PRACTICAL ASSET PROTECTION PLANNING FOR PHYSICIANS

By

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I. ASSET PROTECTION PLANNING.

A. Asset Protection Planning. Asset protection planning is the use of legal techniques to protect assets of individuals and business entities from civil money judgments. The goal of asset protection planning is to insulate assets from claims of creditors without concealment or tax evasion. Because of our litigious society, Florida physicians (really all Floridians) should routinely and consistently engage in personal asset protection.

B. Purpose of Presentation. The purpose of this presentation is to give Florida attorneys a framework or method for asset protection planning for their clients. This presentation assumes a basic knowledge of the law regarding assets that are exempt from claims of creditors, forms of ownership that are exempt from claims of creditors and fraudulent transfer and fraudulent conversion law.

C. Validity of Asset Protection Planning for Debtors. There are many cases in which courts have found debtors who engaged in asset protection acceptable when such planning was begun well in advance of financial and/or legal difficulties. In re Oberst, 91 B.R. 97, (Bankr. C.D. Cal. 1988); Klein v. Klein, 112 N.Y.S.2d 546 (N.Y. Sup. Ct. 1952); Wantulak v. Wantulak, 67 Wyo. 22 (Wyo. 1950).

D. Liability of Attorneys Participating in Planning. The Florida Supreme Court has concluded that the Florida Uniform Fraudulent Transfer Act "was not intended to serve as a vehicle by which a creditor may bring a suit against a non- transferee party for monetary damages arising from the non-transferee party's alleged aiding-abetting of a fraudulent money transfer." Freeman v. First Union National Bank, 865 So. 2d 1272 (Fla. 2004).

1. However, another cause of action may exist. In Freeman, the court in dicta stated that "we caution that our answer to the certified question in this case is confined to the context of the Florida Uniform Fraudulent Transfer Act. We do not address whether relief is available under any other theory of liability or cause of action."

2. For example, in Chepstow Limited v. Hunt, 381 F.3d 1077 (11th Cir. 2004), the Appellate Court went a step further than Freeman and stated that there was a cause of action under Georgia law against a third party "where the allegations are, as here, that they conspired with the debtor to defraud the creditor by hindering its collections of an outstanding debt..." Instead of basing liability on the status of a transferee, liability is based upon status as a co-conspirator who assisted debtor in defrauding a creditor.

3. Also note the 2003 case of Morganroth & Morganroth v. Norris, McLaughlin & Marcus, P.C., 331 F.3d 406 (3rd Cir. 2003). The US Court of Appeals for the Third Circuit remanded to the district court in New Jersey the question whether the defendants, who were attorneys, knowingly and intentionally participated in a client's unlawful conduct to hinder, delay and/or fraudulently obstruct the enforcement of a judgment. The

appeals court said such a finding would satisfy a claim for creditor fraud against a lawyer under New Jersey law.

4. Clients have the right to know their rights and advising them of their rights should not result in liability to the client's creditors. However, if an attorney crosses the line and knowingly and intentionally participates in a client's unlawful conduct to hinder, delay and/or fraudulently obstruct a creditor, the creditor is likely to bring an action upon a theory of law such as creditor fraud or as a co-conspirator in a fraudulent transfer.

5. An example of an attorney crossing the line by assisting a client to defraud a creditor is the Domenic Massari case. See a news release of Massari's guilty plea from the U.S. Attorney's Office attached to this Outline as Appendix One. The acts that Massari admitted, fabricating a letter and backdating it 20 years to establish ownership of assets in the name of a client's father, establishing bogus loans to conceal a client's funds from a creditor, repatriating a client's funds from offshore accounts through bank accounts opened in the name of an another unwitting client and purchasing civil judgments against a client through nominees or strawman he established, are clearly across the line. Those acts subjected him to both civil damages and criminal penalties.

6. As discussed elsewhere in this outline, an attorney dealing with a physician who has no existing claims should have no concern about advising the physician and helping the physician to protect his or her assets from a future creditor. If a client has a claim, an attorney should have no concern about advising him or her about their right to acquire exempt assets with exempt assets (discussed below) and actions that will protect the client's assets from additional claims.

E. <u>Categories of Clients</u>. When developing an asset protection plan for a client, assign the client into one of four categories and develop an asset protection plan for them using a checklist designed for that category. It is a "decision tree" like process, i.e., picking from a list of the available methods of asset protecting that apply to the client's category. The four categories are:

1. Married Physician--Spouse Not a Physician (spouse is not in a hazardous profession) with No Existing Claims.

2. Married Couple--both Physicians (both in hazardous professions) with No Existing Claims.

3. Single Physician With No Existing Claims.

4. A Physician With An Existing Claim.

II. EXEMPT PROPERTY.

Maximization of available exemptions for property from the claims of creditors that Florida law provides should be the primary focus of asset protection planning for physicians in Florida.

A. Assets and Ownership that are Exempt Under Florida Law. Under Florida law, assets may be exempt from the claims of creditors by virtue of their nature, e.g., primary residences (homestead), annuities, life insurance policies, qualified plan assets, IRAs and wages or are exempt from the claims of creditors by virtue of how they are owned, e.g., owned as tenancy by the entireties by spouses, owned by others, e.g., owned by a not-at-risk spouse, or owned in a spendthrift trust.

B. Exempt Property. Asset protection planners speak in terms of "exempt property" (i.e., property that is exempt from the claims of creditors) and "non-exempt property" (i.e., property that is not exempt from the claims of creditors).

C. Applicability of Tax and Financial Planning. Note sometimes asset protection planning does not go hand in hand with tax planning or financial planning. For physicians in hazardous specialties, asset protection planning should trump tax planning or financial planning.

III. CLAIMS.

An initial inquiry of a client in asset protection planning should be whether the client has an existing claim because several of the exemptions, e.g. the acquisition of annuities or life insurance or the transfer of assets to a spouse or into tenancy by the entireties ownership, may be set aside as a fraudulent transfer or a fraudulent conversion by the holder of an existing claim. Also, if a claim exists, the asset protection planner needs to determine whether he or she is acting as an aider and abettor or co-conspirator to acts that hinder, delay and/or fraudulently obstruct a creditor, i.e., a fraudulent transaction.

A. When a Claim Exists. Part of the question of whether a client has a claim depends upon when one has a claim. Generally, a physician has a claim when he or she knew or should have known that a claim will result from an adverse result. Where harm is obvious, a claim arises when the harm occurs, not when the patient knows that the harm resulted from malpractice. Nardone v. Reynolds, 333 So. 2d 25 (Fla. 1976).

B. Source of Definition. The statement in subparagraph A. above not only comes from the Nardone case, but also from two additional sources:

1. In Florida, contingent creditors and tort claimants are as fully protected against fraudulent transfers as holders of absolute claims. Money v. Powell, 139 So.2d 702 (Fla. 2d DCA 1962). Also, the definition of a “claim” under F.S. § 726.102(4) of the Florida Uniform Fraudulent Transfer Act (F.S. §§ 726.101- 726.112), is as follows:

> (4) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

2. Also, under F.S. § 95.11, the statute of limitations commences for an action for medical malpractice when the incident is discovered or should have been discovered with the exercise of due diligence.

3. A physician and an asset protection planner should assume that the physician has a claim (has a creditor) if he or she experiences a notable adverse result.

IV. FRAUDULENT TRANSFERS OR CONVERSIONS.

If it is determined that a client has a claim, the asset protection planner must determine whether planning results in a fraudulent transfer or a fraudulent conversion.

A. Fraudulent Transfers.

1. The Florida Uniform Fraudulent Transfer Act, Florida Statutes §§ 726.101 - 726.112 (the "Act") creates a right of action for any creditor against any debtor and any other person who has received property from the debtor in a fraudulent transfer. A fraudulent transfer occurs when a debtor intends to hinder, delay, or defraud a creditor, or transfers property under certain conditions to another person without receiving reasonably equivalent value in return. But not all such transfers are fraudulent to every creditor.

2. The Act distinguishes between present and future creditors, and specifies the kinds of transfers that are fraudulent to each of the two categories of creditors. Both present and future creditors may recover property when there is a transfer with intent to

defraud. Both may recover when a transfer is made without receiving reasonably equivalent value when the result is to make the debtor's assets unreasonably small in relation to the business or transaction in which the debtor is engaged or about to be engaged. Also, present and future creditors can both recover when a debtor transfers property without receiving reasonably equivalent value when intending to incur debts beyond the ability to pay.

3. Present creditors, however, can recover property when it is transferred by a debtor to another person without receiving reasonably equivalent value if the debtor is insolvent or becomes insolvent as a result of the transfer. A transfer to an "insider" without receiving reasonably equivalent value when the debtor is insolvent, is also fraudulent to present creditors. The term "insider" is defined, and is someone with a special relationship to the debtor. Examples are relatives or business partners (when the debtor is a partner). To be liable, an "insider" must have reasonable cause to believe that the debtor is insolvent.

4. The fundamental relief for a creditor when there is a fraudulent transfer is recovery of the property from the person to whom it has been transferred. The Act allows "avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim. . . ." Whatever is necessary to obtain the property is provided for, including attachment, injunctive relief, appointment of a receiver, or "any other relief the circumstances may require." If the creditor has reduced the claim to a judgment, the court may levy execution against the recovered assets. This means that the property can be sold to satisfy the amount of the judgment.

B. Florida Fraudulent Asset Conversions Statute. In addition to the Uniform Fraudulent Transfer Act, Fla. Stat. §222.30 was created entitled "Fraudulent Asset Conversions." Although the Uniform Transfer Act prohibits the transfer of property by a debtor to a third person with the intent to hinder, delay or defraud a creditor, a fraudulent conversion does not involve a transfer to a third party, but rather, a transfer of non-exempt assets into exempt property. Such a conversion may not be fraudulent per se. However, such conversions are fraudulent if made with the intent to avoid creditors. To establish fraudulent intent, this Statute adopts the analysis used to prove a fraudulent transfer. The court considers such factors as whether the debtor was insolvent at the time of transfer, or whether the transfer included substantially all of the debtor's assets. Each case is determined according to its particular facts. Federal Bankruptcy law does not specifically prohibit fraudulent conversions; however, courts have utilized other provisions of the Bankruptcy Code to penalize debtors who fraudulently convert assets to exempt property while seeking bankruptcy protection.

C. Application of Fraudulent Transfer and Conversion Laws to Physicians. Has a physician who has no claims or incidents that might result in a claim who transfers assets to his or her not-at-risk spouse made a fraudulent transfer as to a future creditor, i.e., a future malpractice claimant? The question is whether under Florida Statute 726.105(1), the physician reasonably should have believed that he or she would incur a malpractice claim as result of rendering future medical services.

1. The answer to this question has not specifically been addressed in Florida case law, however, the fraudulent transfer and fraudulent conversion laws should not apply to a physician who transfers assets to his or her spouse or converts assets into exempt assets at a time when no malpractice incident has occurred. A physician who transfers assets to his or her not-at-risk spouse or converts assets into exempt assets and later is involved in a malpractice incident has not defrauded the malpractice claimant by having made the transfers or conversion prior to the incident.

2. The fraudulent transfer law protects future creditors who are identifiable individually or as a class at the time of the transfer. Since physicians do not intend to commit malpractice or suspect that they will commit malpractice at the time they perform medical services, future malpractice claimants are not identifiable, individually, or as a class at the time medical services are being given.

3. Although this appears to be a sound legal position, there is no assurance that a Florida court at some point might determine that future malpractice claimants are protected as future creditors under the Florida Fraudulent Conveyance Law. See Hurlbert v. Shackleton, 560 So.2d 1276 (Fla. 1st DCA 1990) discussed below.

4. If a debtor has a particular creditor or series of creditors in mind and is trying to remove his or her assets from their reach, this would be a fraudulent transfer. If the debtor is merely looking to his future well-being, a conveyance will not be fraudulent. In Hurlbert v. Shackleton 560 So.2d 1276 (1990), Dr. Shackelton, an obstetrician, transferred assets "[b]ecause I wasn't able to get malpractice insurance, and I wanted to cover all the bases" (at 1278). Dr. Shackelton committed an act of alleged malpractice and suit was brought. Dr. Shackelton made transfers both before and after the suit was filed. The transfers were complete before the judgement was entered. The judgement creditor was found on appeal to not be subject to protection unless Dr. Shackleton was found to have harbored actual fraudulent intent. The court cited the trial court with approval noting "[t]he trial court drew a distinction between "probable and possible" future creditors (at 1279). The appellate court remanded the case for a finding of fact of Dr. Shackleton's actual intent.

5. The dissent in the Shackleton case by Judge Barfield got it right:

> I cannot conceive of any result being reached by the trial judge that would afford this judgment creditor any relief upon remand. The trial judge is unequivocal in his conclusion that this creditor was not contemplated by the law against fraudulent transfers. How could the trial judge now conclude that Dr. Shackleton had the actual intent to defraud this unknown, unintended victim of a future negligent act, or anyone else similarly situated?

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It is my opinion that the trial judge was correct as a matter of law in denying relief to the judgment creditor.

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In the instant case, future victims of Dr. Shackleton's medical malpractice were not identifiable individually or as a class, since the record contains no evidence that Dr. Shackleton intended to commit malpractice or suspected that he would be guilty of malpractice. I question whether any person engages the services of a medical doctor on the strength of his financial credibility rather than his medical credibility.

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The record in this case indicates that the medical malpractice insurance crises struck Dr. Shackleton, and as a prudent move he sought to protect his assets from future unforeseen adversity wrought by a medical mistake. That is not legal fraud. I would have affirmed the judgment without comment.

V. ASSET PROTECTION PLANNING CHECKLISTS.

The following are asset protection planning checklists used by the author of this outline. The checklists include some commentary on the item listed. There is another set of the checklists, generally without commentary, attached to this outline in Appendix Two.

A. Married Physician--Spouse Not a Physician (spouse is not in a hazardous profession) with No Existing Claims:

1. Maximize homestead exemption by paying off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality. Note an objection will come from their accountant to the loss of the mortgage interest deduction and from their financial planner who will think of better places for their excess funds.

2. Maximize 401(k) and profit sharing contributions. Qualified plan assets are 100% exempt in a qualified plan or when rolled over to an IRA. Qualified plan assets are tax deferred.

3. Confirm whether wage exemption applies and maximize and protect wages.

   a. Wages of the head of household that are paid by an employer that is not controlled by the employee are exempt from the claims of creditors. Many Florida residents use wage accounts to deposit their earnings so that their earnings temporarily maintain their exempt status. Before losing their exempt status, people using this technique will transfer their exempt earnings from their wage account into other, more permanent, forms of exempt assets. If the wages are exempt at the time they are converted into other, more permanent, forms of exempt assets, the conversion is not a fraudulent conversion and will, therefore, be free from the claims of creditors. A wage account can be held in tenancy by the entireties, which gives the wages a more permanent exemption a the time of deposit.

b. Avoid distributions that are not wages or spend distributions first. If the physician is receiving distributions from his or her practice or a surgery center or something similar and won't or can't stop taking distributions then, he or she should maintain a tenancy by the entireties account with his or her spouse to deposit the physician's W-2 compensation. They should also maintain a tenancy by the entireties account to deposit the physician's dividend distributions from the practice or surgery center, etc. They should use the funds in the physician's dividend distribution account to pay monthly bills. They can supplement the account that is paying their monthly bills with funds from the physician's wage account, but to the extent they have excess funds in the wage account, they should save the excess funds and invest the excess funds in an account titled in the name of the revocable trust of the not-at-risk spouse.

c. When opening a joint account they should clearly mark the account opening documents to reflect the intention to establish tenancy by the entireties ownership (i.e. strike references to joint ownership with right of survivorship (sometimes referred to as JWROS) and include "as tenants by the entireties" or "TBE" in the title to the account). The title to all bank or brokerage accounts that are not owned by the trust of the not at risk spouse should read as follows:

John Smith and Mary Smith as tenants by the entireties.

The term "tenants by the entireties" or "TBE" does not need to be on the checks of the account, but should be in the title to the account on the account opening documentation. Note, a viable tenancy by the entireties must possess several characteristics of form, two of which are the unity of title (the interest must originate in the same instrument) and unity of time (the interest must commence simultaneously). Thus, it is possible that merely adding the reference "tenancy by the entireties" to the title of an existing JWROS account may not technically comply with these requirements of form. Therefore, it is prudent to establish a wholly new account that is a tenancy by the entireties account, rather than to attempt to switch an existing account established as a joint ownership account with right of survivorship.

4. Maintain marital assets in a revocable trust established by the not-at-risk spouse that becomes an irrevocable spendthrift trust upon the not-at-risk spouse's death.

a. Generally, pursuant to F.S. 61.075, "marital assets" include assets acquired during the marriage, individually by either spouse or jointly by them and interspousal gifts made during the marriage. Thus marital assets maintain their nature whether owned by one spouse or the other or jointly owned. If the at-risk spouse transfers marital assets to the not-at-risk spouse, the marital assets continue to be marital assets and should not morph into nonmarital assets. If the transfer is made at a time when the at-risk spouse has no claims, the assets owned by the not-at-risk spouse should not be subject to claims against the at-risk spouse.

b. If assets are held in a not-at-risk spouse's name to protect them from the potential creditors of the other spouse, the spouse holding assets should maintain them in a trust that will become an irrevocable spendthrift trust upon his or her death in order to protect the assets from the potential creditors of the at-risk spouse. This arrangement will help protect the at-risk spouse from a "double tragedy," i.e., the death of the not-at-risk spouse at a time when the at-risk spouse has a claim. In order to give the surviving spouse as much flexibility in control of investment and distributions of the trust as possible, the trust can be a "Beneficiary Controlled Trust." See subparagraph e. below.

c. If the parties divorce, the at-risk spouse should receive ½ of the marital assets in equitable distribution. If divorce happens, consider having the not-at-risk spouse transfer the at-risk spouse's share of the marital assets into a beneficiary controlled, spendthrift trust for the at-risk spouse.

d. It is well settled that if a spendthrift trust is created by a grantor for another person, either pursuant to the language of the trust itself or pursuant to the application of local law, the trust estate generally will not be available to the creditors of the beneficiary of the trust. A "spendthrift trust" is defined as a trust imposing, by its terms, a valid restraint on voluntary and involuntary transfer of the interest in the trust.

(1) Florida has long recognized the validity of spendthrift trusts. The principal purpose of a spendthrift trust is to protect a beneficiary against debtors. Although spendthrift trusts have been subjected to garnishment in certain instances, such as to enforce child support orders and judgments, the power of the trial court to invade a spendthrift trust is very limited.

(2) The Florida Supreme Court has place limitations on the power of the trial court to invade spendthrift trusts. Furthermore, a basic tenet in the construction of trusts is to ascertain the intent of the settlor and to give effect to this intent.

e. If assets are held in a trust established by the not-at-risk spouse, in order to give the surviving spouse as much flexibility in control of investment and distributions of the trust, consider making the trust a "Beneficiary Controlled Trust."

(1) A Beneficiary Controlled Trust is designed to provide the primary beneficiary with all of the rights, benefits and control over the trust property that he or she would have had if he or she owned it outright, in addition to tax, creditor and divorce protection benefits that are not obtainable with outright ownership.

(2) The Beneficiary Controlled Trust concept is fairly simple. It is a trust where the primary beneficiary either is the sole trustee or a co-trustee. Typically, control of the trusteeship is coupled with a power of appointment that can have the effect of eliminating any potential interference by remote beneficiaries. Because the primary beneficiary/trustee possesses the ability to eliminate all participation in the enjoyment of the

trust assets by secondary and remote beneficiaries, the latter will not be inclined to bring a lawsuit.

(3) To the extent that the spouse's assets exceed his or her remaining exemption against estate taxes ($5,250,000 in 2013), the assets should be held in a spendthrift trust that qualifies as a qualified terminal interest property (a so called Qtip trust) that provides a marital deduction against estate taxes.

f. Once it has been decided that a trust should be used, the design of the trust to achieve and maximize the desired results becomes important. In its simplest structure, the trust could be designed whereby the beneficiary would be at some point (initially or later) the sole successor trustee and have the right to income and principal limited to health, education, support and maintenance, plus a broad special power of appointment during life and/or at death to anyone other than the beneficiary, his or her creditors, his or her estate or the creditors of his or her estate.

(1) However, in Florida, a creditor may reach the debtor's interest in a spendthrift trust when (and to the extent) the debtor may exercise dominion over the trust property. This is because a judgement creditor may exercise any right that a judgement debtor has. A beneficiary will tend to have dominion over the trust property if he or she is the trustee of the trust. However, a trust may be drafted to prevent the beneficiary from being in a position of having dominion of the trust property even if the beneficiary is a trustee of the trust.

(2) If a spendthrift trust has two trustees (with the primary beneficiary as the investment trustee and an independent trustee as the distribution trustee), the beneficiary will not be deemed to have dominion over the trust property. The use of a discretionary trust, where distributions are subject to the absolute discretion of an independent trustee, is the ultimate fortress, since the beneficiary has no enforceable rights against the trust and likewise his or her creditors have no enforceable rights against the trust.

(3) Many clients will not accept anyone other than the primary beneficiaries as fiduciaries, notwithstanding the enhanced asset protection benefits and flexibility that non-beneficiary fiduciaries can offer, even if the non-beneficiary fiduciaries are parents, siblings or best friends. In such instances, since there is no proscription in the estate tax laws that prevents a Beneficiary Controlled Trust from being designed as a discretionary trust, that route should be selected rather than the alternative of selecting an outright disposition or a trust that distributes all the income (except in the case of a marital deduction trust). Such a trust could authorize the beneficiary/ trustee to distribute income and principal to himself or herself based on the ascertainable standards of health, education, support and maintenance taking into account his or her other assets. If this option is selected, the trust should include a clause prohibiting the beneficiary/trustee from making distributions that would discharge his or her legal obligations. The trust also should include special powers of appointment for maximum flexibility.

(4) The Florida Trust Code was amended, effective July 1, 2007, to provide specifically that a creditor of a beneficiary who is also the trustee of a spendthrift trust cannot access the assets of the trust for debts of the trustee/beneficiary as long as distributions from the trusts are limited to the following needs: health, education, support and maintenance. Those standards are quite liberal, making a Beneficiary Controlled Trust the right choice for asset protection purposes.

(5) Many trust drafters write trusts that pay out all of the income. From a creditor protection perspective, a trust that provides for a mandatory payout of the income will give creditors the ability to access the right to receive the income. Therefore, although trust corpus is shielded from creditors, some of the asset protection benefits inherent in the trust vehicle will be lost. But, by eliminating a beneficiary's enforceable rights, the rights of his creditor are also eliminated. This concept applies to credit shelter trust or trusts for children. In the case of a marital deduction trust, all income of the trust must be paid to the surviving spouse in order to qualify for the marital deduction.

g. A broad special power of appointment is often given to the primary beneficiary of a trust, particularly if it is a Beneficiary Controlled Trust. A power of appointment is a desirable ingredient in most trusts because it adds flexibility, and permits the trust to be modified in order to deal with changes in the law or family circumstances. For many clients, the power of appointment is, and should be, an essential ingredient of the plan. They may not be inclined to proceed with their planning in its absence because of a concern of interference by a complaining beneficiary.

(1) The use of a special power of appointment enhances the objective of using a Beneficiary Controlled Trust in that it provides added control in the hands of the primary beneficiary. For example, by giving the trustee broad latitude in investing, including high risk/reward opportunities, it can be anticipated that some transactions will fail. If there were no trust, there would be no accountability to more remote descendants. By coupling the power of appointment with broad discretionary powers in the hands of the trustee/beneficiary, the result would be that the trustee/beneficiary would have the functional equivalent of no accountability with respect to the trust. A power of appointment is also a power of disappointment.

(2) If the creator of the trust desires to provide the beneficiary with rights that are as close to outright ownership as possible, the power holder can be given the power to appoint the property in favor of anyone, in trust or outright, other than himself, his estate, his creditors or the creditors of his estate without causing estate inclusion.

5. Consider life insurance and/or annuities.

a. Life insurance policies and annuities are exempt from the claims of creditors when they are not acquired in fraud of a creditor. Annuities are generally better investments than Life insurance policies.

b. However, a life insurance policy can be structured to be utilized as an investment that is exempt from the claims of creditors (as opposed to a policy that is purchased to provide liquidity at death). One way to improve a life insurance policy purchased as an investment is to reduce coverage. That way, the cost of the life insurance component is substantially less. A policy that is structured to be the most efficient possible for investment purposes is one with a lower death benefit and is a blend of 90% term insurance and 10% whole life. This structure reduces the sales commission by almost 90%.

c. Like life insurance, when purchasing annuities as part of an asset protection plan, one should compare and evaluate (1) expense loading (2) surrender charges and term of surrender charges (3) financial status of the insurance provider (4) guaranteed rate of return (if any) and (5) bail out provisions. With respect to commissions, 2% is the lowest that one sees and anything above 7% should be considered abusive. The lowest commissions tend to be charged by the bigger mutual fund companies, e.g., Fidelity, Vanguard, T. Rowe Price, TIAA/CREF, etc., but those companies tend not to offer guaranteed rates of return. The insurance companies charge higher fees and offer a variety of guarantees.

d. If purchasing an insurance company product, ask the agent what his or her commission is. If the agent will not tell you, find another agent. Ask the agent to clarify expense loading, surrender charges, guaranteed rate of return, if any, and bail out provisions. Generally, the higher the guaranteed rate of return, the higher the expense loading. Ask the agent to illustrate the annuity payout in addition to the commissions and rates of return. Many products have good rates of return but poor payout rates.

6. Not-at-risk spouse should own his or her car and at-risk spouse should lease or purchase, with a bank loan, his or her car (or own a clunker).

7. At-risk spouse should sign consent form for children's driver's licenses (note existing consent can be revoked and switched to at-risk parent). At-risk spouse should

own the car driven by a dependent child. When a child can obtain his or her own insurance policy (might not occur until age 21), the at-risk spouse should give the child the car he or she is using, even if the at-risk spouse is still supporting the child.

8. Protect assets maintained in name of at not-at-risk spouse or in a revocable trust established by the not-at-risk spouse by obtain or increasing a personal liability umbrella policy to $5,000,000. Physicians object to this recommendation because of cost and the thought that more insurance coverage attracts lawsuits. Multi-million dollar automobile accidents happen and a physician's spouse who causes an accident will be sued regardless of coverage. A $5,000,000 umbrella makes the not-at-risk spouse, almost bullet proof. You want to put all of the barriers between liability and your client's assets that you can. Insurance is easy and can cover most of the not-at-risk spouse's exposure for what is really a nominal cost.

9. Non-marital assets: a physician should invest his or her separate, non-marital assets in annuities or life insurance. Generally, pursuant to F.S. 61.075, "nonmarital assets" include, assets acquired by either party prior to the marriage and assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent

10. Check for substantial inheritance from parents of at-risk spouse and suggest physician protection spendthrift trust, a beneficiary controlled trust, for parents of at-risk spouse.

11.. Gay and lesbian physicians who are in a same sex, long term relationship should consider marrying their partner in a state that recognizes same sex marriages.

a. United States v. Windsor, (Docket No. 12-307) (June 26, 2013), is a landmark case in which the United States Supreme Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to heterosexual unions, by Section 3 of the Defense of Marriage Act ("DOMA"), is unconstitutional under the Due Process Clause of the Fifth Amendment.

b. The results of this case are somewhat mixed: the Court determined that the Section 3 of DOMA – which defined marriage as between one man and one woman - was an unconstitutional violation of the Fifth Amendment and that the question of permitting (or denying) same-sex marriage is one reserved to the states. However, Section 2 of DOMA, which allows states to refuse to recognize marriages performed in other states, is not affected by the Court's ruling.

c. What does this case mean for asset protection planning for same-sex physician couples living in Florida? As a result of this case, under Federal law married same-sex couples must be treated as married opposite-sex couples. This would include the application of federal income, gift and estate tax laws.

d. From an asset protection planning point of view, Florida law has not been changed by this case. Since Florida does not recognize a same-sex marriage, tenancy by the entireties ownership is not available to gay or lesbian physicians even if they are married in another state that recognizes same sex marriages. However, if they are married in another state that recognizes same sex marriages, transferring assets from a gay or lesbian physician to his or her partner in Florida will not result in a taxable gift for federal gift tax purposes. Therefore, assets can be shielded from the physician's future malpractice creditors in a revocable trust established by the physician's partner that will become an irrevocable spendthrift trust upon the partner's death in order to protect the assets from a future malpractice creditor of the physician.

e. Note, however, since Florida does note recognize a same sex marriage, Florida laws cannot be used for a same sex marriage divorce. In order to obtain a divorce the same sex couple will need to file for a divorce in a state that recognizes same sex marriage divorce, preferably one that does not require residency for filing for divorce as many states allow same sex divorce but only between its citizens. So to get a divorce, one member of the couple must move to that state for six months to qualify for divorce. However, several states specifically allow people who marry there to divorce there regardless of whether they are citizens. For example, Maryland recognizes same sex marriage and allows anyone married in Maryland to file for divorce in Maryland even though they are residents of another state. The equitable distribution of marital assets law of the state of marriage should be considered to insure that the physician using this technique will receive at lease ½ of the assets in a divorce. Obviously, this technique should only be used by a physician who is willing to give up ½ of his or her assets to their same sex spouse in the event of a divorce.

B. Married Couple-both Physicians with No Existing Claims:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Confirm whether wage exemption applies and maximize and protect wages. Spend non-exempt compensation first. Avoid distributions.

4. Where ever possible, own all assets as tenants by the entireties. Be sure not to convert existing JTWROS accounts into TBE accounts, i.e., open new accounts rather than converting existing accounts. Discuss potential double tragedy.

5. Consider life insurance and/annuities.

6. Check for substantial inheritance from parents of either spouse and suggest physician protection spendthrift trust for parents of either spouse.

C. Single Physician With No Existing Claims:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Maximize use of annuities and/or life insurance. If no need for life insurance (no spouse and no other need), then maximize annuities. If there is an insurance need (kids), use investment grade, whole life insurance.

4. Check size of parents' estates and consider advising parents to set up physician protection spendthrift trusts upon their deaths.

5. Keep in mind that the estate tax exemption is currently $5,250,000 per person or $10,500,000 per couple. If parents have small estates, consider maintaining assets in parents' names to be left to the physician via spendthrift trusts (either by annual exclusion gifts to be invested in the revocable trusts that becomes a spendthrift trust for the physician at death or in another assets, e.g., a condominium acquired for the physician that he or she rents if the physician desires a second home). This is essentially, reverse estate planning.

D. A Physician With An Existing Claim:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Confirm whether wage exemption applies and maximize and protect wages. Avoid distributions. Protect excess wages (excess over living expenses) with TBE accounts, annuities or life insurance. Spend down nonexempt assets and save wages.

4. Check for substantial inheritance from parents of at-risk spouse and suggest physician protection spendthrift trust for parents of at-risk spouse.

E. Summary Letter. A form of letter summarizing an asset protection plan developed for the clients in Category A, Married Physician--Spouse Not a Physician (spouse is not in a hazardous profession) with No Existing Claims, in the method suggested by this presentation is attached as Appendix Three.

Appendix One

Domenic Massari Crosses the Line

FOR IMMEDIATE RELEASE

FRIDAY, JUNE 20, 2003

Contact: Fred Alverson, (614) 469-5715

DISBARRED FLORIDA LAWYER PLEADS GUILTY IN CONNECTION WITH FRAUD, MONEY LAUNDERING SCHEME

Involves former National Revenue Corporation Executive

COLUMBUS -- A disbarred Florida lawyer pled guilty to a conspiracy charge today in connection with a scheme by Richard D. Schultz, former CEO of National Revenue Corporation, to conceal millions of dollars in an attempt to defraud creditors and the Internal Revenue Service.

Domenic L. Massari III, 49, of Clearwater, Florida, entered a plea of guilty today before the Honorable Algenon L. Marbley, U.S. District Judge for the Southern District of Ohio. Massari pleaded guilty to a dual objective conspiracy in connection with a scheme to defraud Schultz's creditors and the IRS.

Massari admitted to assisting Schultz beginning in 1994 to defraud the IRS and Schultz's creditors by fabricating a letter and backdating it to May 29, 1973, in an attempt to make it appear that Schultz's father had title to $5,000,000 received by Schultz in connection with the sale of Schultz's stock in National Revenue Corporation. Massari also admitted to assisting Schultz defraud his creditors through bogus "loan" scheme and by repatriating Schultz's money kept offshore through a bank account in the name of one Massari's unwitting clients. In addition, Massari admitted facilitating Schultz's purchase of the civil judgments against Schultz through the use of nominees or "strawmen."

Last week Massari was charged by state prosecutors in Pinellas County, Florida, with perjury related to his disbarment by the Florida Supreme Court on October 31, 2002. The Florida Supreme Court disbarred Massari for forging a client's signature, misappropriating client funds for personal expenses, and creating a fraudulent document to conceal the misappropriation.

A number of persons, including Schultz, have been convicted of various federal charges in connection with Schultz's schemes to conceal millions of dollars through false and fraudulent transactions, including the use of offshore bank accounts in the Cayman Islands, Bahamas, Canada, Jersey of the Channel

Islands, the United Kingdom and Luxembourg. On September 13, 2002, Judge Marbley sentenced Richard Schultz, 52, of Westerville to 30 months imprisonment, and ordered him to pay $1.26 million in restitution to the IRS, serve 416 hours of community service and pay a $28,500 fine. Between 1994 and 1998, Richard Schultz was President and Chief Executive Order of National Revenue Corporation, a Columbus-based collections agency. Thomas Schultz, 45, of Powell, Ohio, was sentenced to 24 months in prison, fined $7,500 and ordered to serve 416 hours of community service for his crimes. Thomas Schultz was a Vice President at National Revenue Corporation from1994 to 1998. In August 2001, Thomas Schultz pled guilty to conspiracy, failure to disclose foreign financial accounts, and obstruction of justice.

Last week, Francis J. McPeak of Clearwater, Florida, and Cedarwood Acquisition Corporation of Toronto, Canada, entered pleas of guilty to conspiracy charges related to Schultz's schemes to defraud his creditors and the IRS. Sentencing dates have not been set.

Others convicted in the scheme include Larry K. Carnahan, formerly of Westerville, Ohio, who pleaded guilty to conspiracy and tax charges and was sentenced by Judge Marbley last year to 27 months in prison. A London Solicitor pleaded guilty to a conspiracy charge last fall, and a Canadian businessman pleaded guilty in March 2003. Both are awaiting sentencing. On July 14, 2003, two persons, Ron Bogart of Toronto, Canada, and Martin W. Elson of Cleveland, Ohio, are scheduled to be tried before Judge Marbley on charges stemming from the criminal conspiracies to hide Schultz's assets and defraud his creditors, the IRS and others.

Gregory G. Lockhart, United States Attorney for the Southern District of Ohio, Christopher Wray, Acting Assistant Attorney General for the Criminal Division, and Eileen J. O'Connor, Assistant Attorney General for the Tax Division, along with Cromwell Handy, Special Agent in Charge, Internal Revenue Service; and Elissa Brown, Special Agent in Charge, Bureau of Immigration and Customs Enforcement, announced the guilty plea.

Lockhart commended the agents of the IRS Criminal Investigation Division and the Bureau of Immigration and Customs Enforcement agents who investigated the case.

# # #

News releases from the U.S. Attorney's Office are available at www.usdoj.gov/usao/ohs/.

Appendix Two

Check Lists Without Commentary

PHYSICIAN ASSET PROTECTION PLAN CHECKLIST

Married Physician—Spouse Not a Physician (spouse is not in a hazardous profession) with No Existing Claims:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Confirm whether wage exemption applies and maximize and protect exempt wages. Spend non-exempt compensation first. Avoid distributions.

4. Maintain marital assets in a revocable trust established by the not-at-risk spouse that becomes an irrevocable spendthrift trust at spouse's death.

5. Consider life insurance and/or annuities. Make the not-at- risk spouse the custodian of children's accounts and the owner of Section 529 Plans.

6. Not-at-risk spouse should own his or her car and at-risk spouse should lease or purchase, with a bank loan, his or her car.

7. At-risk spouse should sign consent form for children's driver's licenses (note existing consent can be revoked and switched to at-risk parent). At-risk spouse should own the car driven by a dependent child. When a child can obtain insurance (might not be until age 21), give the car to the child, even if the child is still a dependent.

8. Protect assets maintained in name of at not-at-risk spouse by increasing personal liability umbrella policy to $5,000,000.

9. The at-risk spouse should invest separate, non-marital assets in annuities or life insurance.

10. Check for substantial inheritance from parents of at-risk spouse and suggest a physician protection, spendthrift trust in the estate plan of parents of at-risk spouse.

11. Gay and lesbian physicians who are in a same sex, long term relationship should consider marrying their partner in a state that recognizes same sex marriages.

PHYSICIAN ASSET PROTECTION PLAN CHECKLIST

Married Couple--both Physicians with No Existing Claims:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Confirm whether wage exemption applies and maximize and protect exempt wages. Spend non-exempt compensation first. Avoid distributions.

4. Where ever possible, own all assets as tenants by the entireties. Be sure not to convert existing JTWROS accounts into TBE accounts. Discuss potential double tragedy.

5. Consider life insurance and/annuities.

6. Check for substantial inheritance from parents of at-risk spouse and suggest a physician protection, spendthrift trust for assets that are inherited from parents of at-risk spouse.

PHYSICIAN ASSET PROTECTION PLAN CHECKLIST

Single Physician with No Existing Claims:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Maximize use of annuities and/or life insurance. If no need for life insurance (no spouse and no other need), then maximize annuities. If there is an insurance need (kids), use whole life insurance.

4. Check size of parents' estates and consider advising parents to set up physician protection spendthrift trusts upon their deaths.

5. Keep in mind that the estate tax exemption is currently $5,250,000 per person or $10,500,000 per couple. If parents have small estates, consider maintaining assets in parents' names to be left to the physician via spendthrift trusts (either by annual exclusion gifts to be invested in the revocable trusts that becomes a spendthrift trust for the physician at death or in another assets, e.g., a condominium that the physician rents if the physician desires a second home).

6. Gay and lesbian physicians who are in a same sex, long term relationship should consider marrying their partner in a state that recognizes same sex marriages.

PHYSICIAN ASSET PROTECTION PLAN CHECKLIST

A Physician With An Existing Claim:

1. Maximize homestead exemption, pay off mortgage but note the 40 month tolling period of the bankruptcy laws. Confirm property does not exceed ½ acre if inside municipality.

2. Maximize 401(k) and profit sharing contributions.

3. Confirm whether wage exemption applies and maximize and protect exempt wages. Avoid distributions. Protect excess wages (excess over living expenses) with TBE accounts, annuities or life insurance. Spend down nonexempt assets and save wages.

4. Check for substantial inheritance from parents of at-risk spouse and suggest physician protection spendthrift trust for parents of at-risk spouse.

Appendix Three

Summary Letter

BRONSTEIN, CARLSON, GLEIM, SHASTEEN & SMITH, P.A.

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Refer to File No.

December 20, 2013

TO BE PICKED UP

Dr. and Mrs. Thomas Physician
[Address]
[Address}

Re: Revocable Trusts and Last Will and Testaments

Dear Tom and Shari:

Enclosed for your records are the originals of your Revocable Trust Agreements and Last Wills and Testaments dated November 12, 2013. The originals of these documents should be kept by you in your safety deposit box at Local Bank on Central Avenue in St. Petersburg for safekeeping. Also enclosed for your records is a Document Portfolio which contains copies of all your estate planning documents executed on November 12, 2013.

Also enclosed are the originals of your Durable General Powers of Attorney and Advance Health Care Directives. The Advance Health Care Directives should be kept in a safe but accessible place at home. It is a good idea to advise your family physician that you have signed this document.

I would appreciate it if you would acknowledge receipt of your original documents by signing and returning the extra photocopy of this letter in the enclosed self-addressed stamped envelope.

Enclosed concerning your trust is a memorandum of instructions regarding the transfer of your various investment assets into the name of your trust. We will, of course, be happy to help you at any time regarding these transfers.

Also enclosed regarding your trust is a "Trust Certification" to which are attached photocopies of the first page, signature pages and excerpts from your Trust Agreement which set forth your rights and powers as Settlor and Trustee. Many banks and brokerage firms will request a photocopy of your Trust Agreement as you transfer assets into the name of your trust and most of them will accept the Trust Certification in lieu of a photocopy of your entire Trust Agreement.

Execution of your estate planning documents is only an interim step in completing your estate plan. In order to avoid probate or guardianship proceedings and in order for your trusts to reduce estate taxes, your assets should be transferred to one or the other of your trusts. Also, the beneficiary designations of life insurance policies, IRAs and profit sharing and 401(k) accounts should be reviewed and changed as necessary to insure that your estate plan operates as you desire.

In order for your estate plan to properly operate in the manner that we discussed, you should complete the following transfers of assets to your respective trusts or changes to beneficiary designations:

1. Remember our several conversations about tenancy by the entireties accounts. You should maintain a tenancy by the entireties account to deposit Tom's W-2 compensation. You should also maintain a separate tenancy by the entireties account to deposit Tom's dividend distributions from the surgery center. You should use the funds in Tom's dividend distribution account to pay monthly bills. You can supplement the account that is paying your monthly bills with funds from Tom's wage account, but to the extent you have excess funds, you should save the excess funds and invest the excess funds in an account titled in the name of Shari's Trust. When opening a joint account you should clearly mark the account opening documents to reflect the intention to establish tenancy by the entireties ownership (i.e. strike references to joint ownership with right of survivorship (sometimes referred to as JWROS) and include "as tenants by the entireties" or "TBE" in the title to the account). The title to all bank accounts should read as follows:

> Thomas Physician and Shari Nonphysician, as tenants by the entireties.

The term "tenants by the entireties" or "TBE" does not need to be on the checks of the account, but should be in the title to the account on the account opening documentation. Note, a viable tenancy by the entireties must possess several characteristics of form, two of which are the unity of title (the interest must originate in the same instrument) and unity of time (the interest must commence simultaneously). Thus, it is possible that merely adding the reference "tenancy by the entireties" to the title of an existing JWROS account may not technically comply with these requirements of form. Therefore, it is prudent to establish a wholly new account that is a tenancy by the entireties account, rather than to attempt to switch an existing account established as a joint ownership account with right of survivorship.

2. A savings account and any brokerage accounts should be opened in Shari's trust to hold and invest excess funds. The title to this account should read as follows:

> "Shari Nonphysician and Thomas Physician, Co-Trustees of the Shari Nonphysician Family Trust, dated November 12, 2013, Shari Nonphysician, Settlor."

The purpose of saving funds in Shari's trust is to balance your estates (versus Tom's life insurance) and to provide Shari with assets that will utilize her estate tax exemption in the event she is the first of you to die. We discussed the fact that these assets are marital assets and that they, as well as other assets that are added to Shari's trust in the future, are intended to remain marital assets and not become Shari's separate assets.

3. The beneficiary of the life insurance insuring Tom's life should be changed to his trust. Please obtain a beneficiary designation form in order to change the beneficiary of existing policies insuring his life to read as follows:

> "The Trustees or Successor Trustees of the Thomas Physician Family Trust, dated November 12, 2013, Thomas Physician, Settlor and Trustee."

4. The beneficiary of any life insurance insuring Shari's life should be changed to her trust. Please obtain a beneficiary designation form in order to change the beneficiary of existing policies insuring her life to read as follows:

> "The Trustees or Successor Trustees of the Shari Nonphysician Family Trust, dated November 12, 2013, Shari Nonphysician, Settlor and Trustee."

5. Enclosed is a Beneficiary Designation Form for Tom's 401(k). Tom should mark on his plan administrator's beneficiary designation form "See Attached," sign my form and the plan administrator's form, attach my form to their form and give the two forms to the plan administrator. Please send me a xerox copy or .pdf copy of the forms after they are signed.

6. Note your trusts will not have separate tax identification numbers as long as you are surviving. You should each use your respective social security number on the investment accounts or securities which are titled in your respective trusts.

7. We discussed the "Dangerous Instrumentality Doctrine," which provides that the owner of a dangerous instrumentality (a boat or car) is liable for the negligent acts of a person who borrows the vehicle. In Florida, the doctrine extends to negligence of someone who borrows the vehicle from someone else who had permission to borrow the vehicle from the owner. Therefore, it is important that each car used by your family members is owned by the person who commonly drives the car. We also discussed the fact that the adult who consents to a minor obtaining a driver's license in Florida is liable for the accidents caused by the minor. Also, after your children attain age 18, because of the Dangerous Instrumentality Doctrine, whoever owns the car your child is driving is liable for the accidents he or she causes. Thus, because Tom already has risk that he can't avoid, he should go with your children when they obtain their learner's permit and driver's license and Tom should own the car your child drives. As soon as a child can obtain their own automobile insurance, the car he or she drives should be given to him or her.

8. The title to your primary residence should remain in tenants by the entireties (joint ownership by the two of you).

We discussed the fact that Tom's personal assets are exposed to claims by malpractice claimants. The assets at risk include assets that Tom inherits from his parents. We discussed having Tom ask his parents to take steps to protect assets they are leaving him.

Tom's parents can protect assets that they desire to leave him from claims of malpractice claimants by leaving them to him in a spendthrift trust that is designed to allow him flexibility yet provide the assets with protection from the claims of his creditors. Florida law provides that Tom's creditors cannot access a spendthrift trust even though the beneficiary of the trust is also the trustee as long as the trustee's power to make distributions to himself is limited by ascertainable standards, i.e., distributions are only authorized for health, maintenance, support and education.

The trust should last for Tom's lifetime and provide him with a special power of appointment allowing him to direct how the remaining assets will be distributed to your children. Tom's father and mother should be careful as this structure would be an indirect generation skipping transfer. If Tom's share of his parents' estate exceeds their generation skipping exemption, the trust could create generation skipping tax. To the extent his share of his father's and mother's estate exceeds his father's and mother's generation skipping exemption, they should give Tom a general power of appointment over the excess in order to avoid generation skipping tax. The Delaware tax trap can also be used to avoid generation skipping tax on the excess. Tom's parents' attorney should understand these issues.

I recommend that you send a copy of this letter to Tom's father and mother and ask that they discuss this recommendation with their attorney. They should ask that their attorney to prepare a Codicil to their Wills or Amendments to their Trusts (if they have inter vivos trusts) adding a spendthrift trust for Tom in connection with any assets that they intend to leave him. Their attorney should consider making the trust based upon Florida law if the law of their state does not allow a beneficiary to also be the trustee of a trust without adversely affecting the trust's spendthrift status.

You should suggest to Tom's parents that if their attorney has any questions concerning this request, he or she can contact me directly.

I will remain available to answer additional questions and help you modify your estate plan and related documents from time to time. I may notify my clients from time to time if there are significant changes in the law that may affect many of my clients, and therefore, you should keep my office updated with any changes in your address. However, I will not be obligated to notify you of changes in the law and I will not be responsible for contacting you with changes in the law that might affect your estate plan or your specific documents. Therefore, I recommend that you review your estate planning documents every few years and contact me with any questions.

Again, if you have any questions, please do not hesitate to contact me.

Very truly yours,

JOEL D. BRONSTEIN

JDB/

Enclosures

401(k) BENEFICIARY DESIGNATION

Re: Thomas Physician Accounts in the Medical Practice, P.A. 401(k) Plan (my "401K Accounts")

I hereby designate the following as beneficiary of my 401(k) Accounts upon my death:

1. PRIMARY BENEFICIARY: My wife, Shari Nonphysician, if she survives me, but if she does not survive me, then the Secondary Beneficiary shall be the beneficiary.

2. SECONDARY BENEFICIARY: To my children (presently Grace Kid, John Kid and Juliet Kid) in equal shares, but if any of them does not survive me, then that deceased child's share shall be distributed to his or her descendants on a per stirpes basis, but if a deceased child shall leave no descendants, then his or her share to the remaining children. A share for a child of mine or a descendant of a deceased child of mine shall be allocated to the Trustees or Successor Trustees of the Thomas Physician Family Trust, dated November 12, 2013, as amended from time to time, to be held and distributed pursuant to the separate trust therein for such child or descendant.

I reserve the right to amend or revoke this beneficiary designation.

Dated this ______ day of _________________, 2013.

____

Thomas Physician