCor shall operate such ancillary services as approved by the Policy Board.

5.12 Certain Contracting. (a) The parties agree that in the event the Policy Board determines to pursue the formation of an IPA or other physician organization or enter into risk assumption contractual arrangements, the parties will structure the IPA or such arrangements in accordance with the provisions of this Section 5.12 unless the Policy Board otherwise determines. Subject to Section 5.12(b), any payments made by the IPA to GVW or its physicians pursuant to any provider agreements between the IPA and GVW or its physicians, whether for physician services or incentive payments, will be Net Clinic Revenues hereunder. The IPA will be

managed by PhyCor or an Affiliate of PhyCor. In the event a management agreement is entered into for the management of an IPA, the management agreement will provide for a management fee to be paid to the management organization.

(b) Subject to the provisions of Section 2.1.1 hereof, in the event PhyCor and/or GVW has the opportunity to assume risk, whether through an IPA, other contractual arrangement or otherwise, any payments made as a result of profits from the assumption of such risk shall be treated as Additional Managed Care Payments and PhyCor shall receive a portion of such amounts as set forth in Section 8.1(d). PhyCor and GVW shall be responsible for 65% and 35%, respectively, of any losses from the assumption of such risks. In subsequent years if losses have been incurred as a result of the assumption of risk, PhyCor shall receive 65% of any profits from the assumption of risk until the amount of such profits fully reimburses PhyCor for the prior losses, and thereafter, PhyCor shall receive the portion of Additional Managed Care Payments set forth in Section 8.1(d). PhyCor agrees to loan to GVW an amount equal to GVW's share of any losses incurred from the assumption of risk, and any profits thereafter allocated to GVW shall be used first to repay any such loan. In the event no profit exists within four (4) years after the first loan is made as described above, GVW will repay PhyCor any amounts loaned in respect of GVW losses in equal monthly installments over a five year period, bearing interest at the rate of eight (8%) percent per annum.

ARTICLE 6.

OBLIGATIONS OF GVW

6.1. Professional Services. GVW shall provide professional services to patients in compliance at all times with ethical standards, laws and regulations applying to the medical profession. GVW shall ensure that each physician associated with GVW to provide medical care to patients of GVW is licensed by the State of Florida. In the event that any disciplinary actions or medical malpractice actions are initiated against any such physician, GVW shall immediately inform the Executive Director of such action and the underlying facts and circumstances. GVW shall carry out a program to monitor the quality of medical care practiced at the Clinic and PhyCor agrees to render administrative assistance to GVW on an as-requested basis to assist GVW in performing its obligations under this paragraph.

6.2. Medical Practice. GVW shall use and occupy the Clinic exclusively for the practice of medicine, and shall comply with all applicable local rules, ordinances and all standards of medical care. It is expressly acknowledged by the parties that the medical practice or practices conducted at the Clinic shall be conducted solely by physicians associated with GVW, and no other

physician or medical practitioner shall be permitted to use or occupy the Clinic without the prior written consent of PhyCor and GVW.

6.3. Employment of Physician Employees. GVW shall have complete control of and responsibility for the hiring, compensation, supervision, evaluation and termination of its Physician Employees, although at the request of GVW, PhyCor shall consult with GVW respecting such matters. GVW shall be responsible for the payment of such Physician Employees' salaries and wages, payroll taxes, Physician Employee benefits and all other taxes and charges now or hereafter applicable to them. With respect to physicians, GVW shall only employ and contract with licensed physicians meeting applicable credentialling guidelines established by GVW.

6.4. Professional Dues and Education Expenses. GVW and its Physician Employees shall be solely responsible for the cost of membership in professional associations, and continuing professional education. GVW shall ensure that each of its Physician Employees participates in such continuing medical education as is necessary for such physician to remain current.

6.5. Professional Insurance Eligibility. GVW shall cooperate in the obtaining and retaining of professional liability insurance by assuring that its Physician Employees are insurable, and participating in an on-going risk management program.

6.6. Events Excusing Performance. GVW shall not be liable to PhyCor for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies or other events over which GVW has no control for so long as such events continue, and for a reasonable period of time thereafter.

6.7. Clinic Profit Sharing Plan.

(a) Effective October 1, 1989, GVW became an adopting employer to the PhyCor, Inc. Savings and Profit Sharing Plan ("PhyCor Plan") and amended the GVW Profit Sharing Plan ("GVW Plan") to make it a "Supplemental Plan". GVW will not make contributions to the GVW Plan or any Supplemental Plan that would cause either the GVW Plan or the PhyCor Plan to become disqualified.

(b) Unless such action would have no adverse effect on the PhyCor Plan whatsoever, GVW shall not enter into any new "employee benefit plan" within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), without the express written agreement of PhyCor. GVW shall not amend the GVW Plan, except as required by law after

consultation with PhyCor, without the express written agreement of PhyCor to such amendment.

(c) The compensation of counsel, accountants, corporate trustees, and other agents necessary in the administration of the GVW Plan or any subsequent plan or supplemental plan adopted by GVW shall be an expense of GVW or the GVW Plan and not a Clinic Expense or an expense of PhyCor. All such expenses necessary in the administration of the PhyCor Plan, which are not, pursuant to the terms of the PhyCor Plan, expenses of the PhyCor Plan or of individual participants, shall be a Clinic Expense.

(d) Parent shall have the sole and exclusive authority to appoint the Trustees, Custodian and Administrator of the PhyCor Plan and to remove the Trustees, Custodian and Administrator of the PhyCor Plan and appoint successor Trustees, Custodians and Administrators.

(e) PhyCor shall make contributions to the PhyCor Plan, as a Clinic Expense, on behalf of eligible employees of PhyCor who perform services at the Clinic. GVW shall be responsible and liable for contributions to the PhyCor Plan on behalf of Physician Employees who are participating in the PhyCor Plan.

ARTICLE 7.

RESTRICTIVE COVENANTS AND LIQUIDATED DAMAGES

The parties recognize that the services to be provided by PhyCor shall be feasible only if GVW operates an active medical practice to which the physicians associated with GVW devote their full time and attention. To that end:

7.1. Restrictive Covenants by GVW. During the term of this Agreement, GVW shall not, unless pursuant to the Agreement, establish, operate or provide physician services at any medical office, clinic or other health care facility providing services substantially similar to those provided by GVW pursuant to this Agreement anywhere within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility.

7.2. Restrictive Covenants By Current Physician Stockholders and Physician Employees. GVW shall enforce (subject to PhyCor's obligations under Section 5.5(i) of this Agreement) formal agreements from its current Physician Stockholders and Physician Employees (other than Technical Employees, Physician Extender Employees and founding physicians Drs. Vann, Gold and White), pursuant to which the Physician Stockholders and Physician Employees agree not to establish, operate or provide physician

services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by GVW pursuant to this Agreement within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility or any location within a 15 mile radius of any satellite facility during the term of this Agreement and for a period of eighteen (18) months after any termination of employment with GVW.

7.3. Restrictive Covenants By Future Physician Employees. GVW shall obtain and enforce formal agreements from each of its future Physician Employees (and future Physician Stockholders who are not currently Physician Employees), other than Technical Employees and Physician Extender Employees, hired or contracted, pursuant to which such physicians agree not to establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by GVW pursuant to this Agreement within Indian River County, Florida or any location within a 35 mile radius of the main clinic facility or any location within a 15 mile radius of any satellite facility during the term of said Physician Employee's contract with GVW and for a period of eighteen (18) months thereafter.

7.4. Damages for Breach. Any payments received by GVW as damages for breach of any of the foregoing covenants shall be paid to PhyCor by GVW simultaneously with the amount being paid to GVW. Such payment shall be first applied to all costs incurred by PhyCor or GVW in the enforcement of the restrictive covenants for that departing physician and in recruiting a replacement physician for that departing physician. The remainder, if any, shall, with respect to Physician Employees employed by GVW as of December 31, 1996 or who become employed by GVW in a transaction involving proceeds being paid by PhyCor, become an additional service fee to be paid to PhyCor pursuant to Article 8 hereof; and with respect to all other Physician Employees, shall be shared by PhyCor and GVW in the amount of 12% retained by PhyCor and 88% retained by GVW. The accounting treatment of such funds shall be consistently applied and approved by PhyCor's independent certified public accountants and the Policy Board. Nothing contained herein shall authorize GVW to negotiate settlements of, or otherwise release the physicians from, the foregoing covenants without the express written consent of PhyCor.

7.5. Restrictive Covenants of PhyCor. During the term of this Agreement, PhyCor shall not establish, operate or enter into a service agreement with, or provide services similar to those provided under this Agreement to, any multi-specialty or single specialty group within Indian River County, Florida or the immediate surrounding three county area. In addition, PhyCor will

not enter into any agreement with any physician to occupy the clinic facilities.

7.6. Enforcement. PhyCor and GVW acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Article 7 shall be inadequate, either party shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. If any provision of Article 7 relating to the restrictive period, scope of activity restricted and/or the territory described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted and/or area of restriction held reasonable and enforceable by the court shall thereafter be the restrictive period, scope of activity restricted and/or the territory applicable to the restrictive covenant provisions in this Article 7. The invalidity or non-enforceability of this Article 7 in any respect shall not affect the validity or enforceability of the remainder of this Article 7 or of any other provisions of this Agreement.

ARTICLE 8.

FINANCIAL ARRANGEMENTS

8.1. Service Fees. PhyCor shall receive a service fee annually as follows:

(a) PhyCor shall be reimbursed the amount of all Clinic Expenses less (i) Clinic Expenses associated with Technical Employees that are the responsibility of GVW hereunder and (ii) $12,000;

(b) During each year of the Agreement, PhyCor shall receive a fee equal to 12% of Net Clinic Revenues less Clinic Expenses; and

(c) PhyCor shall receive 25% of Additional Managed Care Payments plus any additional amounts that may be paid to PhyCor pursuant to Section 5.12(b) hereof.

(d) Notwithstanding the foregoing, in no event shall the funds available to GVW after payment of PhyCor's fee hereunder and before payment of any expenses which are the responsibility of GVW

hereunder, be less than (1) during the first three years of this Agreement commencing January 1, 1997, the sum of (i) 35% of Net Clinic Revenues, (ii) 75% of Additional Managed Care Payments, and (iii) salaries and benefits of Technical Employees, and (2) during the fourth, fifth and sixth years of this Agreement, the sum of (i) 35% of Net Clinic Revenues, (ii) 75% of Additional Managed Care Payments and (iii) salaries and benefits of Technical Employees, however, in the event Clinic Expenses exceed 62.5% of Net Clinic Revenues, the foregoing 35% under this Clause (2) shall be reduced pro rata by the amount by which Clinic Expenses exceeds 62.5% of Net Clinic Revenues; provided, further, however, the foregoing 35% shall not be reduced below 34.5%. For example, in the event at the end of the fifth year, Clinic Expenses equal 63% of Net Clinic Revenue, then the foregoing 35% shall be reduced to 34.5%.

(e) The service fee shall be payable monthly. The service fee shall be estimated based upon the previous month's operating results of the Clinic. Adjustments to the estimated payments shall be made to reconcile actual amounts due under this Section 8.1, by the end of the following month during each calendar year. Upon preparation of annual financial statements as provided in Section 5.3, final adjustments to the amounts payable under this Article 8 for the preceding year shall be made and any additional payments owing to PhyCor or GVW shall then be made.

8.2. Accounts Receivable. On the first business day of each month, PhyCor shall purchase the accounts receivable of GVW arising during the previous month, by payment of cash or cash equivalents into an account of GVW. The consideration for the purchase shall be an amount equal to all fees recorded each month (net of Adjustments) less service fees due to PhyCor under Section 8.1. PhyCor shall pay or reimburse GVW, as a clinic expense, any Florida Intangible Tax imposed on the accounts receivable so sold. Although it is the intention of the parties that PhyCor purchase and thereby become owner of the accounts receivable of GVW, in case such purchase shall be ineffective for any reason, GVW is concurrently herewith entering into a Security Agreement in the form attached as Exhibit 8.2 to grant a security interest in the accounts receivable to PhyCor. In addition, GVW shall cooperate with PhyCor and execute all necessary documents in connection with the pledge of such accounts receivable to PhyCor or at PhyCor's option, its lenders. To the extent GVW comes into possession of any payments in respect of such accounts receivable, GVW shall

direct such payments to PhyCor for deposit in bank accounts designated by PhyCor.

ARTICLE 9.

RECORDS

9.1. Patient Records. Upon termination of this Agreement, GVW shall retain all patient medical records maintained by GVW or PhyCor in the name of GVW. GVW shall, at its option, be entitled to retain copies of financial and accounting records relating to all services performed by GVW.

9.2. Records Owned by PhyCor. All records relating in any way to the operation of the Clinic which are not the property of GVW under the provisions of Section 9.1 above, shall at all times be the property of PhyCor.

9.3. Access to Records. During the term of this Agreement, and thereafter, GVW or its designee shall have reasonable access during normal business hours to GVW's and PhyCor's financial records, including, but not limited to, records of collections, expenses and disbursements as kept by PhyCor in performing PhyCor's obligations under this Agreement, and GVW may copy any or all such records the cost of which shall be a Clinic Expense.

ARTICLE 10.

INSURANCE AND INDEMNITY

10.1. Insurance to be Maintained by GVW. Throughout the term of this Agreement, PhyCor shall, as a Clinic Expense, provide and/or maintain comprehensive professional liability insurance for GVW and the Physician Employees of GVW with limits of greater than or equal to One Million Dollars ($1,000,000) per occurrence and with aggregate policy limits of greater than or equal to Three Million Dollars ($3,000,000) per physician. PhyCor shall have the right to select a nationally recognized malpractice carrier licensed to do business in the state of Florida. Such policies shall name PhyCor as an additional insured. The Policy Board shall review the coverage needs of the Clinic on an annual basis. Any awards for damages above and outside the policy limits and policy retention amounts shall be the responsibility of GVW. If at any time PhyCor is unable to obtain or maintain the insurance coverage required by this Section 10.1 and GVW shall obtain or maintain said insurance coverage, then adjustments shall be made to the amounts set forth in Section 8.1 in an amount equal to the cost of obtaining or maintaining said insurance coverage provided said coverage is not less than that coverage in force at commencement of this Agreement. If PhyCor is unable to obtain and maintain the

insurance coverage required by this Section 10.1, such failure shall not constitute a breach of this Agreement; provided, however, PhyCor shall at all times diligently and in good faith attempt to obtain the insurance coverage required by this Section 10.1 and shall advise GVW on at least a monthly basis of its progress in that regard when the required insurance coverage is not in full force and effect. PhyCor shall have the option of providing such professional liability insurance through a self-insured program, which program meets any requirements of the Insurance Commissioner of Florida and is approved by seventy-five percent (75%) vote of Physician Stockholders.

10.2. Insurance to be Maintained by PhyCor. Throughout the term of this Agreement, PhyCor shall use its best efforts to provide and maintain comprehensive professional liability insurance for all professional employees of PhyCor with limits as determined reasonable by PhyCor provided that such amount shall be greater than or equal to than One Million Dollars ($1,000,000). In addition, PhyCor shall also provide and maintain reasonable amounts greater than or equal to One Million Dollars ($1,000,000) of general liability and property insurance in amounts not less than now in force, as adjusted for Facilities improvements covering the activity and property of GVW within the clinic an its satellite offices.

10.3. Tail Insurance Coverage. After the termination of this Agreement, GVW shall have PhyCor added as an additional insured, at PhyCor's expense, on any replacement or "tail" coverage purchased by GVW. PhyCor shall use its best efforts to obtain tail coverage for those physicians who cease to practice medicine in any location for a period of five (5) years due to retirement, a legal disability or death. If PhyCor is unable to obtain such coverage and the physician shall obtain such coverage, then PhyCor shall pay for the cost, as a Clinic Expense, of obtaining the tail coverage so long as PhyCor is added as an additional insured on any replacement or tail coverage. If such physician returns to practice within five (5) years, the cost of the tail coverage shall be prorated between PhyCor, as a Clinic Expense, and the physician.

10.4. Additional Insureds. GVW and PhyCor agree to use their best efforts to have each other named as an additional insured on the other's respective professional liability insurance programs at PhyCor's expense.

10.5. Indemnification. GVW shall indemnify, hold harmless and defend PhyCor, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of medical services or any other acts or omissions by GVW and/or its shareholders, agents, employees and/or

subcontractors (other than PhyCor) during the term hereof. PhyCor shall indemnify, hold harmless and defend GVW, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any intentional acts, negligent acts or omissions by PhyCor and/or its shareholders, agents, employees and/or subcontractors (other than GVW) during the term of this Agreement.

ARTICLE 11.

TERM AND TERMINATION

11.1. Term of Agreement. This Amended and Restated Service Agreement shall commence on January 1, 1997 and shall expire on the 40th anniversary hereof unless earlier terminated pursuant to the terms hereof.

11.2. Extended Term. Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall be automatically extended for additional terms of five (5) years each, unless either party delivers to the other party, not less than eighteen (18) months nor earlier than twenty (20) months prior to the expiration of the preceding term, written notice of such party's intention not to extend the term of this Agreement.

11.3. *Bankruptcy and Insolvency.*

(a) This Agreement shall terminate automatically upon the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by either party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of insolvents by either party, except for the filing of a petition in involuntary bankruptcy against either party with the dismissal thereof within thirty (30) days thereafter.

(b) In the event of bankruptcy or insolvency of PhyCor or GVW, GVW shall, provided the HRTI Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions

thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

In the event this Agreement terminates under the provisions of this Section 11.3, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.3 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.4. *Specified Failure of Performance by PhyCor.*

(a) In the event PhyCor shall materially default in the performance of its duties under Section 5.2 of this Agreement and shall not remedy such default within twelve (12) months of notice of default by GVW; or shall fail to remit the services fees required by Section 8.1 hereof and such failure to remit shall continue for a period of fifteen (15) days after written notice thereof; or shall materially default under the provisions of the Lease included as Appendix I; or shall be convicted of a felony offense and such conviction has a material adverse effect on

the physician/patient relationships. GVW may terminate this Agreement and recover damages caused by PhyCor. PhyCor shall use its best efforts to obtain the consents, licenses or approvals of any public or regulatory agency, however, failure to obtain the consents, licenses or approvals of any such public or regulatory agency shall not be deemed a material default under the provisions of this Article 11. Termination of this Agreement by GVW shall require the vote of seventy five percent (75%) of GVW's Physician Stockholders for termination.

(b) In the event of a default under this Section 11.4, GVW shall, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

In the event this Agreement terminates under the provisions of this Section 11.4, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset

Purchase Agreement; provided, however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.4 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.5. *General Failure of Performance by PhyCor.*

(a) In the event PhyCor shall materially default in its performance under this Agreement and such default shall continue for a period of forty-five (45) days after written notice thereof has been given to PhyCor by GVW, GVW may terminate this Agreement and recover damages caused by PhyCor. PhyCor shall use its best efforts to obtain the consents, licenses or approvals of any public or regulatory agency, however, failure to obtain the consents, licenses or approvals of any such public or regulatory agency shall not be deemed a material default under the provisions of this Article 11. Termination of this Agreement by GVW shall require the vote of seventy-five percent (75%) of GVW's Physician Stockholders for termination.

(b) Upon such termination, GVW shall, subject to obtaining all necessary governmental consents and approvals, and to the extent legally permissible, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10, including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic,

depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

If required by the lender or landlord, GVW shall cause at least seventy-five percent (75%) of its shareholders to guarantee the debt or lease on Facilities.

In the event this Agreement terminates under the provisions of this Section 11.5, and GVW has complied with its obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with their obligations as set forth in this Section 11.5 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.6. *Failure of Performance by GVW.*

(a) In the event GVW shall materially default any duty or obligation imposed upon it by this Agreement, and such default shall continue for a period of forty-five (45) days after written notice thereof has been given to GVW by PhyCor, PhyCor may terminate this Agreement and recover damages caused by GVW.

(b) Upon such termination, GVW shall, subject to obtaining all necessary governmental consents and approvals, and to the extent legally permissible, provided the Lease is in full force and effect:

(1) Invoke that certain sublease, a form of which is attached hereto as Appendix I, and assume all leases on medical office space and satellite offices used by the clinic and purchase from PhyCor all of the equipment set forth in Appendix 10,

including any replacements and additions thereto, and other assets set forth on the Opening Balance Sheet (other than the real estate described in Exhibit B-1 and all other assets conveyed by PhyCor to HRTI pursuant to that certain Agreement of Sale and Purchase dated March 26, 1993, by and between PhyCor and HRTI), as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect operations of the clinic, depreciation, amortization and other adjustments of assets shown on the Opening Balance Sheet, for cash with credit to GVW for any debt assumed on the purchase price of said assets.

If required by the lender or landlord, GVW shall make a good faith effort to cause at least seventy-five percent (75%) of its shareholders to guarantee the debt or lease on Facilities.

In the event this Agreement terminates under the provisions of this Section 11.6, and GVW has complied with their obligations as set forth in this Section, the non-competition provisions of Section 7.1 shall no longer apply and GVW shall no longer sell to PhyCor the accounts receivable as provided in paragraph 8.2, PhyCor's authority to represent GVW as attorney-in-fact under Section 5.5 shall not be applicable to accounts generated after the termination of this Agreement, and PhyCor shall no longer have any rights under the Non-competition Agreement set forth in Appendix 7.10 of the Asset Purchase Agreement; provided however, GVW may practice medicine in the clinic and collect the accounts receivable generated therefrom during the period commencing on the date of any such termination and ending on the earlier of (i) the date GVW has complied with its obligations as set forth in this Section 11.6 or (ii) the 181st date after such termination, and such action shall not be deemed to violate the non-competition or other provisions hereof.

11.7. Purchase of Assets. The closing date for the purchase by GVW of assets hereunder shall occur no later than one hundred and eighty (180) days from the date of the notice of termination of this Service Agreement. Expenses attributable to such closing shall be shared equally by the parties in the event of a termination hereof under Sections 11.3, 11.4, 11.5 or 11.6.

11.8. Recordation of Notice of Termination. Upon termination of this Agreement, either party may record evidence of such termination by executing and filing, among other things, an instrument deleting from that certain Memorandum of the HRTI Lease, dated June 21, 1993, recorded in the Public Records of Indian River County, Florida any and all references to this Agreement and all rights, duties and obligations hereunder set forth therein.

ARTICLE 12.

GENERAL PROVISIONS

12.1. Assignment. PhyCor shall have the right to assign its rights hereunder to any person, firm or corporation under common control with PhyCor and to any lending institution, for security purposes or as collateral, from which PhyCor or the Parent obtains financing, including without limitation, Citibank, N.A., as agent, or its successors and assigns under the credit agreement between the Parent, Citibank, N.A., for itself and as agent, and the banks parties thereto. Except as set forth above, neither PhyCor nor GVW shall have the right to assign their respective rights and obligations hereunder without the written consent of the other party. In the event of a permitted assignment by PhyCor, Parent shall not be relieved of its guaranty obligations under this Agreement.

12.2. Whole Agreement; Modification. This Agreement supersedes all prior agreements between the parties, including the Service Agreement, dated as of January 1, 1989, and there are no other agreements or understandings, written or oral, between the parties regarding this Agreement, the Exhibits and the Schedules, other than as set forth herein. This Agreement shall not be modified or amended except by a written document executed by both parties to this Agreement, and such written modification(s) shall be attached hereto.

12.3. Notices. All notices required or permitted by this Agreement shall be in writing and shall be addressed as follows:

To PhyCor:

PhyCor of Vero Beach, Inc.
c/o PhyCor, Inc.
30 Burton Hills Blvd., Suite 400
Nashville, Tennessee 37215

Attn: Joseph Hutts, President

To GVW: Gold, Vann & White, P.A.
2300 Fifth Avenue
Vero Beach, Florida 32960

Attn: President

or to such other address as either party shall notify the other.

12.4. Binding on Successors. Subject to Section 12.1, this Agreement shall be binding upon the parties hereto, and their successors, assigns, heirs and beneficiaries.

12.5. Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing, and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions hereof.

12.6. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties acknowledge that PhyCor is not authorized or qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent any act or service required of PhyCor in this Agreement should be construed or deemed, by any governmental authority, agency or court to constitute the practice of medicine, the performance of said act or service by PhyCor shall be deemed waived and forever unenforceable.

12.7. Severability. The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

12.8. Additional Documents. Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement.

12.9. Attorneys' Fees. If legal action is commenced by either party to enforce or defend its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees in addition to any other relief granted.

12.10. Time is of the Essence. Time is hereby expressly declared to be of the essence in this Agreement.

12.11. Confidentiality. Except for disclosure to its bankers, underwriters, lenders, attorneys and accountants, or as necessary or desirable for conduct of business, including negotiations with other acquisition candidates, neither party

hereto shall disseminate or release to any third party any information regarding any provision of this Agreement, or any financial information regarding the other (past, present or future) that was obtained by the other in the course of the negotiations of this Agreement or in the course of the performance of this Agreement, without the other party's written approval.

12.12. Contract Modifications for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, GVW and PhyCor shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between GVW and PhyCor.

12.13. Remedies Cumulative. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to any party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient.

12.14. Language Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

12.15. No Obligation to Third Parties. None of the obligations and duties of PhyCor or GVW under this Agreement shall in any way or in any manner be deemed to create any obligation of PhyCor or of GVW to, or any rights in, any person or entity not a party to this Agreement.

12.16. Communications. GVW and PhyCor agree that good communication between the parties is essential to the successful performance of this Agreement, and each pledges to communicate fully and clearly with the other on matters relating to the successful operation of GVW's practice at the Clinic.

12.17. Right of First Refusal. In the event PhyCor or its successor determines to sell, whether by sale of stock or assets, the Vero Beach clinic operations including satellites and associated facilities, as a going concern, independent of its other operations, during the term of this Agreement, GVW shall have a right of first refusal to purchase the Vero Beach clinic and

associated facilities at the purchase price and on the same terms, as described herein, of a bona fide written offer to PhyCor by a third party; provided, however, GVW shall have no rights of first refusal hereunder or otherwise to purchase any of the foregoing assets under the same terms and conditions as provided in (a) that certain Agreement of Sale and Purchase dated March 26, 1993 between PhyCor and HRTI, as may be amended from time to time, or (b) the HRTI Lease, as amended, modified or extended, except as otherwise set forth therein. PhyCor shall provide GVW with the names and addresses of any prospective third-party purchaser and shall provide to GVW all necessary releases and documentation to allow GVW to verify the amount and veracity of a third-party purchase offer. The first refusal right shall be granted by written notice of intention to make a bona fide disposition by PhyCor furnishing a copy of said offer to GVW. GVW shall have sixty (60) days from the furnishing of such offer to exercise its right of first refusal. The closing for the purchase of the equipment and assets shall be, no later than one hundred eighty (180) days from GVW's exercise of its right of first refusal. Until the closing, the terms of this Agreement shall continue to be in effect. If the offer from the prospective transferee (purchaser) includes terms and conditions that are not stated in monetary units or payments over time, PhyCor must be able to provide and prove by reasonably accepted accounting principles the United States currency equivalent of the offer. The U.S. currency equivalent must be verified by a "nationally recognized accounting firm" of both parties mutual consent and the expense for such verification shall be borne equally by the parties.

12.18. Board Representation. During the time this Agreement is in effect, the management of Parent shall present one nominee designated by GVW for election to its Board of Directors. Such nominee shall be approved by Parent, which approval shall not be unreasonably withheld.

12.19. HRTI Lease. If, during the period that the HRTI Lease is in full force and effect, a conflict should arise between the terms of the HRTI Lease and the terms hereof, other than the terms specifically defined herein, the HRTI Lease shall be controlling.

12.20. Consideration. In consideration for the execution and delivery by GVW of this Amended and Restated Service Agreement, PhyCor hereby agrees to pay GVW $2,700,000 on January 7, 1997.

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

GOLD, VANN & WHITE, P.A.:

By: _____

Title: President / Medical Director

PhyCor:

PHYCOR OF VERO BEACH, INC.

By: _____

Title: Vice President / Treasurer

EXHIBIT "D"

EMPLOYMENT AGREEMENT - STOCKHOLDER

THIS AGREEMENT, effective the 1st day of January, 1994, by and between JANET E. ANDERSON, M.D., of Indian River County, Florida, a physician duly licensed and authorized to practice medicine in the State of Florida, hereinafter referred to as "PHYSICIAN", and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, with its principal office in Vero Beach, Florida, hereinafter referred to as the "P.A.";

WHEREAS, the P.A. is a multi-specialty group providing medical services to patients in and around Indian River County, Florida; and

WHEREAS, PHYSICIAN is duly licensed to practice medicine in the State of Florida, and specializes in the specialty areas of Cardiology; and

WHEREAS, P.A. has entered into a management services agreement for the provision of facilities, management, equipment, and personnel support by PHYCOR OF VERO BEACH, INC., a Florida corporation, hereinafter referred to as "PHYCOR" PURSUANT TO AMENDED AND RESTATED SERVICE AGREEMENT dated January 1, 1992, between PHYCOR OF VERO BEACH, INC. and GOLD, VANN & WHITE, P.A., hereinafter referred to as "Service Agreement"; and

WHEREAS, both P.A. and PHYSICIAN desire to enter into this Employment Agreement to set forth in writing the terms and conditions of their mutual interests.

NOW, THEREFORE, in consideration of mutual promises and other monies in hand paid, the parties agree as follows:

WITNESSETH:

1. SCOPE AND TERM

1.1. P.A. hereby employs the PHYSICIAN, and the PHYSICIAN accepts employment to render medical services effective January 1, 1994.

1.2 PHYSICIAN shall devote his full working time and attention to the practice of medicine for the P.A. Physician agrees to maintain his current quality of service and time commitment to provide cardiology services for the P.A. Physician will maintain office hours to meet the needs of the P.A.'s patients, existing and future. During the PHYSICIAN's period of employment, he will not directly or indirectly render services of a professional nature to or for any person or firm for compensation, except military reserve duties, or engage in any practice that competes with the interest of the P.A. PHYSICIAN agrees to perform his duties in accordance with the rules of ethics of the medical profession.

1.3 Subject to the provisions for termination as hereinafter provided, this contract shall continue in force until terminated as hereinafter provided.

1.4 P.A. agrees to consult with Physician and seek Physician's counsel and advice regarding the employment of additional physicians specializing in cardiology.

2. COMPENSATION AND BENEFITS

2.1 The PHYSICIAN's compensation and benefits will be based upon the formula for determining shareholder compensation and benefits as voted upon by the P.A.'s shareholders from time to time. The formula in effect on the date of this Agreement is described in Exhibit A attached hereto.

2.2 Insurance: PHYCOR, pursuant to the Service Agreement with the P.A., shall provide the PHYSICIAN a claims made policy of insurance against professional liability with limits of $1 million per occurrence, $3 million aggregate. The PHYSICIAN agrees to attend a loss control risk management seminar as specified by and at the request of P.A. and PHYCOR so as to influence a lesser premium for professional liability insurance provided to the PHYSICIAN. PHYCOR pursuant to the Service Agreement shall provide tail professional liability insurance coverage to PHYSICIAN in the event of death, disability, or retirement from the practice of medicine if the PHYSICIAN has been employed by the P.A. for in excess of five (5) years. The P.A. or PHYCOR shall not provide tail professional liability insurance coverage on termination of this Agreement if PHYSICIAN retires from the practice of medicine having been employed by the P.A. for less than five (5) years. The P.A. or PHYCOR shall not provide tail professional liability insurance coverage in the event PHYSICIAN terminates this Agreement and continues to practice medicine. Further, the PHYSICIAN shall be entitled to participate in the adopted health insurance, disability and life insurance plans.

2.3 Pension and Profit Sharing Plan: At the time the PHYSICIAN first becomes eligible to participate in the PhyCor, Inc. Savings and Profit Sharing Plan and the Doctors' Clinic Supplemental Profit Sharing Plan heretofore adopted by the P.A. (hereinafter "Plans"), the PHYSICIAN shall make an irrevocable election to either (1) have none of his compensation contributed by the P.A. to the Plans, or (2) have a percentage of his compensation equal to the P.A. contribution specified in the Plans contributed on his behalf to the Plans. If the PHYSICIAN elects to have the contributions made to the Plans as provided herein, his compensation under the Agreement shall be reduced by the amount of such contributions. The P.A. and PHYSICIAN acknowledge that the election provided herein is a "one-time election" made pursuant to Treas. Reg. section 1.40(k)-1(a)(iii) and shall be interpreted in all respect pursuant to said Regulation.

2.4 Vacation: PHYSICIAN shall be entitled to four (4) calendar weeks vacation each year. In addition, PHYSICIAN shall be entitled to two (2) calendar weeks, including travel time, to attend approved medical meetings. PHYSICIAN may be granted such additional vacation or education periods as shall be approved by the Board of Directors.

3. EXPENSES

3.1 Company shareholders and employees are expected to endeavor, where possible, to establish and maintain good business and professional relationships with firms and persons who are in a position to aid in advancing the P.A.'s interest. In connection

therewith, the Board of Directors is authorized to reimburse PHYSICIAN for expenses incurred in behalf of the P.A. as set out in Attachment A, attached hereto and made a part hereof, not as ordinary and necessary expenses incurred in earning of their salaries but rather as corporate expenses which should be submitted for reimbursement on a regular basis as explained in said Attachment A. P.A. shall provide specific requirements for recording reimbursable expenses, and submission of forms. Levels of reimbursement may be modified annually by action of the Board of Directors without further modification to this Employee Agreement.

4. FACILITIES, RECORDS, AND FEES

4.1 Facilities: PhyCor pursuant to the Service Agreement with the P.A. shall operate and maintain facilities and shall provide at its costs, equipment, drugs, and supplies suitable to PHYSICIAN's position and adequate for the performance of his duties. Further, PHYCOR pursuant to the Service Agreement with the P.A. shall supply and pay for nurses, technicians, and other personnel reasonably needed by PHYSICIAN in connection with his employment hereunder.

4.2 Records: All case records, charts, and personal files concerning patients of PHYSICIAN shall be and remain the property of the P.A. On termination of PHYSICIAN's employment, he shall not be entitled to keep or reproduce records or charts related to any patient unless the patient shall specifically request the records to be transmitted to PHYSICIAN.

4.3 Fees: Any fees or honorariums received by PHYSICIAN for professional services or other professional activities performed by PHYSICIAN shall belong to the P.A.; provided, however, that legacies and gifts or specific chattels received by the PHYSICIAN from patients or former patients of the P.A. may be retained by the PHYSICIAN as his separate property.

5. TERMINATION

5.1 This Agreement may be terminated by either party by the giving of six (6) month's notice in writing.

5.2 This Agreement may be terminated immediately by P.A:

(a) if PHYSICIAN becomes disqualified to practice medicine in the State of Florida;

(b) on the death of the PHYSICIAN;

(c) if P.A. and PHYSICIAN mutually agree in writing;

(d) if the PHYSICIAN is absent from his employment without the P.A.'s Board of Directors' authorization for a period of thirty (30) consecutive days;

(e) if the PHYSICIAN fails or refuses to perform faithfully or diligently the duties of his employment or any of his obligations under this Agreement;

(f) for cause, which shall include but not necessarily be limited to the addiction to the use of intoxicants or narcotics, chemical dependency, medical incompetence, immorality, insanity, the conviction of a felony violation, or the loss of privileges to practice medicine at any hospital because of events that are reportable to the DPR during the term of this Agreement, or a violation of this Employment Agreement;

(g) if the PHYSICIAN conducts himself in an unprofessional, unethical, or fraudulent manner, or is publicly reprimanded for unethical conduct by any hospital or institution with which the P.A. or PHYSICIAN is associated or any board or group having any privilege or right to pass upon the conduct of the PHYSICIAN, or should the PHYSICIAN's conduct discredit the P.A. or be detrimental to the reputation, character, or standing of the P.A.

5.3 On termination, for any reason, the PHYSICIAN shall be entitled to the compensation due up to the date of such termination, which shall be full compensation in payment for all claims under this Agreement.

5.4 PHYSICIAN acknowledges that he may directly receive payments from patients or insurance companies for services he performs while at Doctors' Clinic after he terminates employment with the P.A. and further agrees to promptly forward said payments directly to the P.A.

6. COVENANTS OF PHYSICIAN

PHYSICIAN covenants that during the term of this Agreement:

6.1 he shall perform his duties hereunder in accordance with the Rules of Ethics of the medical profession;

6.2 he shall work with the P.A. in an effort to achieve a harmonious atmosphere;

6.3 he shall not interfere directly or indirectly with recruiting by the P.A.;

6.4 he will conduct himself and encourage PHYCOR's employees to conduct themselves in a professional manner during the term of this Agreement and shall not, directly or indirectly, commit any act that negatively impacts on the professional reputation or operation of the P.A. or PHYCOR

7. COVENANT NOT TO COMPETE

7.1 The terms and provisions of the covenant restricting the practice of of medicine as set forth in the initial Employment Agreement or any renewals, amendments, or modifications thereof between the parties, shall be null and void and said restrictive covenant shall hereafter be as follows: The PHYSICIAN and P.A. agree that during the period of employment, as defined above, the PHYSICIAN shall not undertake any professional service except for the benefit of the P.A., unless the P.A. shall consent thereto, and shall not engage in any principal business or profession other than the rendition of the

professional services of the P.A. for and on behalf of the P.A. In addition, the PHYSICIAN agrees that upon termination of this Agreement, or in the event employment is terminated by the P.A. during the period of employment, whether or not it be voluntarily or involuntarily, the PHYSICIAN agrees not to enter into the employ of any person, firm, professional association, hospital, or corporation engaged in a similar profession in competition with the P.A. for a period of eighteen (18) months next after the date of such termination, nor himself engage, during such period, directly or indirectly, as principal, agent, or employee in any such profession in competition with the P.A. within a thirty-five (35) mile radius of the P.A.'s business location, the Doctors' Clinic, located at 2300 Fifth Avenue, Vero Beach, Florida and any location within fifteen (15) miles of any satellite location.

In the event the PHYSICIAN has remained employed by the P.A. for a period of one hundred twenty (120) months after January 1, 1994, the provisions of the Non-Competition Agreement shall no longer be of force and effect, and the PHYSICIAN shall be free to practice within the above-referenced 35-mile and 15-mile radius without any penalties providing that said PHYSICIAN has given to the P.A. six (6) months written notice of his intention to terminate his employment with the P.A. In the event said PHYSICIAN fails to provide such six (6) months written notice to the P.A., PHYSICIAN agrees not to actively engage in the practice of medicine in Indian River County, Florida for a period of six (6) months after the termination of his employment with the P.A.

7.2 The PHYSICIAN and the P.A. have examined in detail this restrictive covenant and agree that the restraint imposed herein on PHYSICIAN is reasonable in the sense that it is no greater than necessary to protect the P.A. in its legitimate business interests, and the restrictive covenant is reasonable in the sense that is not unduly harsh and repressive. Any breach or invasion of any terms of this covenant shall be deemed to have caused immediate and irreparable injury to the P.A. and will authorize recourse by the P.A. to injunctive relief and/or specific performance, as well as to all other legal and equitable remedies to which the P.A. may be entitled.

7.3 The P.A. and PHYSICIAN agree that in the event a court of competent jurisdiction should determine that either the time of this covenant is too lengthy, and/or the area from which competition is restricted is too broad, that they hereby stipulate and agree that the court may modify the limits of time and area to the extent that the court deems reasonable so that this covenant shall not be voided.

7.4 The P.A. shall be entitled to damages and injunctive relief against the PHYSICIAN for violation of the terms of this covenant, and in addition, a reasonable attorney's fee and court costs shall be recoverable.

8. GENERAL PROVISIONS

8.1 To further provide for disability income to the PHYSICIAN, the P.A. will utilize the PHYSICIAN's prior twelve (12) months of adjusted charges for the purposes

of determining compensation to be paid the PHYSICIAN for up to a three (3) month period prior to the PHYSICIAN being eligible under the P.A.'s long-term disability coverage. In addition, thereto, the P.A. shall pay the necessary premium costs in order that the PHYSICIAN starting with the fourth month of disability shall be eligible to receive disability income under the P.A.'s disability program in effect at the time of disability, and the P.A. shall further pay the premiums necessary in order that commencing with the sixth month the PHYSICIAN shall be eligible to receive disability income under any corresponding disability program in effect at the time of disability. The total amount of compensation continuation on the disability provisions for the PHYSICIAN shall be limited to the three (3) months as herein provided for the PHYSICIAN. Any payments made by any P.A. adopted disability plan shall not reduce any payments otherwise due the PHYSICIAN under any other provisions of this Agreement.

8.2 This Employment Agreement is not assignable by the PHYSICIAN.

8.3 The PHYSICIAN and the P.A. acknowledge that an earlier Employment Agreement dated January 29, 1992 between the parties to be no longer in force and effect upon the effective date of this Agreement.

8.4 The PHYSICIAN agrees to be bound by the Articles of Organization, By-laws and Policies of the P.A. as may be amended from time to time.

8.5 The PHYSICIAN warrants that he is free to enter into this Agreement without any restrictions whatsoever.

8.6 Any notice required or permitted to be given under this Agreement shall be sufficient, if in writing, and sent by certified mail, return receipt requested, to either party's last known address.

8.7 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Indian River County, Florida. Arbitration shall be governed by the rules of the American Arbitration Association, and the procedure herein set forth. Three (3) arbitrators shall be selected to hear such controversies or claims. One arbitrator shall be selected by the P.A. and one shall be selected by the PHYSICIAN. The third arbitrator shall be selected by the arbitrators. Any decision made by the arbitrators under this provision shall be entered in any court of competent jurisdiction.

8.8 In the event either party is required to retain the services of an attorney to enforce the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee together with costs incurred, including appellate proceedings.

8.9 In the event notice of termination is given either by PHYSICIAN or P.A., then from that date until termination PHYSICIAN waives his rights to attend shareholder and/or director meetings of the P.A.

8.10 Upon termination of this Employment Agreement, PHYSICIAN agrees to return all of his shares in the P.A. in return for amounts provided for in the Stock Purchase Agreement entered into between the parties.

PHYSICIAN agrees to transfer all of the common stock which he owns in Gold, Vann & White, P.A. at the time of payment, to P.A. or to such entity or person as is designated by the P.A. PHYSICIAN agrees to execute all documents reasonably required by the P.A. in connection with the transfer.

8.11 This instrument contains the entire agreement of the parties with respect to the employment of PHYSICIAN. No prior or present agreements, or representations, either written or oral, shall be binding upon any of the parties hereto unless incorporated and made a part of this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing, executed by the parties to be bound thereby. This Agreement binds and inures to the benefit of both the P.A. and PHYSICIAN and their respective successors, heirs, and legal representatives.

8.12 This Agreement and all of its provisions shall be construed according to the laws of the State of Florida.

8.13 This Agreement and the terms hereof supersedes and overrides any agreements or provisions of other agreements in conflict herewith.

8.14 It is understood and agreed between the parties hereto that time is of the essence of this agreement.

8.15 The masculine pronoun has been used throughout this Agreement but shall be construed to mean the feminine wherever the context shall warrant.

8.16 Legal Construction: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

8.17 The PHYSICIAN shall have no authority to enter into any contracts binding upon the P.A., or to create any obligations on the part of the P.A.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Witnesses:

GOLD, VANN & WHITE, P.A.

By: _____
L. Kent Merrill, M.D.
President/Medical Director

As to Company

As to Physician

By: _____
Janet E. Anderson, M.D.

Exhibit A

Income Distribution Formula

The income distribution formula in effect on the date of this Agreement provides that physician shareholder of the P.A. shall receive the following as income:

> The P.A. retains funds after payment of PHYCOR's service fees. Deducted from these funds are P.A. expenses, which consist of associate compensation, employee benefits of all physicians, physician professional dues, continuing education and other expenses relating to and approved by the P.A. The remaining balance is then shared among all shareholder physicians based on the ratio each shareholder's net charges bears to the total net charges of all shareholders in the aggregate. Net charges are gross charges less contractual adjustments, discounts and bad debts for physician services and laboratory testing performed within the Clinic.

Cardiologists will receive production credit in the foregoing formula to allow them to receive 50% of the net professional revenues (excluding the professional components of ancillary services global fees and excluding laboratory services), less P.A. expenses. In addition, cardiologists will receive 50% of the difference between (i) the net global fees from services provided by the cardiologist in the areas of echocardiography, holter monitor interpretation, pacemaker interrogation and stress testing and (ii) direct costs of PHYCOR's associated with such services as set forth in the attachment hereto, including, but not limited to, salaries and benefits, supplies, equipment costs, and repairs and maintenance and indirect costs in the areas of rent, utilities and taxes; and less P.A. expenses. The parties agree that determination of net professional revenues shall be initially based upon historic collection rates of P.A. Any adjustments shall be made no later than thirty six (36) months following the initial provision of professional service generating the fee.

The parties recognize and agree that the foregoing income distribution formula, including the provisions specifically applicable to cardiologists, may be changed by the shareholders of the P.A. as provided in the documents regarding the corporate governance of the P.A., and may be changed by the P.A. upon advice by counsel that the P.A. fails to meet the definition of a "group practice" under federal or state law. The parties recognize that such formula will be required to be amended by January 1, 1995 unless guidelines or regulations are issued clarifying ambiguities in the laws to take effect on such date. In addition, changes in the provisions of the Service Agreement with PhyCor may result in changes to the foregoing income distribution formula.

ATTACHMENT A

The following items have been approved by the Board of Directors and you will be reimbursed for properly documented expenses.

Expense Category	Amount Reimbursed	Documentation Required
Automobile: Lease Payment	Lease payment x business use percentage	Submit beginning of year for full year form 2106 page 2
Depreciation	Percentage allowed for business portion	Prior year or statement from accountant.
Fuel Car Phone Repairs or warranty License tax Oil and lube Car wash Insurance Car phone charges Tires and batteries Tolls	Amount spent x business percentage " " " " " " " " "	Submit monthly or quarterly. Copy of actual receipts attached to expense statement.
Actual mileage	$0.28 per business mile for autos not previously depreciated, no other auto expense may be reimbursed	Mileage reimbursement form
Continuing Education: Registration fee Airline bill Auto rental Hotel bills Meals	Actual, limited to $10,000 per year	Submit as incurred. Actual receipts and if spouse attends reason for their attendance
Entertainment: Meals or recreation charges	Actual, limited to $10,000 per year. Actual, limited to business use percentage. Club use must be greater than 50% business use to deduct dues.	Submit monthly or quarterly Actual receipts

Expense Category	Amount Reimbursed	Documentation Required
Office Supplies Professional journals Furniture and equipment or lease thereof Magazines Professional dues	Amounts incurred Actual, limited to $10,000 per year.	Receipts submitted monthly or quarterly

For entertainment purposes the IRS says that a "business associate" who may be entertained is a person with whom the taxpayer could reasonably expect to engage or deal in the active conduct of his profession. Examples, are patients, suppliers, referring physicians, employees, agents, partners, or professional advisors, whether established or prospective.

EXHIBIT B

EXPENSES ASSOCIATED WITH THE CARDIOLOGY DEPARTMENT ANCILLARY SERVICES

Expense Description	Basis for Allocation
Salaries and benefits	Actual costs incurred for echo tech and other personnel involved in these diagnostic services.
Supplies	Actual costs incurred
Equipment Costs:	
Depreciation on equipment	
Holter Monitor	$200 per month
Treadmill	$366 per month
50% of the lease cost of the Acuson equipment	$1,482 per month
Cost of funds associated with the acquisition price of the holter monitor and the treadmill	$286 per month
Service Contracts	50% of the actual costs incurred on the Acuson
	100% of the actual cost incurred on the Treadmill
	50% of the actual costs incurred on the Holter Monitor
Repairs and maintenance	50% of the actual costs incurred on the Acuson
	100% of the actual cost incurred on the Treadmill
	50% of the actual costs incurred on the Holter Monitor
Other direct expenses	Actual costs incurred
Overhead costs (rent, utilities/ telephone and ad valorem taxes)	$168 per month, allocated to cardiology based on the square footage used to operate the above listed equipment (two exam rooms)

AMENDMENT TO

EMPLOYMENT AGREEMENT - STOCKHOLDER

THIS AMENDMENT TO EMPLOYMENT AGREEMENT-STOCKHOLDER made on this, the 14th day of October, 1996, by and between Janet Anderson, M.D., of Indian River County, Florida, a physician duly licensed and authorized to practice medicine in the State of Florida, hereinafter referred to as "DOCTOR," and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, with its principal office in Vero Beach, Florida, hereinafter referred to as the "COMPANY";

WHEREAS, DOCTOR and COMPANY entered into an Employment Agreement - Stockholder on January 1, 1994; and

WHEREAS, DOCTOR and COMPANY intend to Amend Paragraph 7, Covenant Not to Compete, to provide for a restrictive covenant which is not limited to a total of ten (10) years.

NOW, THEREFORE, in consideration of mutual promises and other monies in hand paid and other valuable consideration, including the executing of the Amendment to the Service Agreement by COMPANY and PHYCOR OF VERO BEACH, INC., the parties agree as follows:

1. DOCTOR and COMPANY hereby agree to amend Paragraph 7 of the Employment Agreement - Stockholder as follows:

7. COVENANT NOT TO COMPETE

7.1. The DOCTOR and COMPANY agree that during the period of employment, as defined above, the DOCTOR shall not undertake any professional service except for the benefit of the COMPANY, unless the COMPANY shall consent thereto, and shall not engage in any principal business or profession other than the rendition of the professional services of the COMPANY for and on behalf of the COMPANY. In addition, the DOCTOR agrees that upon termination of this Agreement, or in the event employment is terminated by the COMPANY during the period of employment, whether or not it be voluntarily or involuntarily, the DOCTOR agrees not to enter into the employ of any person, firm, professional association, hospital, or corporation engaged in a similar profession in competition with COMPANY for a period of eighteen (18) months next after the date of such termination, nor himself engage, during such period, directly or indirectly, as principal, agent, or employee in any such profession in competition with the COMPANY within a thirty-five (35) mile radius of the COMPANY's business location, the Doctor's Clinic at Vero Beach, Florida, and any location within fifteen (15) miles of any satellite location.

7.2. The COMPANY and DOCTOR have examined in detail this restrictive covenant and agree that the restraint imposed herein on DOCTOR is reasonable in the sense that it is no greater than necessary to protect the COMPANY in its legitimate business interests, and the restrictive covenant is

reasonable in the sense that is not unduly harsh and repressive. Any breach or invasion of any terms of this covenant shall be deemed to have caused immediate and irreparable injury to the COMPANY and will authorize recourse by the COMPANY to injunctive relief and/or specific performance, as well as to all other legal and equitable remedies to which the COMPANY may be entitled.

7.3 The COMPANY and DOCTOR agree that in the event a court of competent jurisdiction should determine that either the time of this covenant is too lengthy, and/or the area from which competition is restricted is too broad, that they hereby stipulate and agree that the court may modify the limits of time and area to the extent that the court deems reasonable so that this covenant shall not be voided.

7.4 The COMPANY shall be entitled to damages and injunctive relief against the DOCTOR for violation of the terms of this covenant, and in addition, a reasonable attorney's fee and court costs shall be recoverable.

2. All other terms and conditions of the Employment Agreement - Stockholder dated January 1, 1994, except as modified herein by this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals

the day and year first above written.

Witnesses:

Karen Casserly

As to Company

Jennifer Frederick

As to Doctor

GOLD, VANN & WHITE, P.A.

By:

Janet Anderson, M.D.

CONDITIONAL AGREEMENT

THIS CONDITIONAL AGREEMENT made on this, the 14th day of October, 1996, by and between Janet Anderson, M.D., of Indian River County, Florida, a physician duly licensed and authorized to practice medicine in the State of Florida, hereinafter referred to as "DOCTOR," and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, with its principal office in Vero Beach, Florida, hereinafter referred to as the "COMPANY."

WHEREAS, DOCTOR and COMPANY entered into an Employment Agreement - Stockholder dated January 1, 1994; and

WHEREAS, DOCTOR has entered into an Amendment to the Employment Agreement - Stockholder amending Paragraph 7, the Covenant Not to Compete; and

WHEREAS, it is the intention of the parties that the amendment to Paragraph 7, Covenant Not to Compete, be conditionally signed by DOCTOR conditioned upon COMPANY approving the Amendment to the Service Agreement within ninety (90) days from the date of this Agreement.

NOW, THEREFORE, in consideration of mutual promises and other monies in hand paid, the parties agree as follows:

1. The Amendment to Paragraph 7 of the Employment Agreement - Stockholder between DOCTOR and COMPANY is contingent upon:

a. The stockholders of COMPANY voting to approve all the amendments to the Service Agreement; and,

b. COMPANY and PHYCOR OF VERO BEACH, INC., a Florida corporation, formally entering into and executing the Amendment to Service Agreement and COMPANY receiving the consideration from PHYCOR OF VERO BEACH, INC. for entering into the Amendment to the Service Agreement.

2. If either (a) or (b) of Paragraph 1 above are not accomplished within ninety (90) days from the date of this Agreement, then in that event the Amendment to Employment Agreement - Stockholder amendment Paragraph 7 executed concurrently herewith by DOCTOR shall be null and void; and in that instance, DOCTOR shall remain subject to the Employment Agreement - Stockholder dated January 1, 1994, including Paragraph 7 as set forth therein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

Witnesses:

Karen Casserly

As to Company

Jennifer Frederick

As to Doctor

GOLD, VANN & WHITE, P.A.

By:

Janet Anderson, M.D.

AMENDMENT TO EMPLOYMENT AGREEMENT - STOCKHOLDER

THIS AMENDMENT TO EMPLOYMENT AGREEMENT - STOCKHOLDER is made this 2nd day of February, 1999, between Janet E. Anderson, MD ("PHYSICIAN") and GOLD, VANN & WHITE, P.A., a Florida professional association ("P.A.").

RECITALS:

WHEREAS, PHYSICIAN and the P.A. entered into that certain agreement entitled Employment Agreement - Stockholder and dated 1/1/94 ~~1999~~ (the "Agreement") and

WHEREAS, PHYSICIAN and the P.A. desire to amend certain terms and provisions of the Agreement,

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements, covenants and promises hereinafter provided, and one or more other physician employees of the P.A. also modifying the terms and conditions of his or her employment as hereinafter provided, the parties agree as follows:

1.0 Section 8.7 of the Agreement is hereby deleted in its entirety.

2.0 PHYSICIAN hereby waives and releases the P.A. from any and all claims, actions, and causes of actions for breach, default or violation of any term or provision of the Agreement by the P.A., or any employee, agent or contractor of the P.A., occurring on or before the date hereof.

3.0 All capitalized terms contained in this Amendment shall have the meaning ascribed to them in the Agreement unless otherwise defined herein.

4.0 The Agreement shall remain in full force and effect as modified hereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Witnesses:

As to P.A.

As to PHYSICIAN

GOLD, VANN & WHITE, P.A.

By:

By:

EXHIBIT "E"

STOCK PURCHASE AND REDEMPTION AGREEMENT

THIS AGREEMENT, made this 1st day of January, 1994 by and between Janet E. Anderson, M.D., hereinafter referred to as the "Stockholder"; and GOLD, VANN & WHITE, P.A., a Professional Association incorporated under the laws of the State of Florida, hereinafter referred to as the "Company".

W I T N E S S E T H:

WHEREAS, STOCKHOLDER shall receive 100 shares in the above corporation for a paid-in capital contribution of Five Thousand Five Hundred Dollars and 00/100 ($5,500.00) for all shares of stock; and

WHEREAS, the parties to this Agreement believe that it is to their best interests to provide for non-transferability and redemption of STOCKHOLDER's one hundred (100) shares, in the event of sale or the termination of employment with the COMPANY.

NOW, THEREFORE, in consideration of the mutual covenants herein set out, the parties hereto do hereby agree as follows:

1. No STOCKHOLDER shall, during the period of his employment by the COMPANY, sell or dispose of his stock in the COMPANY without the consent of the COMPANY pursuant to the terms of this Agreement. A legend to this effect shall appear on the Stock Certificate.

2. SHAREHOLDER shall pay the paid-in capital amount of Five Thousand Five Hundred Dollars ($5,500.00) on or before January 1, 1994, payable in one installment.

[April 15, 1998]

[Name Redacted]

Re: Advisory Opinion No. 98-4

Dear [Name Redacted]:

We are writing in response to your request for an advisory opinion, in which you ask whether a proposed management services contract between a medical practice management company and a physician practice, which provides that the management company will be reimbursed for its costs and paid a percentage of net practice revenues (the "Proposed Arrangement"), would constitute illegal remuneration as defined in the anti-kickback statute, §1128B(b) of the Social Security Act (the "Act").

You have certified that all of the information you provided in your request, including all supplementary letters, is true and correct, and constitutes a complete description of the material facts regarding the Proposed Arrangement. In issuing this opinion, we have relied solely on the facts and information you presented to us. We have not undertaken any independent investigation of such information.

Based on the information provided, we conclude that the Proposed Arrangement may constitute prohibited remuneration under §1128B(b) of the Act.

I. FACTUAL BACKGROUND

A. The Parties

Dr. X is a family practice physician who has incorporated as, and practices under the name of, Company A ("Company A"). Company A is proposing to enter into an agreement to establish a family practice and walk-in clinic with a corporation, Company B ("Company B"). Dr. X is the sole Requestor of this advisory opinion.

B. The Arrangement

EXHIBIT "G"

Under the Proposed Arrangement, Company A will provide all physician services at the clinic. Company A may hire additional physicians and other medical personnel with the mutual agreement of Company B. Company A will pay all physician compensation and fringe benefits, including but not limited to, licensing fees, continuing education, and malpractice premiums.

Company B will find a suitable location for the clinic and furnish the initial capital for the office, furniture, and operating expenses. Once operational, Company B will provide or arrange for all operating services for the clinic, including accounting, billing, purchasing, direct marketing, and hiring of non-medical personnel and outside vendors.

Company B will also provide Company A with management and marketing services for the clinic, including the negotiation and oversight of health care contracts with various payors, including indemnity plans, managed care plans, and Federal health care programs.

In addition to Company B's activities on behalf of Company A, Company B will set up provider networks. These networks may include Company A and, if required by Company B, Company A has agreed that it will refer its patients to the providers in such networks.

In return for its services, Company B's payment will have three components. Company A will be required to make a capital payment equal to a percentage of the initial cost of each capital asset purchased for Company A per year for six years. Company B will also receive a fair market value payment for the operating services it provides and an at-cost payment for any operating services for which it contracts. Company B will receive a percentage of Company A's monthly net revenues for its management services.

If the percentage payment described above is not permitted by law, then the parties will establish a management fee reflecting the contemplated financial results of the arrangement or, if the parties cannot agree to a fixed amount, the parties will hire an accounting firm to determine an appropriate fixed fee (the "Alternative Proposed Arrangement").

II. LEGAL ANALYSIS

A. Anti-kickback Statute

The anti-kickback statute, §1128B(b) of the Act, makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce the referral of business covered by a Federal health care program. Specifically, the statute provides that:

> Whoever knowingly and willfully offers or pays [or solicits or receives] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person – to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony.

§1128B(b) of the Act. In other words, the statute prohibits payments made purposefully to induce referrals of business payable by a Federal health care program. The statute ascribes liability to both sides of an impermissible "kickback" transaction. The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 474 U.S. 988 (1985).

Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years or both. Conviction will also lead to automatic exclusion from Federal health care programs, including Medicare and Medicaid.

This Office may also initiate administrative proceedings to exclude persons from Federal and State health care programs or to impose civil monetary penalties for fraud,

kickbacks, and other prohibited activities. See §§1128(b)(7), 1128A(a)(7) of the Act.[1]

B. Safe Harbor Regulations

In 1991, the Department of Health and Human Services (the "Department") published safe harbor regulations that define practices that are not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. For this Proposed Arrangement, the only safe harbor regulation potentially available is the personal services and management contracts safe harbor. See 42 C.F.R. §1001.952(d).

The personal services and management contracts safe harbor provides protection for personal services contracts if all of the following six standards are met: (i) the agreement is set out in writing and signed by the parties; (ii) the agreement specifies the services to be performed; (iii) if the services are to be performed on a part-time basis, the schedule for performance is specified in the contract; (iv) the agreement is for not less than one year; (v) the aggregate amount of compensation is fixed in advance, based on fair market value in an arms-length transaction, and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made by Medicare or a State health care program; and (vi) the services performed under the agreement do not involve the promotion of business that violates any Federal or State law.

We conclude that the Proposed Arrangement does not qualify for this safe harbor. In order for an agreement to be protected by this safe harbor, strict compliance with all six standards is necessary. In this case, the compensation is not an aggregate amount, fixed in advance, as the safe harbor requires. Accordingly, the safe harbor standards are not satisfied.

C. Percentage Compensation Arrangement

Because compliance with a safe harbor is not mandatory, the fact that the Proposed Arrangement does not fit within a safe harbor does not mean that the Proposed

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[1]Because both the criminal and administrative sanctions related to the anti-kickback implications of the Proposed Arrangement are based on violations of the anti-kickback statute, the analysis for the purposes of this advisory opinion is the same under both.

Arrangement is necessarily unlawful. Rather, we must analyze this Proposed Arrangement on a case-by-case basis.

Percentage compensation arrangements for marketing services may implicate the anti-kickback statute. In our preamble to the 1991 final safe harbor rules, 56 Fed. Reg. 35952 (July 29, 1991), we explained that the anti-kickback statute "on its face prohibits offering or acceptance of remuneration, *inter alia*, for the purposes of 'arranging for or recommending purchasing, leasing, or ordering any . . . service or item' payable under Medicare or Medicaid. Thus, we believe that many marketing and advertising activities may involve at least technical violations of the statute." 56 Fed. Reg. at 35974.

This Proposed Arrangement is problematic for the following reasons.

- **The Proposed Arrangement may include financial incentives to increase patient referrals.** The compensation that Company B receives for its management services is a percentage of Company A's net revenue, including revenue from business derived from managed care contracts arranged by Company B. Such activities may potentially implicate the anti-kickback statute, because the compensation Company B will receive will be in part for marketing services. Where such compensation is based on a percentage, there is at least a potential technical violation of the anti-kickback statute. In addition, Company B will be establishing networks of specialist physicians to whom Company A may be required to refer in some circumstances. Further, Company B will presumably receive some compensation for its efforts in connection with the development and operation of these specialist networks. In these circumstances, any evaluation of the Proposed Arrangement requires information about the relevant financial relationships. However, Company B is not a requestor for this advisory opinion, and Company A does not have information regarding Company B's related business arrangements.

Accordingly, we have insufficient information to ascertain the level of risk of fraud or abuse presented by the Proposed Arrangement.[2]

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[2]We are also precluded from reaching a conclusion about the Alternative Proposed Arrangement. Such a determination would require us to evaluate whether the agreed

- **The Proposed Arrangement contains no safeguards against overutilization.** In light of the proposed establishment of provider networks with required referral arrangements, there is a risk of potential overutilization. Under the Proposed Arrangement, we are unable to determine what, if any, controls will be implemented under managed care contracts negotiated for Company A by Company B. Without such controls, we can not be assured that items and services paid for by Federal health care programs will not be overutilized.

- **The Proposed Arrangement may include financial incentives that increase the risk of abusive billing practices.** Since Company B receives a percentage of Company A's revenue and will arrange for Company A's billing, Company B has an incentive to maximize Company A's revenue. This Office has a longstanding concern that percentage billing arrangements may increase the risk of upcoding and similar abusive billing practices.

III. CONCLUSION

The advisory opinion process permits the OIG to protect specific arrangements that "contain[] limitations, requirements, or controls, that give adequate assurances that Federal health care programs cannot be abused." See 62 Fed. Reg. 7350, 7351 (February 19, 1997). Based on the facts we have been presented, the Proposed Arrangement appears to contain no limitations, requirements, or controls that would minimize any fraud or abuse.

Therefore, since we cannot be confident that there is no more than a minimal risk of fraud or abuse, we must conclude that the Proposed Arrangement may involve prohibited remuneration under the anti-kickback statute and thus potentially be subject to sanction under the anti-kickback statute, §1128B(b) of the Act. Any definitive conclusion regarding the existence of an anti-kickback violation requires a determination of the

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upon fee is fixed at fair market value. We are prevented from making that determination by §1128D(b)(3)(A) of the Act, which prohibits our opining on fair market value in an advisory opinion.

parties' intent, which determination is beyond the scope of the advisory opinion process.[3]

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to Dr. X, who is the Requestor of this opinion. This advisory opinion has no application, and cannot be relied upon, by any other individual or entity.

- This advisory opinion is applicable only to the statutory provision specifically noted above. No opinion is herein expressed or implied with respect to the application of any other Federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement.

- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008.

Sincerely,

/s/

D. McCarty Thornton
Chief Counsel to the Inspector General

[3]Our conclusion regarding the risk of fraud or abuse in relation to the anti-kickback statute should not be construed to mean that a finding of fraud or abuse is an implied element necessary to establish a violation of the statute.

ALTERNATIVE PROVISION

2. SHAREHOLDER shall pay the paid-in capital amount of Five Thousand Five Hundred Dollars ($5,500.00) in monthly installments commencing February 1, 1994 of $460.00 for eleven (11) consecutive months with a twelfth (12th) installment of $440.00.

3. If the STOCKHOLDER's employment by the COMPANY is terminated pursuant to the terms of STOCKHOLDER's employment agreement with COMPANY, such STOCKHOLDER, his heirs or assigns, shall sell and the COMPANY shall purchase, by way of redemption, all of the shares of stock he then owns in the COMPANY for STOCKHOLDER's original purchase price plus the amount attributable to any increase in the All Urban Consumer Price Index (CPI) when considering the year of acquisition as the base year. Payment of the redemption amount shall be in the same manner as COMPANY was paid, i.e. in cash or over twelve (12) months calculated consistent with the following example. For example, if the STOCKHOLDER purchased shares for $5,000.00, on redemption he would receive $5,000.00 plus the CPI increase from January of the year of purchase.

4. This Agreement shall be binding on the parties, their heirs and assigns, and may be terminated or modified only by mutual agreement between them.

5. This Agreement shall be governed by the laws of the State of Florida.

6. The parties agree that the amount of capital contribution and method of valuation and repayment shall be reviewed by the Board of Directors of COMPANY annually.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the day and year first above written.

02/20/96

WITNESS:

Emilie Solomon

Martha P. Eastwood

As to Stockholder

Janet E. Anderson, M.D. 3-06-96

Date

GOLD, VANN & WHITE, P.A.

Elizabeth McCarty

Karen R. Cassidy

As to Company

By: L. Kent Merrill

L. Kent Merrill, M.D.
President/Medical Director

02/20/96

EXHIBIT "F"

KAPPEL & KAPPEL
A PROFESSIONAL ASSOCIATION

OAK POINT PROFESSIONAL CENTER
SUITE 221
3970 HIGHWAY A1A, NORTH
VERO BEACH, FLORIDA 32963-1216
TELEPHONE 561.231.7223
[illegible]
e-mail [illegible]

ROBERT KAPPEL, D.O., J.D.*
CRAIG M. KAPPEL**
MICHAEL B. KAPPEL**
* [illegible]
** [illegible]

SUNTRUST TOWER
SUITE 740
100 RIALTO PLACE
MELBOURNE, FLORIDA 32901
TELEPHONE 407.956.0990

Reply to Vero Beach

November 17, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED 7000 1670 0000 0409 0310
PERSONAL AND CONFIDENTIAL
Katherine Lannon, Esquire
Office of Attorney General
Collins Building
Room 324
Tallahassee, Florida 32308

Re: Voluntary Disclosure Statement
Petition for Declaratory Statement of Howard Tee, M.D.

Dear Ms. Lannon:

This letter is to voluntarily disclose additional facts, on behalf of our client, Howard Tee, M.D. (the "Petitioner"), which led to the *Petition for Declaratory Statement of Howard Tee, M.D.* (the "Petition") to the Board of Medicine.

On September 8, 1998, Gold, Vann & White, P.A. ("GVW") filed a cause of action in the Circuit Court of the 19th Judicial Circuit, in and for Indian River County, Florida against a former employee, Allen P. Friedenstab, M.D. ("Friedenstab"), for breach of Covenant Not To Compete and sought injunctive relief (Gold, Vann & White, P.A. v. Allen P. Friedenstab, M.D., Case No.: 98-0472 CA 22). On February 9, 2000, Friedenstab filed his answer and affirmative defenses, which asserted that the Management Service Agreement of January 1, 1989, ("Service Agreement") and subsequent revisions and amendments constituted illegal fee splitting with Phycor of Vero Beach, Inc. ("Phycor"), a Florida corporation, under §1128B(b)(1) of the Social Security Act and/or Section 458.331(1)(l) in *para material* with Section 817.505(1)(a), Florida Statutes.

On or about September 5, 2000, the Petitioner became aware of the pending hearing on GVW's Motion for Partial Summary Judgment in Friedenstab. More specifically, the Petitioner was concerned that the information he received in regard to the Fourth Affirmative Defense in Friedenstab's answer raised the question that the Service Agreement entered into between GVW and Phycor constituted possible "illegal fee splitting". The Petitioner then presented to this Firm for a legal opinion on the Service Agreement, which is incorporated by reference into his employment agreement. The Petitioner, until the date he sought legal counsel, had no prior knowledge of the contents of neither the Service Agreement nor the Board of Medicine's opinion *In re Petition for Declaratory Statement of Magan L. Bakaramia, M.D.*, 20 FALR 395(1998). More important, neither GVW nor Phycor made any effort to disclose the Service Agreement contents to Petitioner and its disciplinary ramifications.

EXHIBIT
"F"

In advising the Petitioner of his options following disclosure and discovery of *Bakarania*, the Petitioner was advised of additional issues raised by GVW's and PhyCor's failure to disclose and/or "cover up" the *Bakarania* decision. More specifically, the Petitioner was made aware of the Board of Medicine's position of percentage based management agreements by this Firm. Additionally, we reviewed for and with the Petitioner the recently obtained transcript and testimony of *In re: Huber* heard before the Board of Medicine on June 2, 2000. We again emphasized to the Petitioner the Board of Medicine's position restated in *Huber* that a Service Agreement that contains language "... just about the same appearances whenever a percentage is involved, so I would say to the Board, that is the same or equal to resembling the *Bakarania* case"[1] would subject the physician to disciplinary action under §458.331(1)(i), Florida Statutes. The Service Agreement entered into by GVW and PhyCor resembles the *Bakarania* agreement.

Specifically, the Service Agreement required PhyCor to provide services that were usual and customary business management activities. The management activities included billing, clerical personnel, office maintenance, inventory supply, and payment of the practice's operating expenses, in addition to duties which involved practice expansion through marketing, obtaining managed care contracts, creating a network referral system and finally, the development and provision of ancillary services. In return for providing such services, PhyCor receive and still receives a non-fixed fee through a percentage based reimbursement formula, totally derived from the profits generated by physician's fees and professional component of PhyCor ancillaries, regardless of whether they are from the net or gross profits. Moreover, there is no evidence, specifically included in the Service Agreement between GVW and PhyCor that fair market value was even considered in arriving at the percentage based management fee.[2]

More recently, concerns were raised by Petitioner to this Firm from information received form other resources in regard to the Services Agreement. Specifically, the Petitioner was concerned with the prohibited the acts of "patient brokering" and "fee-splitting" arrangements under §817.505, Florida Statutes. We further informed the Petitioner of the opinion issued by the Office of the Inspector General of the United States, Department of Health and Human Services ("OIG"). The opinion was issued at or about the same time as the Board of Medicine decided *Bakarania*. In Advisory Opinion 98-4, the OIG considered a set of facts similar to those presented in the *Bakarania* petition for declaratory statement. We informed the Petitioner that the OIG concluded that arrangements in which a management company shared in a percentage of a physician client medical practice's net revenues, that are at least in part (i) generated by managed care contracts arranged by the management company; (ii) include revenues form referrals within provider networks created by the practice management company; and (iii) billed and collected on behalf of the medical practice by the management company, would implicate the federal anti-kickback statute and likely result in prohibited remuneration under the federal anti-kickback statute. (see attached Exhibit "A")

To briefly summarize the underlying facts, which led to the petition, the Petitioner was actively recruited by GVW from out-of-state in November 1996, and was employed by the multi-specialty

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[1] Testimony before Board of Medicine, page 21, line 18, Hearing Transcript, Tab 14, *In re: Frederick Huber, M.D.*(Unpublished) (June 2, 2000).

[2] *In re Petition for Declaratory Statement of Jeffrey Fernyhough, M.D.*(Unpublished) DOH-97-0332 (November 11, 1997), in which the Board of Medicine specifically included that fair market value should be considered in the determination of the application of §458.331(1)(i).

medical group as an invasive cardiologist. The Petitioner first entered into a Non-Shareholder Employment Agreement (the Non-Shareholder Agreement"), effective February 1, 1997, and subsequently, entered into a Stock Purchase Agreement ("Stock Purchase Agreement ") and Employment Agreement-Stockholder ("Shareholder Employment Agreement"), collectively referred to as "Agreements", on February 1, 1998. During negotiations, which involved the Agreements, *Bakarania* or its progeny, were never disclosed to the Client by PhyCor or GVW, even though PhyCor, Inc., a physician practice management company, the parent corporation of PhyCor, intervened in *Bakarania* and was well aware of the decision. In fact, PhyCor, Inc. had filed an *Amicus Curie* brief in *Bakarania* on behalf of the Appellant in the First District Court of Appeal of Florida (Case No. 97-4543). (see attached Exhibit "B")

When the Petitioner presented in our office for legal representation in this matter, we advised the Petitioner of the present position of GVW and PhyCor in regard to the Service Agreement as it relates to *Bakarania*. We disclosed to Petitioner the videotaped deposition testimony in Friedenstab of Michael Kissner ("Kissner"), Executive Director of GVW d/b/a Doctor's Clinic, Inc., obtained on August 17, 2000, in which Kissner clearly admitted, under oath, that a percentage of the physician fee revenues from patient encounters and the professional component of designated health services, which included marketing efforts on behalf of GVW, were received by PhyCor in the form of a management fee. (Page 27, 28 of Kissner deposition attached as Exhibit "C") Moreover, Kissner clearly had knowledge of *Bakarania* and failed to disclose in a timely manner this information to the Petitioner prior to the Petitioner entering into the Agreements. (Page 55-62 of deposition attached as Exhibit "D") Additionally, on August 17, 2000, deposition testimony obtained from Arthur Glasser, M.D. ("Glasser"), President of GVW, in Friedenstab clearly demonstrates that as President of GVW, Glasser never considered *Bakarania* "important enough" nor did Glasser consider it "necessary" for the physicians, individually or as GVW as a group, to petition the Board of Medicine for a declaratory statement opinion on the participation by the physicians in the GVW/PhyCor percentage based Service Agreement. Glasser further took the position that the Service Agreement, not arrived at by arms length and fair market value negotiations, which contained marketing and promotion, as originally drafted and amended, would not result in disciplinary action by the Board of Medicine. Glasser unilaterally decided that *Bakarania* did not apply. Glasser actually did not believe that the Board of Medicine would take any action against the participating physicians under § 458.331 (1)(i), Florida Statutes. (Pages 23-29 of Glasser deposition attached as Exhibit "E")

In the performance of our due diligence in preparation to counsel the Petitioner, the characteristics in the relationship between the Petitioner and PhyCor, appeared to be identical to those found to be prohibited by §458.331(1)(i), Florida Statutes, in *Bakarania* and by the federal anti-kickback statute in Advisory Opinion 98-4. For these reasons, we advised the Petitioner to seek a Final Order of the Board of Medicine, which will state whether or not the Service Agreement, further described within this correspondence and the petition, is in violation of §458.331(1)(i), Florida Statutes and the Board of Medicine's interpretation and application of that statutory provision as set forth in the Final Order by the Board of Medicine in the *Bakarania* petition.

We anticipate this letter of disclosure will provide further insight as to why the Petitioner sought the Board of Medicine's determination. Once the Board of Medicine has made its determination, the Petitioner will be able to make a quick analysis as to the best course of action without creating further risk of disciplinary action by the Board of Medicine.

Very truly yours,

RAPPEL & RAPPEL
A Professional Association

ROBERT RAPPEL, D.O., ESQ.
For the Firm

DRR/jam
Enclosure:

Exhibit "A"	OIG Advisory Opinion 98-4
Exhibit "B"	*Amicus Curie* brief by PhyCor, Inc.
Exhibit "C"	Kissner Testimony Pages 27-28
Exhibit "D"	Kissner Testimony Pages 55-62
Exhibit "E"	Glasser Testimony Pages 23-29

cc: *Howard Tee, M.D. (w/o encl.)*

s:\clients\tee\petition board of medicine\disclosure letter bom111000.doc

IN AND FOR INDIAN RIVER COUNTY, FLORIDA

CASE NO. 98-0473-CA-32
Honorable Scott W. Gaaney

GOLD, VANN & WHITE, P.A.,
a Florida professional association,

Plaintiff,

vs.

ALLEN P. FRIEDENBERG, M.D.,

Defendant.

VIDEOTAPED DEPOSITION OF MICHAEL KISSNER

DATE: Thursday, August 27, 1998

TIME: 9:30 a.m.

PLACE: Offices of Rappel & Rappel, P.A.
9470 North Highway A1A
Suite 221
Vero Beach, Florida 32963

BEFORE: Sharon Bonkamp, Notary Public in and for the State of Florida at Large.

AMERICAN REPORTING
941 Beachland Blvd.
Vero Beach, Florida 32963
(561) 234-9960

TOLL FREE (888) 474-9960

For the Plaintiff:

RICHARD M. SCHAEFFER, ESQUIRE
Goldwasser & Freeman, P.A.
One Biscayne Tower
Suite 2250
Two South Biscayne Boulevard
Miami, Florida 33131

For the Defendant:

CRAIG R. RAPPEL, ESQUIRE
Rappel & Rappel
9470 N. Highway A1A
Suite 221
Oak Point Professional Center
Vero Beach, Florida 32963

I N D E X

NAME OF WITNESS

MICHAEL KISSNER

EXHIBITS

Defendant's

CERTIFIED QUESTIONS

Q Sir, in this case it's titled PhyCor of Vero Beach, Inc. and Gold, Vann & White, P.A. versus Theodore G. Perry, M.D. My question to you, sir, is is this case against Dr. Friedenberg, why is PhyCor of Vero Beach, Inc. not a plaintiff? (page 16)

Q Who paid for the litigation in Dr. Perry's case? (page 34)

Q Did PhyCor of Vero Beach, Inc. pay for those services? (page 36)

Q Did Gold, Vann & White reimburse PhyCor of Vero Beach, Inc. for any legal services? (page 36)

Q In terms of the payment for legal fees in Dr. Lum and Lesse's arbitration, who paid for those legal fees? (page 37)

Q Did Gold, Vann & White, P.A. reimburse PhyCor of Vero Beach, Inc. for those legal fees? (page 37)

EXHIBIT "C"

THEREUPON,

MICHAEL KISSNER,

called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RAPPEL:

Q Good morning, sir. For the record, can you please give us your full name.

A Michael Gerard Kissner.

Q Mr. Kissner, are you currently employed?

A Yes, I am.

Q Where are you employed?

A PhyCor of Vero Beach, Inc.

Q What is the address of where PhyCor of Vero Beach, Inc. is located?

A At the Doctors' Clinic, 2300 5th Avenue, Vero Beach, Florida 32960.

Q The Doctors' Clinic, what is the Doctors' Clinic?

A The Doctors' Clinic is the name under which Gold, Vann & White, P.A. does business. It's Gold, Vann & White, P.A. doing business as Doctors' Clinic.

Q Gold, Vann & White, P.A., that's a professional association made up of a group of

building that they're in?
A That's correct.
Q Some other entity owns the building that Gold, Vann & White is in?
A That's correct.
Q Because Gold, Vann & White, a signatory to that lease agreement between whoever owns the building and PhyCor of Vero Beach, Inc., is the tenant.
MR. GOLDSTEIN: Objection to form. You can answer.
THE WITNESS: The lease – I believe GVW may be on that as a sub-lessee, but PhyCor of Vero Beach, Inc. is the lessee.
BY MR. RAPPEL:
Q Well, let's just assume for a minute that Gold, Vann & White has no strings attached to the physical location that they're in; that it's on the head of PhyCor of Vero Beach, Inc., so to speak, being the tenant.
A Okay.
Q Are you telling me that reviewing restrictive covenant by GVW, 7.1 on page 18 of this agreement, that if the doctors as a group were unhappy with how PhyCor was providing services for them and they decided that they wanted to terminate the relationship and go up and go down the street and form a group practice down the street, that PhyCor can prevent them from practicing medicine based on this restrictive covenant?
A Your hypothetical assumes termination of the agreement. I believe further in this document are specific areas, chapter and articles and sections, if you will, of how that termination would proceed.
Q And if they ignored that and they just went down the street. They didn't give notice. They didn't follow all the procedures of the written document. They just got up and went down the street.
MR. GOLDSTEIN: Objection; hypothet. Not relevant to this case but you can answer it, Mr. Kissner, if you can.
THE WITNESS: You're asking very hypothetical questions. You're saying it terminates if this happened, if that happened. I don't believe I can answer that question.
BY MR. RAPPEL:
Q Under the service agreement, can you tell me how PhyCor of Vero Beach, Inc. is paid?
A PhyCor receives a management fee for providing management services as identified in this document, Exhibit 1.
Q At any point does it receive a flat rate

Page 27

payment for certain services?
A I haven't reviewed this document in years. Does PhyCor receive a flat rate payment?
Q For certain services that it provides.
A Off the top of my head, I'm not aware of any. I don't recall any.
Q How are costs paid for the marketing?
A Bills for advertisement newsprint come out of our accounts payable. We pay those bills out of operations.
Q And how does PhyCor of Vero Beach, Inc. receive any type of recoupment of those costs from Gold, Vann & White?
MR. GOLDSTEIN: Objection to form. You can answer.
BY MR. RAPPEL:
Q If they do at all.
A So your question is?
Q My question is, does Gold, Vann & White pay back PhyCor of Vero Beach, Inc. for the marketing?
MR. GOLDSTEIN: Objection to form.
THE WITNESS: I don't believe so.
BY MR. RAPPEL:
Q How does Gold, Vann & White, P.A. generate income?

Page 28

A The entity of Doctors' Clinic and the physicians employed by GVW provide professional services and practice medicine at this location, Doctors' Clinic in Vero Beach. For that we send out bills on their behalf. Collect those. A management fee is paid to PhyCor and the balance goes to the P.A., GVW. When I say the P.A., I'm referring to Gold, Vann & White, P.A. so I don't have to keep repeating myself.
Q Sure.
A The P.A. has its own internal distribution, income distribution plan, that they use to determine how physicians are compensated.
Q Could Gold, Vann & White, P.A. as you know it make any income without a patient, without patients? I'm not talking about any investments, portfolios, or anything they've set aside.
A Well, I'm wondering what you're asking.
Q I'm just asking without patients can they make a living?
A Practicing medicine.
Q Practicing medicine. Thank you.
A That global term, practicing medicine, would include MRO review at a hospital which would not have a patient present. Do you consider that practicing medicine?

impact to the organization. Otherwise why would the P.A. want to not recruit?

And providing all that, having assumed candidates are acceptable, candidates have been interviewed, and the P.A. has extended offers to them and have been accepted by the physicians, ratified by the shareholders, then PhyCor of Vero Beach, Inc. would provide the staffing. Perhaps there's an extra billing office person needed; another medical record office person needed; someone additional in the lab or phlebotomy depending on the specialty. And knowing that there's a typical – about a six or eight-month lead time, we would be preparing for that.

BY MR. RAPPEL:

Q Did you read Dr. Lum's demand for arbitration?

A I probably did. I don't specifically recall. I probably did.

Q Prior to her demand for arbitration, had any other physician raised the specter that the management services agreement was an illegal self-referral issue or an illegal fee-splitting issue or even an illegal patient brokering issue?

MR. GOLDSTEIN: Objection to form bu

THE WITNESS: Did any physician ever raise that?

BY MR. RAPPEL:

Q Yes, sir.

A I believe that issue has been raised and proven to be quite the opposite.

Q Well, my question is did any physician raise that issue?

A I believe Dr. Lum and Lazan did.

Q Anyone else other than them? My question was prior to Dr. Lum raising that issue, did anyone else raise that issue?

A I don't recall.

Q Now, you said it was proven not to have constituted illegal fee splitting or a self-referral issue or a patient brokering issue. Can you tell me where it was proven that this agreement was not illegal under Florida law?

A Specific to the clinic here you asked that question, specific to our doctors. That's my understanding of the proceedings that we went through arbitration. They did not find that to be in any shape, or form what was contended to be an illegal ment.

EXHIBIT "D"

Page 55

Q Have you ever heard of the Phymatrix versus Bakarania case?

A I have.

Q When did you first hear about the Phymatrix versus Bakarania?

A Probably when it was going on. I think that was over in the west coast of Florida, Tampa, St. Pete somewhere.

Q What did you understand that case to be?

A I understood that to be that this physician, Bakarania, was contending that the agreement between him and the practice management company at the time, which I believe was Phymatrix, was illegal and contended lots of things that I think you've already alluded to.

Subsequently it was proven – I'm not sure of the outcome of that, whether it was deemed illegal or not. I know that PhyCor, Inc. filed a Friend of the Court or an amicus brief, something – I'm not sure of the legal term – to that as an interested party in those proceedings and outcomes.

But it was specifically addressed that it did not pertain to PhyCor's agreement. I think the decision pertained strictly to the Bakarania one and that PPM contract in place with that physician at the time.

Q Didn't PhyCor say that the agreement was the

Page 56

same agreement that they had with their physicians in Florida in their brief?

A I have never seen the PhyCor brief.

Q Why would PhyCor have an interest in the Bakarania case? If it didn't affect them, why would they be interested?

A Well, I think it was a PPM company, a physician practice management company. I'm not even sure Phymatrix exists anymore. Was in place at the time with other physicians. And if something is being challenged in a court of law, again, that's why I understand PhyCor filed something to be an interested party only to know how it was resolved. But it did not apply to the PhyCor agreement at all.

Q As part of the joint policy board, did you bring up the Bakarania issues to the physicians of Gold, Vann & White, P.A.?

A I may have. It would come up under my executive director report or other items of interest; not a specific – I don't recall specific discussions about it.

Q Have you tracked any other cases besides the Bakarania decision with respect to the fee splitting issues with PPMCs that you mentioned, the terminology PPMC?

impact to the organization. Otherwise why would the P.A. want to not recruit?

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Q Have you tracked any other cases besides the Bakarania decision with respect to the fee splitting issues with PPMCs that you mentioned, the terminology PPMC?

[2] others.
[3] Q As a result of Bakaraniz, did you, at any
[4] time, attempt to amend this Exhibit No. 1, the amended
[5] and restated services agreement?
[6] A No.
[7] MR. GOLDSTEIN: An objection to form prior to
[8] that please. Thank you.
[9] BY MR. RAPPEL:
[10] Q I noticed in Article 7 on page 18 and also on
[11] page 19 there's provision 7.2 titled on page 18:
[12] restrictive covenants by current physician stockholders
[13] and physician employees. And on page 19 has a
[14] provision, 7.3: Restrictive covenants by future
[15] physician employees. And on 7.6 on page 20 talks about
[16] enforcement provisions. Why is it important that PhyCor
[17] of Vero Beach, Inc. see to it that GVW enforces the
[18] restrictive covenants that it has with its physicians?
[19] A You've got to protect the enterprise and the
[20] business. It's very time consuming and expensive to
[21] recruit physicians. We typically bring a physician in;
[22] provide a practice setting for them; staff; services to
[23] them; help build the entity, the practice. And once
[24] that practice has been established and doing well, it
[25] would be difficult and injurious to have that physician

[1] just leave without having a non-compete. You've got to
[2] have something that protects the entity.
[3] This whole Article 7 deals with both
[4] restrictive covenants by GVW for its physicians;
[5] restrictions for PhyCor; and the P.A. back and forth
[6] mutually as well; and the enforcement of same.
[7] Q Would that also inure to protections of the
[8] patient base? In other words, if a physician leaves,
[9] it's more likely than not that the patients will follow
[10] to that physician and therefore Gold, Vann & White would
[11] lose revenues?
[12] A If the physician stayed within the non-compete
[13] area, patients – it could harm the P.A., yes.
[14] Q And if the P.A. is harmed, then PhyCor of Vero
[15] Beach is harmed because it takes a direct percentage of
[16] the income generated by Gold, Vann & White, P.A.,
[17] correct?
[18] A PhyCor of Vero Beach, Inc. receives a
[19] management fee.
[20] Q That management fee is listed within the
[21] services agreement, correct?
[22] A I believe it is.
[23] Q And the management fee discusses percentages
[24] of net clinic revenues, correct?
[25] A I believe it does.

Page 59

[1] Q And net clinic revenues are defined within the
[2] agreement, correct?
[3] A The definition of net clinic revenues is
[4] defined in this agreement. PhyCor receives its
[5] management fee. This agreement also provides
[6] guarantees, I believe, to the physicians based on flat
[7] guarantee of net clinic revenues regardless of who comes
[8] or goes.
[9] Q And on page 6, section 2.1.9, net clinic
[10] revenues; it indicates ancillary and other revenues;
[11] physician services revenues and capitation revenues.
[12] Can there be ancillary or other revenues, physician
[13] services revenues and capitation revenues, without a
[14] patient or patients?
[15] A In the traditional sense as we discussed
[16] earlier, no. You need patients to provide – that
[17] physicians can provide medical services to which would
[18] include perhaps ancillary testing. There is no
[19] capitation. GVW has never – nor PhyCor of Vero Beach
[20] in this location – ever received any capitation
[21] revenues. Well, it also provides provisions for
[22] additional managed care payments and that doesn't exist
[23] either. This document was crafted probably to be a
[24] living document and address issues to be dealt with over
[25] time.

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[1] Q It's a 40-year agreement, correct?
[2] A I believe it is.
[3] Q So as I understand it, the management services
[4] fees, PhyCor of Vero Beach, Inc., the more patients that
[5] come into the clinic, the more revenues that are
[6] generated, the bigger the management fees that PhyCor of
[7] Vero Beach, Inc. receives, correct?
[8] A PhyCor is paid a management fee per this
[9] contract.
[10] Q And the management fee is based on the sliding
[11] scale of percentages found within the agreement,
[12] correct?
[13] A I'm not going to interpret this agreement. I
[14] have people that do that; that's my chief financial
[15] officer.
[16] Q Is your CFO an attorney?
[17] A No; not to my knowledge.
[18] Q Is your CFO board certified in health care
[19] law?
[20] A Not to my knowledge.
[21] Q Now, as part of taking some of these courses
[22] including going to the – have you taken any courses
[23] with the ACMP yet?
[24] A It doesn't work that way. The ACMPE, the
[25] College of Medical Practice Executives, provides ongoing

conference of the southern section and the eastern section of MGMA combined in Marco Island. Was a two or three-day conference during which time various items of health care are presented. Attendance to those has accredited hours towards it which you need certain amount of hours to gain your status. And then you ultimately write a thesis and a dissertation.

I'm president. I'm just recently president of the Florida MGMA. We had our annual conference in May. The same thing in a smaller format occurs. We have speakers from around the state; health care attorneys, legislatures, business office folks, marketing, recruitment, vendors and software folks that attend these. Attendance at those and the knowledge gained there you can also receive credit hours for. So it's accumulation of credit hours.

Q After the Bakarania decision came out, did you ever have Gold, Vann & White or PhyCor of Vero Beach, Inc. file a declaratory statement with the Board of Medicine to review Exhibit No. 1?

MR. GOLDSTEIN: Objection, form, but you can answer it.

THE WITNESS: I don't know.

BY MR. RAPPEL:

made an appearance in that case based on what the decision was by the Board of Medicine in that case? And after it was appealed and affirmed by the First DCA, did you ever decide to take this agreement to the Board of Medicine to decide whether they believed it would be legal?

A I personally have never taken this agreement referred to as Exhibit 1 to the Board of Medicine. I look to PhyCor, Inc. to provide me some of that counsel. And I don't know what's entailed with all these amicus briefs or things of that nature or what's filed or not. I am aware that the Bakarania issue does not apply to PhyCor or its agreements between PhyCor of Vero Beach, Inc. and Gold, Vann & White, P.A. Quite frankly I don't need to deal with it at this point in time or -- the decision has been rendered. We'll deal with other things that are more important.

Q Are you an employee of Gold, Vann & White, P.A.?

A No, I'm not.

Q Are reception staff employees of Gold, Vann & White, P.A.?

A PhyCor of Vero Beach, Inc. employs, as I've said before, the nurses, as we've defined earlier,

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receptionists, record folks, business office people.

Q Have you taken any courses or attended any seminars with respect to Florida's anti-kickback and anti-self-referral statute or the federal anti-kickback statute under the Social Security Act?

A I'm sure those have been discussed at many of these conferences I've attended in which I sit there in a group setting and listen to the latest things going on in those areas.

Q When Dr. Lum left the practice, Doctors' Clinic, did she leave at the same time that Dr. Friedenstab left or did she leave before or leave after?

A My recollection was the arbitration hearings were about July of 1998; maybe June, July area. I think she left, Dr. Lum left, shortly after the decision was rendered, July or August. I recall Dr. Friedenstab leaving in September. I want to say mid or late September of 1998.

Q The patients that come into the Doctors' Clinic, do they belong to anybody?

A I think slavery went out in the 1800s. Patients are -- I can't answer that question. I'm not going to answer that question.

Q Have you taken any courses on medical ethics? Doctor/patient relationship; quality of care issues;

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patient abandonment.

A How global is medical ethics?

Q Basically along those lines. Anything dealing with ethics revolving around the doctor/patient relationship; patient abandonment; quality of care; providing a service to the patient.

A I've not taken a specific course that I can recall today about that. I do know that as a general rule, physicians are not allowed to abandon patients without providing at least some emergency care for a period of time; that may be according to various communities. Here I believe it's considered to be about 30 days that you need to provide care to a patient. If you were going to leave, give adequate notice and provide care on an emergency basis for a period of time while the patient re-establishes. That's my working knowledge of it.

Q At any time did you feel that the patient base that Dr. Lum had or Dr. Friedenstab had -- in other words, the book of patients that they've seen over the years that they've been at Gold, Vann & White, P.A., did you feel that those patients belong to Gold, Vann, & White, P.A.?

A I think the patients belong to Gold, Vann & White, P.A. and not an individual physician.

IN AND FOR INDIAN RIVER COUNTY, FLORIDA

CASE NO. 95-0473-CA-23
Honorable Brett M. Sweeney

GOLD, PAUL & WHITE, P.A.,
a Florida professional association,

Plaintiff,

vs.

ALLEN P. PRIEDKNIGHT, M.D.,

Defendant.

VIDEOTAPED DEPOSITION OF ARTHUR GLASER, M.D.

DATE: Thursday, August 17, 2000

TIME: 1:00 p.m.

PLACE: Offices of Rappel & Rappel, P.A.
3870 North Highway A1A
Suite 321
Vero Beach, Florida 32960

BEFORE: Sharon Northrup, Notary Public in and for the State of Florida at Large.

AMERICAN REPORTING
951 Beachland Blvd.
Vero Beach, Florida 32963
(561) 234-0660

TOLL FREE (888) 474-0660

For the Plaintiff:

RICHARD M. GOLDSTEIN, ESQUIRE
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I N D E X

NAME OF WITNESS

ARTHUR GLASER, M.D.

EXHIBITS

Defendant's

EXHIBIT "E"

Page 3

THEREUPON,

ARTHUR GLASER, M.D.,

called as a witness on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RAPPEL:

Q Good afternoon, sir. For the record can you please give us your full name.

A My name is Arthur Louis Glaser.

Q Are you a physician licensed to practice medicine here in the State of Florida?

A I am.

Q How long have you been a physician?

A Since 1973.

Q Have you continuously since 1973 held a license to practice here in the State of Florida?

A No.

Q When did you first receive a license to practice here in the State of Florida?

A I believe it was in 1984, but I'm not certain.

Q Do you currently hold licenses to practice medicine in any other state besides Florida?

A I do.

Q What states are those?

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A Hawaii, Virginia, South Carolina.

Q Prior to 1984 where did you practice medicine?

A I was in a training program in Charleston, South Carolina.

Q When you came here to Florida in 1984, where did you work?

A When I came here?

Q Yes, sir.

A I worked here in Vero Beach at Doctors' Clinic.

Q As long as you've worked here in Vero Beach, has the Doctors' Clinic always been known as the Doctors' Clinic?

A As far as I know, yes.

Q Is that what's referred to as a fictitious name? In other words, is the Doctors' Clinic its own entity? Is it a corporation, a partnership?

A It's a partnership.

Q Are you currently an owner in the Doctors' Clinic?

A I'm a member of the partnership.

Q How long have you been a member of the partnership at the Doctors' Clinic?

A I believe since 1986.

Q Are you currently an officer or a director in

instances?
A Yes.
Q Did you testify in the arbitration proceedings with respect to Gold, Vann & White, P.A. versus Dr. Theodore Perry?
MR. GOLDSTEIN: At least in – I'm going to help the witness here. At least in part. If you don't know, during the course of that testimony is when Dr. Glaser had an emergency medical condition; that's why I say at least in part.
BY MR. RAPPEL:
Q Did you give a deposition in that proceeding prior to testifying?
A You know I believe I did, but I just don't recall for sure.
Q What was your emergency medical condition that happened in the Perry proceeding?
MR. GOLDSTEIN: I'm going to object. If you want, do it off the record. I think it's very personal. It has no bearing on this case and he has a right to privacy in that matter. If you want to close the record and then take it before the Judge, I'll be glad to let you do it.
BY MR. RAPPEL:

[illegible] your medical condition affect your ability to remember, to see, and things to know to which you can testify here today?
A When?
Q From your medical condition –
MR. GOLDSTEIN: The answer is no. It affected his testimony at the time. It does not affect his testimony today.
BY MR. RAPPEL:
Q That's your testimony; not your attorney talking for you but that's your testimony?
A Is it affecting my testimony today?
Q Yes.
A No, it is not.
Q Does it affect your ability to remember things to which you're going to be testifying here today?
A Well, it depends on your questions, I assume.
Q Have you ever heard of the Bakarania decision?
A Yes, I have.
Q Where did you hear the term the Bakarania decision?
A Mr. Goldstein mentioned it to me.
Q Did Mr. Goldstein mention that to you recently?
A The past several months.

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Q Prior to Mr. Goldstein ever mentioning anything to you, have you ever heard the Bakarania decision before?
A No, sir.
Q Does Gold, Vann & White, P.A. have general counsel?
MR. GOLDSTEIN: Object to form. You can answer.
THE WITNESS: Do we have attorneys who represent us?
BY MR. RAPPEL:
Q No; general counsel.
A I don't understand.
Q Basically a full-time corporate transactional attorney that's there to answer any questions with respect to labor law issues, health care transactional issues, accounting issues.
A No.
Q Who drafted the employment agreements between the physician and Gold, Vann & White, P.A.?
A There were probably a number of attorneys who did that.
Q Different law firms?
A Perhaps.
Q Could have been only one law firm?

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MR. GOLDSTEIN: Objection to form.
THE WITNESS: I don't believe so.
BY MR. RAPPEL:
Q Did Collins, Brown, Caldwell et al., P.A., did they ever draft any of your employment agreements between Gold, Vann & White, P.A. and the physician?
A They may have drafted some of them.
Q Have you ever been trained in corporate compliance?
A I don't believe I've been trained in it. I've been given information to read.
Q Have you ever been given a corporate compliance manual?
A Yes.
Q When were you given a corporate compliance manual for the first time?
A 1998, 1999.
Q To your knowledge have there been any revisions to that corporate compliance manual since 1998 or 1999?
A I have no knowledge.
Q Did you originally vote to accept the first services agreement between PhyCor and Gold, Vann & White, P.A.?
A The original?

A I'm not even sure I was a voting member of the P.A. at the time, so I don't recall.
Q At the time were you privy to discussions as to why Gold, Vann & White, P.A. felt the need to hire a physicians practice management corporation?
A No, sir, I wasn't.
Q What does PhyCor of Vero Beach, Inc. today do for you as a physician at Gold, Vann & White, P.A.?
A Well, they actually run the administrative aspects of the clinic. They hire virtually all of the employees. They do our billing.
Q Anything else?
A Not that I can think of, no.
Q Do they do marketing for you?
A There is some marketing, yes.
Q And to your knowledge what does that marketing for you entail? What do they do for you personally?
A For me personally?
Q Yes, sir.
A Other than being listed in the phone book, the occasional ad in the paper, no other marketing for me. My practice is fairly mature. I don't really need very much marketing.
Q Do you reimburse them the fair market value

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is PhyCor of Vero Beach, Inc. compensated for providing you administrative aspects such as billing, marketing, or any other aspects of running a medical practice?
A They receive a management fee, which I understand is 12 percent of the net clinic revenues.
Q How does the Gold, Vann & White, P.A. generate net clinic revenues?
A How do physicians earn money?
Q Yes, sir. Excluding the items on Exhibit No. 2, which is no medical director fees, no fees for serving on hospital committees, no fees for serving on board of directors, no fees for serving in positions of nursing homes, and no research honoraria for study meetings. How does –
A Physicians generate income by seeing patients.
Q And the more patients you see, the more percentage of net clinic revenues will occur?
A I don't think –
MR. GOLDSTEIN: Objection to form. You can answer.
THE WITNESS: I don't think the percentage changes. No, sir.
BY MR. RAPPEL:
Q Well, the more that the net clinic revenues increase.

MR. GOLDSTEIN: Objection to form. You can answer the question.
THE WITNESS: No.
BY MR. RAPPEL:
Q Why not?
A It's part of the service agreement that they would provide some of the marketing. I mean I'm assuming they pay it out of their fees. The physicians don't pay PhyCor to perform marketing.
Q Have you read the management services agreement between PhyCor of Vero Beach, Inc. and the Doctors' Clinic, the last document that's in existence between the two prior to coming to this deposition today?
A Did I read it today? No, sir. I did not.
Q Did you read it in the last week?
A No, sir.
Q Did you read it in the last month?
A No, sir. You're referring to what's known as the amended and restated service agreement?
Q Yes, sir.
A I've read it this year, but certainly not any later than January or February.
Q As your understanding of this agreement, how

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MR. GOLDSTEIN: Objection to form.
BY MR. RAPPEL:
Q Well, how do you get from if you earn $100,000 a year in net clinic revenues, and seeing more patients increases you to $200,000 a year, it would seem that more patients caused the increase in the net clinic revenues, correct?
A If I double the number of patients I see do revenues go up?
Q Yes, sir.
A They do.
Q Would you agree with me that 12 percent of $200,000 is more than 12 percent of $100,000?
MR. GOLDSTEIN: Objection; form. You can answer.
THE WITNESS: Yes. I would agree with that.
BY MR. RAPPEL:
Q As a shareholder of Gold, Vann & White, P.A., has the board of directors ever indicated that as a result of the Bakarania decision that the management services agreement between PhyCor of Vero Beach, Inc. and Gold, Vann & White, P.A. should be submitted to the Florida Board of Medicine for a declaratory statement?
MR. GOLDSTEIN: Objection; form.
THE WITNESS: No.

Q As president of Gold, Vann & White, P.A., since the finalization of the Bakarania decision by the First District Court of Appeals, did you ever have counsel, transactional counsel or healthcare law counsel, for Gold, Vann & White, P.A. review that agreement to see if it was compliant with the edicts of the Board of Medicine?

MR. GOLDSTEIN: Objection to form. You can answer.

THE WITNESS: No.

BY MR. RAPPEL:

Q Can you tell me why not?

A No, I can't. I didn't think it was necessary. It was something that the board of directors never thought was important.

Q Your testimony before was that you did not know about the Bakarania decision?

A It's never been an issue discussed at the P.A. board of directors.

Q Could Gold, Vann & White, P.A. right now on your directions – and assuming your brethren agreed with you – just walk away from PhyCor of Vero Beach, Inc. –

MR. GOLDSTEIN: Objection to form. I'm sorry.

Q – and begin practicing medicine someplace else?

MR. GOLDSTEIN: Objection; form. You can answer.

THE WITNESS: Could the P.A. walk away and begin practicing medicine elsewhere?

BY MR. RAPPEL:

Q Yes, sir.

A You mean in mass?

Q Yes. If Gold, Vann & White, P.A. decides they no longer want to be affiliated with PhyCor, perhaps because they feel that there's some breaches in the agreement. And let's go down the street down by the hospital and let's go to the building down there and just go there. Could they do that?

MR. GOLDSTEIN: Objection to form. You can answer.

THE WITNESS: Could they? Yes. I think they could. Would they? Unlikely.

BY MR. RAPPEL:

Q Would there be any monetary legal obligations that they would owe to PhyCor if they would do that?

A I believe so.

Q What would be owed to PhyCor if they did that?

A Well, I'm assuming that PhyCor would want payment for some tangible assets that they've expended for GVW and Doctors' Clinic; plus probably some intangible assets as well. The P.A. has a long-term service agreement which, I think, if we did that we would be in breach of and they may even come after us. There would be some legal aspects I'm assuming.

Q Besides the legal obligations that require it, why would Gold, Vann & White, P.A. enforce its restrictive covenants between the physician and the P.A. itself?

A Why would the P.A. enforce restrictive covenants?

Q Correct.

A That's how the P.A. protects itself.

Q Why is Gold, Vann & White, P.A. obligated to PhyCor to enforce its restrictive covenants against its physicians?

A It's part of the service agreement. But apart from the service agreement, the P.A. has always sought to enforce its non-compete clause.

Q And if you obtained money from the enforcement of the restrictive covenant, where does that money go? In other words, the damages that flow from the breach of the restrictive covenant, where would those monies go?

A I think it depends. It would depend who pays the attorney's fees in the effort to fight the restrictive covenant.

Q Well, besides the attorney's fees, aren't there naturally supposed to be damages when that physician leaves the fold and opens up shop down the street?

A That's the theory. Yes, sir.

Q And if there's recovery for those damages for the loss of the patient base that went down the street, where are the monies – if Gold, Vann & White collect them, where are those monies supposed to go?

A I'm not certain. I really can't answer your question. I don't know.

Q The monies are supposed to pay for the substantial goodwill relationship between the physician and the patient, correct?

MR. GOLDSTEIN: Objection to form.

BY MR. RAPPEL:

Q The money for the damages, if you know.

MR. GOLDSTEIN: Objection to form.

THE WITNESS: You mean in a non-compete issue?

BY MR. RAPPEL:

Q Yes, sir.

A I don't know. And the money is supposed to

EXHIBIT "G"

[April 15, 1998]

[Name Redacted]

Re: Advisory Opinion No. 98-4

Dear [Name Redacted]:

We are writing in response to your request for an advisory opinion, in which you ask whether a proposed management services contract between a medical practice management company and a physician practice, which provides that the management company will be reimbursed for its costs and paid a percentage of net practice revenues (the "Proposed Arrangement"), would constitute illegal remuneration as defined in the anti-kickback statute, §1128B(b) of the Social Security Act (the "Act").

You have certified that all of the information you provided in your request, including all supplementary letters, is true and correct, and constitutes a complete description of the material facts regarding the Proposed Arrangement. In issuing this opinion, we have relied solely on the facts and information you presented to us. We have not undertaken any independent investigation of such information.

Based on the information provided, we conclude that the Proposed Arrangement may constitute prohibited remuneration under §1128B(b) of the Act.

I. FACTUAL BACKGROUND

A. The Parties

Dr. X is a family practice physician who has incorporated as, and practices under the name of, Company A ("Company A"). Company A is proposing to enter into an agreement to establish a family practice and walk-in clinic with a corporation, Company B ("Company B"). Dr. X is the sole Requestor of this advisory opinion.

B. The Arrangement

EXHIBIT "G"

Under the Proposed Arrangement, Company A will provide all physician services at the clinic. Company A may hire additional physicians and other medical personnel with the mutual agreement of Company B. Company A will pay all physician compensation and fringe benefits, including but not limited to, licensing fees, continuing education, and malpractice premiums.

Company B will find a suitable location for the clinic and furnish the initial capital for the office, furniture, and operating expenses. Once operational, Company B will provide or arrange for all operating services for the clinic, including accounting, billing, purchasing, direct marketing, and hiring of non-medical personnel and outside vendors.

Company B will also provide Company A with management and marketing services for the clinic, including the negotiation and oversight of health care contracts with various payors, including indemnity plans, managed care plans, and Federal health care programs.

In addition to Company B's activities on behalf of Company A, Company B will set up provider networks. These networks may include Company A and, if required by Company B, Company A has agreed that it will refer its patients to the providers in such networks.

In return for its services, Company B's payment will have three components. Company A will be required to make a capital payment equal to a percentage of the initial cost of each capital asset purchased for Company A per year for six years. Company B will also receive a fair market value payment for the operating services it provides and an at-cost payment for any operating services for which it contracts. Company B will receive a percentage of Company A's monthly net revenues for its management services.

If the percentage payment described above is not permitted by law, then the parties will establish a management fee reflecting the contemplated financial results of the arrangement or, if the parties cannot agree to a fixed amount, the parties will hire an accounting firm to determine an appropriate fixed fee (the "Alternative Proposed Arrangement").

II. LEGAL ANALYSIS

A. Anti-kickback Statute

The anti-kickback statute, §1128B(b) of the Act, makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce the referral of business covered by a Federal health care program. Specifically, the statute provides that:

> Whoever knowingly and willfully offers or pays [or solicits or receives] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person -- to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony.

§1128B(b) of the Act. In other words, the statute prohibits payments made purposefully to induce referrals of business payable by a Federal health care program. The statute ascribes liability to both sides of an impermissible "kickback" transaction. The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 474 U.S. 988 (1985).

Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years or both. Conviction will also lead to automatic exclusion from Federal health care programs, including Medicare and Medicaid.

This Office may also initiate administrative proceedings to exclude persons from Federal and State health care programs or to impose civil monetary penalties for fraud,

kickbacks, and other prohibited activities. See §§1128(b)(7), 1128A(a)(7) of the Act.[1]

B. Safe Harbor Regulations

In 1991, the Department of Health and Human Services (the "Department") published safe harbor regulations that define practices that are not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. For this Proposed Arrangement, the only safe harbor regulation potentially available is the personal services and management contracts safe harbor. See 42 C.F.R. §1001.952(d).

The personal services and management contracts safe harbor provides protection for personal services contracts if all of the following six standards are met: (i) the agreement is set out in writing and signed by the parties; (ii) the agreement specifies the services to be performed; (iii) if the services are to be performed on a part-time basis, the schedule for performance is specified in the contract; (iv) the agreement is for not less than one year; (v) the aggregate amount of compensation is fixed in advance, based on fair market value in an arms-length transaction, and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made by Medicare or a State health care program; and (vi) the services performed under the agreement do not involve the promotion of business that violates any Federal or State law.

We conclude that the Proposed Arrangement does not qualify for this safe harbor. In order for an agreement to be protected by this safe harbor, strict compliance with all six standards is necessary. In this case, the compensation is not an aggregate amount, fixed in advance, as the safe harbor requires. Accordingly, the safe harbor standards are not satisfied.

C. Percentage Compensation Arrangement

Because compliance with a safe harbor is not mandatory, the fact that the Proposed Arrangement does not fit within a safe harbor does not mean that the Proposed

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[1]Because both the criminal and administrative sanctions related to the anti-kickback implications of the Proposed Arrangement are based on violations of the anti-kickback statute, the analysis for the purposes of this advisory opinion is the same under both.

Arrangement is necessarily unlawful. Rather, we must analyze this Proposed Arrangement on a case-by-case basis.

Percentage compensation arrangements for marketing services may implicate the anti-kickback statute. In our preamble to the 1991 final safe harbor rules, 56 Fed. Reg. 35952 (July 29, 1991), we explained that the anti-kickback statute "on its face prohibits offering or acceptance of remuneration, *inter alia*, for the purposes of 'arranging for or recommending purchasing, leasing, or ordering any . . . service or item' payable under Medicare or Medicaid. Thus, we believe that many marketing and advertising activities may involve at least technical violations of the statute." 56 Fed. Reg. at 35974.

This Proposed Arrangement is problematic for the following reasons.

- **The Proposed Arrangement may include financial incentives to increase patient referrals.** The compensation that Company B receives for its management services is a percentage of Company A's net revenue, including revenue from business derived from managed care contracts arranged by Company B. Such activities may potentially implicate the anti-kickback statute, because the compensation Company B will receive will be in part for marketing services. Where such compensation is based on a percentage, there is at least a potential technical violation of the anti-kickback statute. In addition, Company B will be establishing networks of specialist physicians to whom Company A may be required to refer in some circumstances. Further, Company B will presumably receive some compensation for its efforts in connection with the development and operation of these specialist networks. In these circumstances, any evaluation of the Proposed Arrangement requires information about the relevant financial relationships. However, Company B is not a requestor for this advisory opinion, and Company A does not have information regarding Company B's related business arrangements.

Accordingly, we have insufficient information to ascertain the level of risk of fraud or abuse presented by the Proposed Arrangement.[2]

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[2]We are also precluded from reaching a conclusion about the Alternative Proposed Arrangement. Such a determination would require us to evaluate whether the agreed

- **The Proposed Arrangement contains no safeguards against overutilization.** In light of the proposed establishment of provider networks with required referral arrangements, there is a risk of potential overutilization. Under the Proposed Arrangement, we are unable to determine what, if any, controls will be implemented under managed care contracts negotiated for Company A by Company B. Without such controls, we can not be assured that items and services paid for by Federal health care programs will not be overutilized.

- **The Proposed Arrangement may include financial incentives that increase the risk of abusive billing practices.** Since Company B receives a percentage of Company A's revenue and will arrange for Company A's billing, Company B has an incentive to maximize Company A's revenue. This Office has a longstanding concern that percentage billing arrangements may increase the risk of upcoding and similar abusive billing practices.

III. CONCLUSION

The advisory opinion process permits the OIG to protect specific arrangements that "contain[] limitations, requirements, or controls, that give adequate assurances that Federal health care programs cannot be abused." See 62 Fed. Reg. 7350, 7351 (February 19, 1997). Based on the facts we have been presented, the Proposed Arrangement appears to contain no limitations, requirements, or controls that would minimize any fraud or abuse.

Therefore, since we cannot be confident that there is no more than a minimal risk of fraud or abuse, we must conclude that the Proposed Arrangement may involve prohibited remuneration under the anti-kickback statute and thus potentially be subject to sanction under the anti-kickback statute, §1128B(b) of the Act. Any definitive conclusion regarding the existence of an anti-kickback violation requires a determination of the

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upon fee is fixed at fair market value. We are prevented from making that determination by §1128D(b)(3)(A) of the Act, which prohibits our opining on fair market value in an advisory opinion.

parties' intent, which determination is beyond the scope of the advisory opinion process.[3]

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to Dr. X, who is the Requestor of this opinion. This advisory opinion has no application, and cannot be relied upon, by any other individual or entity.

- This advisory opinion is applicable only to the statutory provision specifically noted above. No opinion is herein expressed or implied with respect to the application of any other Federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement.

- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008.

Sincerely,

/s/

D. McCarty Thornton
Chief Counsel to the Inspector General

[3]Our conclusion regarding the risk of fraud or abuse in relation to the anti-kickback statute should not be construed to mean that a finding of fraud or abuse is an implied element necessary to establish a violation of the statute.

2. Article Number

7106 4575 1294 0952 4593

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
Howard Tee, MD
1485 37th Street
Suite 101
Vero Beach, Fl 32960

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 4/2/01

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

REL/MD*03/26/01 SENDER: Sonja D. Wright

PS Form 3811, June 2000 Domestic Return Receipt

2. Article Number

7106 4575 1294 0952 4609

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
[illegible]t Rappel
Howard Tee, MD
[illegible]0 Highway A1A North
Suite 221
Oak Point Professional Center
Vero Beach, Fl 32963-1216

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Kaci Carr B. Date of Delivery 4.2.01

C. Signature
X Kaci Carr ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RE[illegible]*03/26/01 SENDER: Sonja D. Wright

PS Form 3811, June 2000 Domestic Return Receipt

7106 4575 3294 0950 9873

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
Craig M. Rappel, Esq.
5070 Hwy. A1A, N., Ste. 221
Vero Beach FL 32963-1216

re Howard Tee

A. Received by (Please Print Clearly) Rosemary Sherry
B. Date of Delivery 7/31/01
C. Signature
X
☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RE: L/MD*7/24/01 SENDER: Jane Jordan

PS Form 3811, June 2000 Domestic Return Receipt

2. Article Number
7106 4575 3294 0950 9866

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
Robert Rappel, D.O., J.D.
5070 Hwy. A1A, N., Ste. 221
Vero Beach FL 32963-1216

re Howard Tee

COMPLETE THIS SECTION ON DELIVERY
A. Received by (Please Print Clearly) JOANN RAPPEL
B. Date of Delivery 7-30-01
C. Signature
X JoAnn Rappel
☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RE: L/MD*7/24/01 SENDER: Jane Jordan

PS Form 3811, June 2000 Domestic Return Receipt

2. Article Number
7106 4575 3294 0950 9880

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
Richard B. Wingate, Esq.
5070 Hwy. A1A, N., Ste. 221
Vero Beach FL 32963-1216

re Howard Tee

COMPLETE THIS SECTION ON DELIVERY
A. Received by (Please Print Clearly) Rosemary Sherry
B. Date of Delivery 7/31/01
C. Signature
X
☐ Agent ☐ Addressee
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RE: L/MD*7/24/01 SENDER: Jane Jordan

PS Form 3811, June 2000 Domestic Return Receipt