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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |  |
|------------------------|--|
| Proceeding             | 91226424   |
| Party                  | Plaintiff<br>Engage Healthcare Communications, LLC   |
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| Submission             | Other Motions/Papers   |
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| Signature              | /James Anelli/   |
| Date                   | 08/29/2019   |
| Attachments            | JCH Op. Proceeding No. 91226424 - Resp. to Attorney Request<br>8.27.19.pdf(8825 bytes )<br>First Amended Complaint pt.1.pdf(308725 bytes )<br>First Amended Complaint pt.2.pdf(321774 bytes )<br>First Amended Complaint pt.3.pdf(4842830 bytes )<br>First Amended Complaint pt. 4a.pdf(4861786 bytes )<br>First Amended Complaint pt. 5pdf.pdf(4180270 bytes )<br>Second Amended Answer pt. 1.pdf(82241 bytes )<br>Second Amended Answer pt. 2.pdf(92126 bytes )<br>Second Amended Answer pt. 3.pdf(109509 bytes )<br>Second Amended Answer pt. 4.pdf(53922 bytes ) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| Engage Healthcare Communications,) |   |                         |
| LLC                                | ) |                         |
| Opposer,                           | ) | Opposition No. 91226424 |
|                                    | ) |                         |
| v.                                 | ) |                         |
|                                    | ) |                         |
| Intellisphere, LLC                 | ) |                         |
|                                    | ) |                         |
| Applicant.                         | ) |                         |
|                                    | ) |                         |

**RESPONSE**

On August 12, 2019, the Board requested that Opposer, Engage Healthcare Communications, LLC, submit a copy of the pleadings in the civil action that it cited in the parties' Consent Motion for Suspension in View of Civil Proceeding dated August 8, 2019.

As requested, attorney for Opposer hereby submits its First Amended Complaint and Applicant's Second Amended Answer to First Amended Complaint, Separate Defenses, and Second Amended Counterclaim in connection with Civil Action 3:12-civ-00787-FLW-LHG, as the basis for the parties' Consent Motion for Suspension in View of Civil Proceeding.

In the event that further information is requested, Opposer will provide the same.

Respectfully submitted,

White and Williams LLP

By:     /James Anelli/    

James Anelli

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*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response has been properly served via email on Applicant's attorney this 29th day of August, 2019 at the following email addresses:

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Green Hill Healthcare Communications, LLC, and  
Center of Excellence Media, LLC

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ENGAGE HEALTHCARE  
COMMUNICATIONS, LLC; GREEN  
HILL HEALTHCARE  
COMMUNICATIONS, LLC; and  
CENTER OF EXCELLENCE  
MEDIA, LLC,

Plaintiffs,

vs.

INTELLISPHERE, LLC, MICHAEL  
J. HENNESSY & ASSOCIATES,  
INC., ARC MESA EDUCATORS,  
LLC, MICHAEL J. HENNESSY,  
JOHN DOES 1 TO 5; and JANE  
DOES 1 TO 5,

Defendants.

Civil Action No. 12-cv-00787-JAP-LHG

**FIRST AMENDED COMPLAINT**

Plaintiffs Engage Healthcare Communications, LLC (“Engage”), Green Hill Healthcare Communications, LLC (“Green Hill”), and Center of Excellence Media, LLC (“Center of Excellence”, collectively Engage, Green Hill, and Center of Excellence are “Plaintiffs”), by their attorneys, LeClairRyan, a Virginia Professional Corporation, complaining

of Defendants Intellisphere, LLC, Michael J. Hennessy & Associates, Inc., Arc Mesa Educators, LLC, and Michael J. Hennessy (collectively, the “Defendants”), allege as follows:

**STATEMENT OF THE CASE**

1. Plaintiffs, affiliated companies, are in the business of medical publishing. They have created and marketed a number of informative and popular medical publications and continuing education programs and related materials over the past five years, including, as relevant herein, AMERICAN HEALTH & DRUG BENEFITS, THE ONCOLOGY NURSE APN/PA, PERSONALIZED MEDICINE IN ONCOLOGY, PERSONALIZED MEDICINE IN HEMATOLOGY ONCOLOGY, VALUE-BASED CANCER CARE, ONCOLOGY PRACTICE MANAGEMENT, PEER-SPECTIVES, TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY, TARGETED THERAPIES IN ONCOLOGY, TARGETED THERAPIES IN BREAST CANCER, TARGETED THERAPIES IN LUNG CANCER, and TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA.

2. Plaintiffs’ publications and continuing medical education programs and materials are highly specialized, and the markets for the publications are well defined, including without limitation medical providers, pharmaceutical providers, administrators, support staff, pharmaceutical companies, oncology pharmacists, directors of oncology services, directors of pharmacy, administrators, reimbursement specialists, oncology special interest nursing students, commercial payers, pharmacy benefit managers, hospitals, oncology KOLs, Medicare, Medicaid, VA/DOD, senior congressional staff, Food and Drug Administration, medical oncologists, surgical oncologists, medical directors (cancer programs), urology oncologists, urologists, drug plans, health plans (HMOS, PPOS), consultants, and manufacturers.

3. Plaintiffs' President and CEO is Brian Tyburski. Mr. Tyburski has over 15 years experience and expertise in medical publishing and education communications during which he has created, launched and grown numerous publications and websites in the medical field as well as numerous and continuing medical education programs and materials.

4. Plaintiffs' Chairman is John J. "Jack" Hennessy, II. Mr. Hennessy has over 34 years experience in the field of medical publishing, during which he has created, launched and grown numerous publications in the medical field as well as numerous and continuing medical education programs and materials. For example, he created and grew Medical World Communications, Inc., one of the largest medical publishers in the United States, prior to selling his interest in 2005.

5. Defendants Intellisphere, LLC ("Intellisphere"), Michael J. Hennessy & Associates, Inc. ("MJH & Associates"), and Arc Mesa Educators, LLC ("Arc Mesa"), are competing medical publishers. Intellisphere, MJH & Associates and Arc Mesa are in direct competition with Plaintiffs.

6. Over the course of the past several years, Intellisphere, MJH & Associates and Arc Mesa have copied a number of trade names utilized by Plaintiffs, and launched competing publications, articles and other materials bearing the exact same or confusingly similar trade names. This copying includes the blatant copying of trade names and marks created for new publications and continuing education programs, use of the copied trade names and marks in commerce to intentionally create confusion and divert customers, and the mimicking of the trade dress and style of the publications and continuing education programs and materials. Indeed, Defendants have copied the following trade names of Plaintiffs' publications:

| <b><u>Plaintiffs' Trade Name</u></b>  | <b><u>Name Adopted by Defendants</u></b>  |
|---|---|
| PERSONALIZED MEDICINE IN ONCOLOGY<br><br>PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY   | PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY  |
| THE ONCOLOGY NURSE<br><br>THE ONCOLOGY NURSE APN/PA   | ONCNURSE  |
| VALUE-BASED CANCER CARE<br><br>VALUE-BASED ONCOLOGY CARE  | VALUE-BASED ONCOLOGY  |
| ONCOLOGY PHARMACY NEWS<br><br>CLINICAL ONCOLOGY PHARMACY NEWS   | ONCOLOGY PHARMACY NEWS  |
| ONCOLOGY PRACTICE MANAGEMENT  | ONCOLOGY BUSINESS MANAGEMENT  |
| AMERICAN HEALTH & DRUG BENEFITS   | AMERICAN JOURNAL OF PHARMACY BENEFITS   |
| PEER-SPECTIVES  | PEERS & PERSPECTIVES  |
| TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY<br><br>TARGETED THERAPIES IN ONCOLOGY<br><br>TARGETED THERAPIES IN BREAST CANCER<br><br>TARGETED THERAPIES IN LUNG CANCER<br><br>TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA | INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER<br><br>INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER<br><br>TARGETED THERAPY NEWS<br><br>BIOMARKERS, PATHWAYS, TARGETED THERAPIES<br><br>BIOMARKERS, PATHWAYS AND TARGETED THERAPIES |



(The foregoing trademarks registered and used by Plaintiffs and at issue herein, being PERSONALIZED MEDICINE IN ONCOLOGY, PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY, THE ONCOLOGY NURSE, THE ONCOLOGY NURSE APN/PA, VALUE-BASED CANCER CARE, VALUE-BASED ONCOLOGY CARE, ONCOLOGY PHARMACY NEWS, CLINICAL ONCOLOGY PHARMACY NEWS, ONCOLOGY PRACTICE MANAGEMENT, AMERICAN HEALTH & DRUG BENEFITS, PEER-SPECTIVES, TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY, TARGETED THERAPIES IN ONCOLOGY, TARGETED THERAPIES IN BREAST CANCER, TARGETED THERAPIES IN LUNG CANCER, and TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA are referred to collectively hereinafter as the “Plaintiffs’ Trademarks;” and copies of those trademarks registered or used by Defendants, being PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY, ONCNURSE, VALUE-BASED ONCOLOGY, ONCOLOGY PHARMACY NEWS, ONCOLOGY BUSINESS MANAGEMENT, AMERICAN JOURNAL OF PHARMACY BENEFITS, PEERS & PERSPECTIVES, INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, TARGETED THERAPY NEWS, BIOMARKERS, PATHWAYS, TARGETED THERAPIES and BIOMARKERS, PATHWAYS AND TARGETED THERAPIES, are referred to collectively as the “Offending Marks”).

7. The medical publishing industry, like much of the publishing world, depends on advertisers for revenue. However, unlike other publishing ventures, medical publications and journals are typically distributed free of charge or for a nominal charge, making them entirely dependent on advertising revenue for their success.

8. Advertisers and their advertising agencies look to the quality of a publication's materials and editorial board when making decisions on where to buy advertising. Advertisers do not want to associate their products with publications having weak editorial boards, or marginal standards for their materials. This carries through to concern over the perception of the readers – if advertisers believe that the readers perceive a publication as having weak standards or a weak board, then they may not advertise in that publication.

9. Accordingly, medical publications essentially have two groups of customers—the pharmaceutical advertisers, and the readers of Plaintiffs' publications, and doubt by either group as to the quality of a publication will greatly impact both reputation and revenue. Therefore, confusion over the source of publications, as at issue herein, is a paramount concern.

10. Thus, Defendants' continuing and intentional actions in adopting the same or strikingly similar trade names as first used by Plaintiffs has a very high likelihood of causing significant consumer confusion, and causing great harm to the reputation and revenues of Plaintiffs' publications and continuing education programs.

11. On December 7, 2011, Plaintiffs, by their counsel, sent a cease and desist letter to Intellisphere and MJH & Associates. The Cease and Desist Letter is attached hereto as Exhibit 1 (the "Cease and Desist Letter"). In response, despite having knowledge of Plaintiffs' rights' and knowing that it was infringing on Plaintiffs' Trademarks, Intellisphere filed a cancellation proceeding before the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trade Office (the "PTO"), seeking the cancellation of Plaintiffs' registration for the mark VALUE-BASED CANCER CARE, which mark Intellisphere is already infringing. *Intellisphere, LLC v. Engage Healthcare Communications, LLC*, TTAB No. 92054949 (the "Cancellation Proceeding").

12. The Cease and Desist Letter unquestionably confirmed that Defendants are aware of Plaintiff's prior rights in Plaintiffs' Trademarks, and were or should have been aware of the confusion that will likely be caused by two companies offering related services under identical marks.

13. Despite having notice of Plaintiff's rights in and to Plaintiffs' Trademarks, and the likelihood of confusion, Defendants have not only continued to widely market their journals and programs under the Offending Trademarks without authorization from Plaintiffs, but then filed the Cancellation Proceeding knowing that Plaintiffs had prior rights, all in complete disregard of Plaintiff's rights.

14. Defendants, by the acts complained of herein, have infringed and continue to infringe Plaintiffs' Trademarks, dilute the unique commercial impression of Plaintiffs' Trademarks, and otherwise improperly use the reputation and goodwill of Plaintiffs to promote Defendants' similar journals and services, which are not connected with, authorized, approved, licensed, produced or sponsored by, Plaintiffs.

15. The aforesaid acts of Defendants, as well as those set out hereinbelow, have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable damage, loss and injury to Plaintiffs, for which Plaintiffs have no adequate remedy at law.

16. Thus, Plaintiffs bring this action seeking to bring an end to Defendants' intentional, direct, overt and pervasive copying of Plaintiffs' Trademarks, by way of the imposition of injunctive relief, as well as by way of declaratory judgment and an award of compensatory and/or statutory damages, punitive damages and attorneys' fees and costs.

**SUBJECT MATTER JURISDICTION**

17. This is an action under the Lanham Act of 1946, as amended, 15 U.S.C. § 1051 et seq., for infringement of trade name, false advertising, and unfair competition, and under principles of state statutory and common law.

18. This Court has jurisdiction of Plaintiff's claims arising under the Lanham Act pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1331 and § 1338, and under its supplemental jurisdiction, 28 U.S.C. §§ 1338(b) and 1367(a).

19. Upon information and belief, the acts of Defendants of which complaint is made herein have been made by Defendants in and/or affect interstate commerce.

20. Upon information and belief, the actions of Defendants of which complaint is herein made have been and continue to be committed by Defendants in New Jersey.

**VENUE**

21. This action is properly venued in the District of New Jersey under 28 U.S.C. § 1391, because Plaintiffs and Defendants are located in this District and do business in this District. Moreover, Defendants have committed the acts complained of in this District.

**THE PARTIES**

22. Engage is a limited liability company organized and existing under the laws of the state of Delaware, and having a place of business at 241 Forsgate Drive, Suite 205A, Jamesburg, New Jersey 08831.

23. Green Hill is a limited liability company organized and existing under the laws of the state of Delaware, and having a place of business at 241 Forsgate Drive, Suite 205C, Jamesburg, New Jersey 08831.

24. Center of Excellence is a limited liability company organized and existing under the laws of the state of Delaware, and having a place of business at 241 Forsgate Drive, Suite 205B, Jamesburg, New Jersey 08831.

25. Upon information and belief, Intellisphere is a limited liability company formed under the laws of Delaware, authorized to do business in New Jersey, and having a business address of 666 Plainsboro Road, Plainsboro, New Jersey.

26. Upon information and belief, MJH & Associates is a corporation formed under the laws of New Jersey, having a business address of 666 Plainsboro Road, Plainsboro, New Jersey, and upon information and belief is the parent corporation of Intellisphere.

27. Upon information and belief, Arc Mesa is a limited liability company formed under the laws of New Jersey, having a business address of 666 Plainsboro Road, Plainsboro, New Jersey.

28. Upon information and belief, Michael J. Hennessy is an individual residing in New Jersey, and having a business address of 666 Plainsboro Road, Plainsboro, New Jersey.

29. John Does 1 to 5 and Jane Does 1 to 5 are such individuals as discovery may show had authority or control over Defendants' selection of the marks and names complained of herein.

## **FACTUAL ALLEGATIONS**

### **The Plaintiffs**

30. Green Hill is a full-service medical communications firm that specializes in creating informational products for underserved niches of the oncology medical community. Through its journals THE ONCOLOGY NURSE -APN/PA, THE ONCOLOGY PHARMACIST, JOURNAL OF ONCOLOGY NAVIGATION & SURVIVORSHIP, JOURNAL OF HEMATOLOGY ONCOLOGY PHARMACY, PERSONALIZED MEDICINE IN ONCOLOGY, TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY, TARGETED THERAPIES IN ONCOLOGY, TARGETED THERAPIES IN BREAST CANCER, TARGETED THERAPIES IN LUNG CANCER, and TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA, among others, its offers unique opportunities to reach and influence every inter-professional team member that is involved in the management of patients who are diagnosed, treated, and living with cancer.

31. Engage Healthcare Communications is a global medical communications company with expertise in managed markets, oncology, commercial and government payers, employers, policymakers, provider organizations, and physicians. Its publications include AMERICAN HEALTH & DRUG BENEFITS, VALUE-BASED CANCER CARE, ONCOLOGY PRACTICE MANAGEMENT, and VALUE-BASED CARE IN RHEUMATOLOGY, among others.

32. Center of Excellence is approved by the Accreditation Council for Continuing Medical Education (“ACCME”) as a non-commercial interest, nonaccredited provider/joint sponsor of continuing medical education. Center of Excellence’s mission is to consistently contribute to the improvement of patient outcomes by elevating the knowledge, competency, and

performance of healthcare professionals through high-quality, certified, accredited medical education activities. As a nonaccredited joint sponsor, Center of Excellence collaborates with accredited provider partners, including universities and nonprofit medical education companies. Center of Excellence uses multiple platforms to provide its continuing education, such as national, regional, and local conferences and symposia, print supplements and newsletters, and interactive online activities. Since November 2007, Center of Excellence has developed and implemented over 200 activities with 10 different accredited providers and over a dozen medical societies/associations. Through its efforts, Center of Excellence has delivered over 300 hours of course instruction to more than 210,000 healthcare professionals, with over 20,000 continuing medical education credits issued.

### **The Market**

33. In the medical publishing field, where the target markets for the publication – healthcare advertisers, medical providers, administrators and staff – demand that publications be non-biased, accurate and trustworthy, it is critical that medical publications be identified as a key source of information. Moreover, each publication will have a specific and distinct audience and demand content that is relevant, sound and persuasive.

34. Creating and launching a medical publication or a continuing education program is an expensive and time consuming endeavor. Plaintiffs must research the existing publications and continuing education programs, seek input from medical providers and administrators as to informational needs, develop the concept of a publication or a continuing education program, including its subject and target market, analyze the viability of the concept, develop a trade name, develop a style and look and trade dress for the publication or the

continuing education program, seek contributors and content from the medical profession, seek advertisers, market the endeavor pre-launch, and then launch the publication or the continuing education program. Thus, each publication and continuing education program takes considerable man-hours to conceive, create and launch, considerable expense to get to fruition, and considerable man hours and expense to continue thereafter.

35. In this process, the publisher must also create an editorial board for a publication or the continuing education program, and seek to attract the best known individuals to serve on the editorial board in the medical field in which the journal will be published. In turn, the strength of the editorial board and a publication's editorial content will have a great influence on the willingness of advertisers to buy space in the publication or advertise or sponsor a continuing education program.

36. Further, in serving the medical community, the standards for all publications and continuing education programs are extremely high. Information must be timely and accurate, contributors must be well-regarded and trustworthy, topics must be relevant and contemporary. The reputation of a publication or a continuing education program, the editorial board, and the publisher – for accuracy and trustworthiness of the information in the publications or the continuing education programs – are of utmost importance in the field of medical publication and continuing medical education.

37. Thus, confusion as to the source of a publication or a continuing education program can easily mean loss and/or diversion of revenue, and the demise of the publication or the program. The members of the editorial board may resign, leading directly to loss of advertisers, and loss of revenue. Further, if the readers doubt the veracity or reputation of the



publication or the continuing education program, it can lead to advertisers and members of the editorial board fleeing the publication or the continuing education program.

38. Between them, Plaintiffs have 34 trade names registered on the principal or supplemental registers, and an additional 84 applications for registration pending.

### **The Defendants**

39. Intellisphere holds itself out as a provider of healthcare publications, research, information, advertising and education for the medical industry. Upon information, and belief, it markets to general practitioners, specialists, nurses, pharmacists and managed care professionals and administrators, through a number of magazines, journals, e-mail databases, events and conferences.

40. Similarly, MJH & Associates, upon information and belief, is a publisher of magazines, journals, and related content, marketed to medical providers and administrators.

41. Arc Mesa, upon information and belief, is also a publisher of magazines, journals, and related content, marketed to medical providers and administrators.

42. Thus, Defendants are in the same markets as Plaintiffs Engage, Green Hill, and Center of Excellence, and compete directly for advertisers, editorial board members, and readers.

43. Defendants are highly sophisticated in the areas of trade marks and the laws related thereto. Intellisphere alone has filed at least 116 applications for registration of trademarks with the PTO, and currently has at least 34 trademarks registered on either the principal register or the supplemental register. Arc Mesa has, within the past two months alone, filed at least eight applications for registration with the PTO.

44. Further, Intellisphere has filed in the recent past at least three actions to enforce registered trademarks, being *Intellisphere LLC, v. Numed Research, Inc.*, Central District of California, 09-cv-4436, *Intellisphere, LLC v. Philips Electronics North America Corporation*, District of New Jersey, 10-cv-2759, and *Intellisphere, LLC v. San Diego MD Magazine*, Southern District of California, 10-cv-1482. In these actions Intellisphere has alleged infringement, unfair competition and even cybersquatting under the Lanham Act, under state statutes, and under the common law.

45. Additionally, as set forth above, Intellisphere has filed the Cancellation Proceeding before the TTAB.

46. MJH & Associates has filed at least 42 applications for registration of trademarks with the PTO, and currently has at least 10 trademarks registered on either the principal register or the supplemental register.

47. Thus, both by virtue of their many registrations and filings for trademark registrations, and their participation in lawsuits and the Cancellation Proceeding to enforce rights under registered trademarks, Defendants are and all times relevant have been well aware of the protections afforded to Plaintiffs for Plaintiffs' Trademarks under the Lanham Act, under state statutes and under the common law. Further, Defendants have at all times relevant clearly had at their disposal sophisticated intellectual property counsel, and the ability to search the PTO and internet for existing trade mark registrations and uses prior to their adoption of new trade marks, or their filing of new applications for registration with the PTO.

48. Indeed, upon information and belief, Defendants have had actual knowledge of Plaintiffs' use of, registration of and/or application for registration of each of Plaintiffs' Trademarks, prior to Defendants' use of each of the corresponding Offending Marks.

49. For example, the Association of Value-Based Cancer Care (the “*AVBCC*”) is the fastest growing national specialty organization dedicated to improving the care of cancer patients and their quality of life, by discussing, considering, and evaluating the value equation as it relates to new and existing cancer therapies. This organization, which currently consists of over 300 members, was established by plaintiffs to provide a network for payers and oncology healthcare professionals to interact and network in order to promote optimal care for patients and their families. In March of 2011, Lynn Beamsdorfer, the Oncology Specialty Group Editorial Director for MJH & Associates, attended the *AVBCC* First Annual Meeting in Philadelphia, without being invited. At the meeting, she was able to observe and obtain samples of Plaintiffs’ existing publication VALUE-BASED CANCER CARE. Within three months, MJH & Associates was indicating that it was going to come out with a new publication named VALUE-BASED ONCOLOGY, clearly copying from Plaintiffs. Notably, MJH & Associates has even used an acronym VBO, which clearly is confusingly similar to Engage’s acronym VBCC for VALUE-BASED CANCER CARE, and even the acronym *AVBCC* for Association of Value-Based Cancer Care.

50. Further, in November 2011, employees of MJH & Associates, upon information and belief being Scott Harwood and Peter Ciszewski, were observed gathering Plaintiffs’ journals from an exhibit at the Chemotherapy Foundation annual meeting. Several days later, MJH & Associates sought to register the infringing marks VALUE-BASED ONCOLOGY / ONCOLOGY BUSINESS MANAGEMENT, and PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY, each a copy of Plaintiffs’ pre-existing marks.

51. Michael Hennessy is upon information and belief the Chairman and Chief Executive Officer of both Intellisphere and MJH & Associates. Upon information and belief, he

closely directs the operations of Intellisphere and MJH & Associates, and at all times he knew of, approved of, and directed, the actions and infringements complained of herein. In fact, as discussed herein, over the last several months, it appears that Defendants have set out to intentionally copy Plaintiffs' trade names in order to cause confusion in the market, and have likely succeeded in this effort.

**Plaintiffs' Trademarks Being Infringed**

(1) **PERSONALIZED MEDICINE IN ONCOLOGY**  
**PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY**

52. Green Hill filed applications for the mark PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY in International Classes 9, 16, 35 and 41 (Serial Nos. 85263894, 85263881, 85263862 and 85263844) on March 10, 2011. An allegation of use filed on December 20, 2011, states the date of first use anywhere is January of 2011, and the date of first use in interstate commerce is June of 2011. As of January 10, 2012, the allegation of use was accepted for serial number 85263881 in International Class 16, and the other allegations of use are subject to office actions which Green Hill is working with the examiner to address.

53. Green Hill has been using the trade name PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY to identify its publication since January 2011. As with all of its publications, this publication took considerable time and expense to develop and launch, and the trade name has become identified with its publisher, Green Hill.

54. Green Hill filed an intent-to-use application for the mark PERSONALIZED MEDICINE IN ONCOLOGY in International Classes 9, 16, 35, and 41 (Serial No. 85473354) on November 15, 2011. The application is still being prosecuted.

55. Intellisphere filed applications for the *exact mark* PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY in Classes 16 and 44 (Serial No. 85465495) on November 6, 2011. The application states the date of first use anywhere and in interstate commerce is October 26, 2011, in Class 16 and the date of first use anywhere and in interstate commerce is September 26, 2011, in Class 44. Intellisphere also filed an application in International Class 9 (Serial No. 85470184) on November 11, 2011. The application states the date of first use anywhere and in interstate commerce is November 10, 2011. On January 3, 2012, both applications were approved for registration on the supplemental register, but following protest by Plaintiffs, on January 11, 2012, the approval for registration was withdrawn and the application returned to the examiners.

56. After the Complaint was filed in this matter and a courtesy copy provided to Intellisphere's counsel in the Cancellation Proceeding, Intellisphere filed a protest with the PTO regarding Green Hills application for PERSONALIZED MEDICINE IN ONCOLOGY, serial number 85483354, based on Intellisphere's application for PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY. The protest has been accepted by the PTO.

**(2) THE ONCOLOGY NURSE  
THE ONCOLOGY NURSE-APN/PA**

57. Green Hill filed use based applications for the mark THE ONCOLOGY NURSE in International Class 9 (Serial No. 77562743) on September 4, 2008, and in International Classes 16, 35 and 41 (Serial No. 77561035) on September 3, 2008. Both applications state the date of first use anywhere and in interstate commerce were May 1, 2008.

The applications subsequently registered on the Supplemental Register on May 12, 2009 and May 19, 2009 respectively.

58. Green Hill also filed use based applications for the mark THE ONCOLOGY NURSE-APN/PA in International Classes 9, 16, 35, and 41 (Serial Nos. 85213694, 85213695, 85213698 and 85213700) on January 10, 2011. The applications state the date of first use anywhere and in interstate commerce is June 1, 2010. The applications subsequently registered on the Supplemental Register on August 23, 2011, except for the Class 9 application, which registered on the Supplemental Register on August 16, 2011.

59. In or prior to 2008, Intellisphere began publishing a journal called “Oncology Net Guide.” Upon information and belief, after Green Hill began using the trade mark THE ONCOLOGY NURSE, Intellisphere changed the name of its journal to “Oncology Net Guide; Nurses Edition,” and in 2010 or thereafter, changed it to ONCNURSE. Copies of the cover pages of each iteration are attached hereto as Exhibit 2.

60. Intellisphere filed a use based application for the similar mark ONCNURSE in International Classes 16 and 41 (Serial No. 85429504) on September 22, 2011. The application states the date of first use anywhere and in interstate commerce is October of 2010. The application has been refused for registration on the basis of likelihood of confusion with applications THE ONCOLOGY NURSE, cited above, owned by Green Hill. Intellisphere filed a second use based application for the same mark in International Class 35 (Serial No. 85505282) on December 28, 2011, claiming a date of first use anywhere and in interstate commerce is October of 2010.

(3) **VALUE-BASED CANCER CARE**

61. Engage has established a business platform that uses extensively the trade mark VALUE-BASED. Thus, it publishes numerous journals using the trade marks VALUE-BASED CANCER CARE, VALUE-BASED RHEUMATOLOGY, VALUE-BASED BREAST CANCER, VALUE-BASED CARDIOLOGY, VALUE-BASED CARDIOMETABOLIC, and others.

62. Further, Engage has assisted in the establishment and operation of non-profit organizations which use the VALUE-BASED trade marks of Engage, including *AVBCC*, and the ASSOCIATION OF VALUE-BASED CARDIO METABOLIC HEALTH.

63. Engage's VALUE-BASED journals and organizations have been highly successful, both in attracting contributors and board members, and in attracting advertisers, facts that have upon information and belief become known to Defendants.

64. Engage filed applications for the mark VALUE-BASED CANCER CARE in International Classes 9, 16, 35 and 41 (Serial Nos. 77909155, 77909165, 77909171 and 77909178) on January 11, 2010. The applications state the date of first use anywhere is January 2, 2010, and the date of first use in interstate commerce is October 1, 2010 in Class 41; May 1, 2010, in Classes 9, 16 and 35. The Class 9 and 16 applications were registered on the Supplemental Register on February 8, 2011. The Class 35 and 41 applications registered on the Supplemental Register on the March 8, 2011, and April 5, 2011, respectively.

65. Engage filed intent to use applications for the mark VALUE-BASED ONCOLOGY CARE in International Classes 9, 16, 35 and 41 (Serial No. 85488889) on December 6, 2011. The first use dates are the same as for VALUE-BASED CANCER CARE. This application is currently being processed by the PTO.

66. Attached hereto as Exhibit 3 are relevant pages from Engage's VALUE-BASED CANCER CARE website.

67. Intellisphere filed an intent-to-use based application for the stylized word mark VALUE-BASED ONCOLOGY in International Classes 16 and 41 (Serial No. 85451604) on October 19, 2011. Shortly thereafter, Intellisphere also filed a use based application for the mark VALUE-BASED ONCOLOGY in International Class 16 (Serial No. 85465504) on November 6, 2011. The application states the date of first use anywhere and in interstate commerce was November 1, 2011. As of January 8, 2012, both applications are awaiting examination by attorney.

68. On December 7, 2011, counsel for Engage and Green Hill sent a cease and desist letter to Intellisphere, Exhibit 1 hereto, requesting that Defendants cease their copying and use of the trade marks listed herein, including VALUE-BASED CANCER CARE.

69. On or about December 19, 2011, Intellisphere filed the Cancellation Proceeding before the TTAB, seeking to cancel all four registrations Engage has obtained for VALUE-BASED CANCER CARE. The Cancellation Proceeding specifically states that it is in response to the cease and desist letter.

70. Notwithstanding its own application to register the mark VALUE-BASED ONCOLOGY, Intellisphere argues in the Cancellation Proceeding that Engage's mark VALUE-BASED CANCER CARE is descriptive, and not entitled to be registered.

71. Subsequent to filing the Cancellation Proceeding, and before any action had been taken thereon, Intellisphere filed another use based application for the mark VALUE-BASED ONCOLOGY in International Class 9 and 41 (Serial No. 85527307) on January 27,



2012. The application states the date of first use anywhere and in interstate commerce in both classes was January 27, 2012.

72. Attached hereto as Exhibit 4 is a copy of a presentation Intellisphere has used for VALUE-BASED ONCOLOGY. A simple comparison with Engage's presentations shows that Intellisphere has mimicked the general feel of VALUE-BASED CANCER CARE, with the same general content, editorial board, and information, even down to similar circulation numbers.

**(4) ONCOLOGY PHARMACY NEWS**

73. Green Hill filed applications for the mark ONCOLOGY PHARMACY NEWS and CLINICAL ONCOLOGY PHARMACY NEWS in International Class 35 (Serial Nos. 77295691 and 77295689) on October 3, 2007. The applications state that the date of first use anywhere and in interstate commerce is January 16, 2008. The applications are still being prosecuted and are suspended.

74. Green Hill filed an application for the marks ONCOLOGY PHARMACY NEWS and CLINICAL ONCOLOGY PHARMACY NEWS in International Class 16 (Serial No. 77738721 and 77738719) on May 16, 2009. The applications state the date of first use anywhere and in interstate commerce is May 1, 2008 for all marks. The applications are still being prosecuted and are suspended.

75. MJH & Associates filed an intent-to-use application for the mark ONCOLOGY PHARMACY NEWS (Serial No. 77487344), on May 30, 2008 in Classes 16 and 41, which application is subject to a Final Office Action dated September 21, 2011, refusing registration for being merely descriptive and is still being prosecuted. Due to the filing by MJH

& Associates for the exact same trade name, the above-referenced applications by Green Hill for ONCOLOGY PHARMACY NEWS and CLINICAL ONCOLOGY PHARMACY NEWS are currently suspended pending the disposition of MJG & Associates intent-to-use application.

**(5) ONCOLOGY PRACTICE MANAGEMENT**

76. Engage filed applications for the mark ONCOLOGY PRACTICE MANAGEMENT in Classes 9, 16, 35 and 41 (Serial Nos. 85263789, 85263802, 85263808 and 85263813) on March 10, 2011. Allegations of use were then filed on December 20, 2011, which state that the date of first use anywhere is August 1, 2010 and the date of first use in interstate commerce is April 1, 2011.

77. As of January 11, 2012, allegations of use for each of the applications were accepted by the PPO, and the applications are still pending registration.

78. MJH & Associates filed an application for the mark ONCOLOGY BUSINESS MANAGEMENT in International Classes 9, 16, and 41 (Serial No. 85471063) on November 12, 2011. The application lists the date of first use anywhere and in interstate commerce as November 10, 2011, in Classes 9 and Class 41, and October 26, 2011, in Class 16. As of January 8, 2012, the application has not been examined by an attorney.

**(6) AMERICAN HEALTH & DRUG BENEFITS**

79. Engage filed two applications for the mark AMERICAN HEALTH & DRUG BENEFITS on April 3, 2007 in International Class 35 (Serial No. 77147713) and Classes 9, 16, and 41 (Serial No. 77147686). The Class 35 application states the date of first use anywhere is August 1, 2007, and the date of first use in interstate commerce is August 15, 2007. The

application registered on the Supplemental Register on September 16, 2008. The Class 9, 16, and 41 application states the date of first use anywhere is August 1, 2007, and the date of first use in interstate commerce is February 15, 2008. The application registered on the Supplemental Register on November 4, 2008.

80. MJH & Associates filed an application for the mark THE AMERICAN JOURNAL OF PHARMACY BENEFITS in International Class 16 and 41 (Serial No. 77542321) on August 8, 2008. The application states the date of first use anywhere is July 8, 2008, and the date of first use in interstate commerce is July of 2008. The application registered on the Supplemental Register on December 23, 2008.

(7) **PEER-SPECTIVES**

81. Center for Excellence filed an application for the mark PEER-SPECTIVES in International Class 41 (Serial No. 77496472) on June 11, 2008. The application states the date of first use anywhere is February 15, 2008, and the date of first use in interstate commerce is May 21, 2008. The trade mark PEER-SPECTIVES was registered on the principal register on January 27, 2009.

82. Intellisphere filed an application for the mark PEERS & PERSPECTIVES in International Classes 9, 16 and 41 (Serial No. 85315984) on May 9, 2011. The application states the date of first use anywhere and the date of first use in interstate commerce in each of the classes of "June 00, 2011." The trade mark PEERS & PERSPECTIVES was registered on the principal register on January 17, 2012.

**(8) TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY;  
TARGETED THERAPIES IN ONCOLOGY;  
TARGETED THERAPIES IN BREAST CANCER;  
TARGETED THERAPIES IN LUNG CANCER, and  
TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA**

83. On November 15, 2011, Green Hill filed intent to use applications to register the marks TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY and TARGETED THERAPIES IN ONCOLOGY, serial numbers 85473323 and 85473337, respectively, in international classes 9 (downloadable electronic magazines, journals, newsletters, feature reports, monographs and electronic supplements to the foregoing in the fields of hematology and oncology), 16 (printed publications, namely, peer reviewed medical magazines, journals, newsletters, feature reports, monographs, and printed supplements to the foregoing in the fields of hematology and oncology), 35 (advertising services, namely, providing advertising space in magazines, journals, newsletters, articles, feature reports, monographs, supplements to printed publications in the fields of hematology and oncology and web sites web sites for advertising goods and services that concern information in the fields of hematology and oncology) and 41 (online educational services, namely, providing continuing education courses and exams in the fields of hematology and oncology via a global computer information network; providing online information about continuing education in the fields of hematology and oncology). However, Green Hill has been using these marks since as early as January, 2010 anywhere, and in commerce as of July 1, 2011, with respect to print publications in international class 16. On January 3, 2012, the PTO examining attorney issued office actions with respect to Green Hill's applications for TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY and TARGETED THERAPIES IN ONCOLOGY, and stated that no other marks bar or prevent

registration. However, on January 11, 2012, the Deputy Commissioner of the PTO accepted letters of protest with respect to each mark and issued a Letter of Protest Memorandum to the examining attorney to consider whether TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY and TARGETED THERAPIES IN ONCOLOGY conflict with the prior filed application for INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER.

84. Green Hill has used in commerce the marks (a) TARGETED THERAPIES IN BREAST CANCER, (b) TARGETED THERAPIES IN LUNG CANCER, and (c) TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA, since January 1 2011 , anywhere and in commerce as of July 1, 2011, with respect to printed publications in international class 16. Green Hill is preparing applications to register the aforementioned marks.

85. Arc Mesa or another affiliate, acquired certain assets of Physicians Education Resource Group (“PERG”), an oncology and cancer information and resource group, which pertained to an annual, in-person oncology conference from 2003 through approximately 2009 or 2010. This conference was known as INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER. Based upon information and belief, there are and were no print or electronic publications associated with such conference, although PERG did own some journal properties, such properties were acquired by another entity unrelated to Defendants.

86. On October 15, 2011, Arc Mesa filed a use-based application serial number 85448275 to register the mark INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER in international class 41 for “education services, namely, providing providing [sic] *annual medical conference*, lectures, interactive discussions, poster sessions, hands-on workshops, and broadcast symposia for oncologists and surgeons in the field of oncology”

(emphasis added) on the principal register based on acquired distinctiveness. Arc Mesa alleges the mark was first used anywhere and in commerce as of August 2003. On January 25, 2012, the examining attorney found no bar to registration and has exchanged correspondence with Arc Mesa on ministerial matters.

87. On December 28, 2011, Arc Mesa filed an intent to use application to register the mark INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, serial number 85505127 on the principal register in international class 35 (advertising services, namely, providing advertising space in magazines, newsletters, supplements and web sites that concern information in the field of medicine). On February 16, 2012, the PTO examining attorney issued an office action stating, among other things, that no conflicting marks were found.

88. On January 17, 2012, Arc Mesa filed a use-based application to register the mark INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, serial number 85518548 on the supplemental register in international classes 9 (downloadable electronic publications in the nature of magazines and articles in the field of oncology) and 41 (providing a website featuring resources, namely, non-downloadable publications in the nature of articles in the field of oncology), alleging first use anywhere and in commerce dates of January 16, 2012, the day before filing the application. On February 12, 2012, the application was approved for registration on the supplemental register.

89. On February 9, 2012, Arc Mesa filed a use-based application to register the mark INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, serial number 85538934 on the supplemental register in international class 16 (printed publications, namely, magazines, journals, newsletters, monographs and printed supplements to such printed

publications in the fields of oncology, medicine, and healthcare), alleging first use anywhere and in commerce dates of February 8, 2012, the day before filing the application.

90. On February 6, 2012, Arc Mesa filed a use-based application to register the mark INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, serial number 85535419 on the supplemental register in international classes 9 (downloadable electronic publications in the nature of magazines, journals, monographs, supplements, and articles in the field of medicine, healthcare, and oncology) and 41 (providing a website featuring resources, namely, non-downloadable publications in the nature of magazines, journals, monographs, supplements, and articles in the field of medicine; providing online information in the fields of medicine, healthcare, and oncology), alleging first use anywhere and in commerce dates of February 6, 2012, the same day of filing the application.

91. On February 6, 2012, Arc Mesa filed an intent to use application to register the mark INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, serial number 85535421 on the principal register in international class 35 (advertising services, namely, providing advertising space in magazines, newsletters, supplements and web sites that concern information in the field of medicine).

92. On February 9, 2012, Intellisphere filed a use-based application to register the mark INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, serial number 85538940 on the supplemental register in international class 16 (printed publications, namely, magazines, journals, newsletters, monographs and printed supplements to such printed publications in the fields of oncology, medicine, and healthcare), alleging first use anywhere and in commerce dates of February 8, 2012, the day before filing the application.

93. On February 3, 2012, Intellisphere filed a use-based application to register the mark TARGETED THERAPY NEWS, serial number 85532814 on the supplemental register in international classes 9 (downloadable electronic publications in the nature of magazines and articles in the field of oncology) and 41 (providing a website featuring resources, namely, non-downloadable publications in the nature of articles in the field of oncology), alleging first use anywhere and in commerce dates of February 2, 2012, the day before filing the application.

94. On February 3, 2012, Intellisphere filed an intent to use application to register the mark TARGETED THERAPY NEWS, serial number 85532879 in international class 35 (advertising services, namely, providing advertising space in magazines, newsletters, supplements and web sites that concern information in the field of medicine).

95. On February 9, 2012, Intellisphere filed a use-based application to register the mark TARGETED THERAPY NEWS, serial number 85538362 on the supplemental register in international class 16 (printed publications, namely, magazines, journals, newsletters, monographs and printed supplements to such printed publications in the fields of medicine and healthcare), alleging first use anywhere and in commerce dates of February 8, 2012, the day before filing the application.

96. On January 1, 2012, Intellisphere filed an intent to use application to register the mark BIOMARKERS, PATHWAYS, AND TARGETED THERAPIES, serial number 85507070 on the principal register in international class 35 (advertising services, namely, providing advertising space in magazines, journals, newsletters, articles, and web sites that concern information in the fields of medicine and healthcare).

97. On January 2, 2012, Intellisphere filed a use-based application to register the mark BIOMARKERS, PATHWAYS, TARGETED THERAPIES, serial number 85507071



on the supplemental register in international classes 9 (downloadable electronic publications in the nature of journals and articles in the field of oncology) and 41 (providing a website featuring non-downloadable publications in the nature of journals and articles in the field of oncology), alleging first use anywhere and in commerce dates of December 28, 2011.

### **Defendants' Wrongful Acts**

98. Plaintiffs' Trademarks and the trade dress of their journals and publications using Plaintiffs' Trademarks have been used extensively by Plaintiffs in interstate publication and distribution of its literature and continuing education programs, and in advertising its literature and continuing education programs. Further, Plaintiffs have expended substantial sums in developing, marketing and advertising its products. As a result, Plaintiffs have established widespread and favorable public recognition and acceptance of its publications and continuing education programs marketed under Plaintiffs' Trademarks, such that Plaintiffs' Trademarks have become assets of substantial value as symbols of Plaintiffs, their quality products and services, and their good will. Each of the publications and continuing education programs marketed under each of the Plaintiffs' trademarks is marketed in a wide area, including most of the United States.

99. Plaintiffs' Trademarks have become associated in the public mind with Plaintiffs. Plaintiffs are the sole owners of Plaintiffs' Trademarks, and the first to use each of Plaintiffs' Trademarks anywhere, and in commerce. Plaintiffs have acquired an exclusive right to use Plaintiffs' Trademarks in connection with medical literature, continuing medical education, and advertising. Plaintiffs have not given Defendants any permission, licensure, assignment, or other form of approval to use Plaintiffs' Trademarks.

100. Plaintiffs' rights in and use of Plaintiffs' Trademarks have priority over Defendants' use of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks, as Plaintiffs' usage predates Defendants' usage as to each of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks.

101. The continued use and pattern of copying of Plaintiffs' Trademarks and/or confusingly similar marks by Defendants constitutes willful and knowing infringement, unfair competition by false designation of origin and/or an encroachment on the rights of Plaintiffs. The use of Plaintiffs' Trademarks or confusingly similar marks by Defendants is designed and calculated to deceive the public and Plaintiffs' customers into believing that they are dealing with Plaintiffs, or to dilute the reputation, value and marketability of Plaintiffs' publications, advertising space therein, and continuing education programs. As a result of Defendants' use of Plaintiffs' Trademarks or confusingly similar marks, Plaintiffs are suffering irreparable damage and loss of profits and will continue to so suffer and will lose the value of Plaintiffs' Trademarks, the expense and effort of creating the publications, advertising space therein, and continuing education programs marketed under Plaintiffs' Trademarks. Plaintiffs have no speedy or adequate remedy at law to prevent such infringement and unfair competition. Further, Defendants' activities complained of herein have caused and remain likely to cause confusion as to the true source of the publications, advertising space therein, and the continuing education programs marketed under Plaintiffs' Trademarks.

102. Upon information and belief, Defendants have intentionally furthered confusion in the relevant market, by intentionally copying Plaintiffs' Trademarks, by misrepresenting the source of their publications, and by failing to correct impressions of

consumers in the relevant market that mistakenly believe that the source of Defendants' publications, advertising space therein, and continuing education programs are the Plaintiffs.

103. Plaintiffs have been and are being seriously damaged by Defendants' activities complained of herein, and have no adequate remedy at law for the injuries being suffered. Unless Defendants' activities complained of herein are preliminarily and permanently enjoined, Plaintiffs and their good will and reputation will suffer irreparable injury of an insidious and continuing sort that cannot be adequately calculated or compensated in money damages.

**COUNT ONE**  
**Trademark Infringement (15 U.S.C. §1125(a))**

104. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 103 of the First Amended Complaint as if set forth verbatim herein.

105. This cause of action for trademark infringement arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

106. Plaintiffs' Trademarks are typically adopted after extensive research and planning for a new publication.

107. Plaintiffs have spent hundreds of thousands of dollars advertising Plaintiffs' Trademarks and the publications, advertising space therein, and continuing education programs that are marketed thereunder, as well as developing the publications and continuing education programs, developing content for the publications and continuing education programs, and launching the publications and continuing education programs, and their name and reputation and good will are associated with Plaintiffs' Trademarks.

108. Plaintiffs' rights in and use of Plaintiffs' Trademarks have priority over Defendants' use of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks, as Plaintiffs' usage predates Defendants' usage as to each of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks.

109. Defendants' actions as set forth hereinabove are likely to cause confusion, mistake or deception as to the source and/or of Defendants' publications and continuing education programs, and to cause advertisers, medical professionals and administrators to incorrectly believe that Defendants' publications or programs, or the Offending Marks, originate from, are affiliated or connected with Plaintiffs, or that Plaintiffs' Trademarks and publications are licensed, sponsored, authorized, approved, or sanctioned by Defendants.

110. Defendants' aforesaid acts constitute infringement of Plaintiffs rights in and to the registered Plaintiffs' Trademarks under the Lanham Act, 15 U.S.C. § 1125(a).

111. Defendants' actions have caused or threaten to cause Plaintiffs to have their good will diluted, diminished in value and damaged, and Plaintiffs have actually suffered and will continue to suffer monetary damages, in addition to loss of good will which cannot be compensated with monetary damages.

**COUNT TWO**

**Trademark Infringement – Unfair Competition (15 U.S.C. §1125(a))**

112. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 113 of this First Amended Complaint as if set forth verbatim herein.

113. This cause of action for unfair competition arises under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

114. The actions of Defendants as set forth hereinabove constitute unfair competition in violation of Plaintiffs' rights under the Lanham Act, 15 U.S.C. § 1125(a).

115. Defendants' actions have caused or threaten to cause Plaintiffs to have their good will diluted, diminished in value and damaged, and Plaintiffs have actually suffered and will continue to suffer monetary damages, in addition to loss of good will which cannot be compensated with monetary damages.

**COUNT THREE**

**False Designation Of Origin Under Lanham Act (15 U.S.C. §1125(a))**

116. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 117 of this First Amended Complaint as if set forth verbatim herein.

117. Plaintiffs' rights in and use of Plaintiffs' Trademarks have priority over Defendants' use of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks, as Plaintiffs' usage predates Defendants' usage as to each of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks.

118. Indeed, it is clear from the pattern of Defendants' adoption of the Offending Marks, and their pattern of filing applications for registration with the PTO shortly

after Plaintiffs file applications for registration, that Defendants are intentionally and deliberately seeking to copy and dilute the trademarks of new publications and continuing education programs of Plaintiffs, either to trade off of and profit from the good will of Plaintiffs, or to harm Plaintiffs' reputation and good will by associating Defendants' publications and information with Plaintiffs' Trademarks.

119. Plaintiffs and Defendants are engaged in interstate commerce in the business of selling products and services in similar channels of trade to the same or similar customers.

120. By use of Plaintiffs' Trademarks, as set forth hereinabove, Defendants have affixed, applied, annexed and/or used false designations of origin in connection with the sale, distribution and advertising of its products and services in interstate commerce.

121. By selection and use of Plaintiffs' Trademarks, Defendants have traded on Plaintiffs' good name and goodwill and have confused Plaintiffs' customers.

122. Defendants' use of Plaintiffs' Trademarks has caused and is likely to continue to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendants with Plaintiffs. Moreover, Defendants' actions have caused and are likely to continue to cause confusion, mistake, or deception as to the origin, sponsorship, or approval by Plaintiffs of Defendants' services and products. By use of Plaintiffs' Trademarks, Defendants have falsely and deceptively implied a connection or affiliation with Plaintiffs, and falsely represented Defendants as having authorized or sponsored by Plaintiffs, their publications, products and services.

123. As described above, Plaintiffs, through their counsel, have previously communicated with Defendants and demanded that Defendants cease and desist all use of

Plaintiffs' Trademarks. Despite such notice, Defendants have failed to stop their use. In the face of this notice, Defendants' instead filed the Cancellation Proceeding as set forth hereinabove, and have stubbornly continued their use of Plaintiffs' Trademarks, demonstrating that their actions have been and remain willful and intentional.

124. Unless Defendants are enjoined from continuing the aforementioned infringement and unlawful acts, Plaintiffs will continue to suffer irreparable harm.

125. Pursuant to Section 34 of the Lanham Act, 15 U.S.C. §1116, Plaintiffs are entitled to permanent injunctive relief to prevent further damage to Plaintiffs, and to prohibit Defendants from further, similar violations of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

126. This is an exceptional case under Section 35 of the Lanham Act, 15 U.S.C. §1117(a), thereby entitling Plaintiffs to recover damages of up to three times Defendants' profits, those damages sustained by Plaintiffs, attorneys' fees and the costs of this action.

127. Plaintiffs also request and are entitled to a destruction order pursuant to Section 36 of the Lanham Act, 15 U.S.C. §1118, requiring that Defendants deliver up and destroy all publications, continuing education programs, labels, signs, prints and other materials relating to or incorporating Plaintiffs' Trademarks Plaintiffs' rights in and use of Plaintiffs' Trademarks have priority over Defendants' use of Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks, the Offending Marks, or any other name that is confusingly similar to Plaintiffs' Trademarks.

128. Plaintiffs also request as additional relief that Defendants be ordered to communicate in writing to their advertisers and readers that they are not affiliated or associated

with Plaintiffs, and that their offending publications and programs are being terminated or renamed.

**COUNT FOUR**  
**Declaratory Judgment (28 U.S.C. §2201 et seq.)**

129. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 128 of this First Amended Complaint as if set forth verbatim herein.

130. Plaintiffs have used Plaintiffs' Trademarks in interstate commerce.

131. Plaintiffs' rights in and use of Plaintiffs' Trademarks have priority over Defendants' use of the Offending Marks, as Plaintiffs' usage of Plaintiffs' trademarks predates Defendants' usage of the Offending Marks.

132. As set forth hereinabove, Plaintiffs have spent considerable time, money and effort in creating, developing, advertising, promoting, and marketing its publications under Plaintiffs' Trademarks.

133. Defendants' use of the Offending Marks has caused and is likely to continue to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendants with Plaintiffs. Moreover, Defendant's actions have caused and are likely to continue to cause confusion, mistake, or deception as to the origin, sponsorship, or approval by Plaintiffs' of Defendants' services and products. By use of Plaintiffs' Trademarks, Defendants have falsely and deceptively implied a connection or affiliation with Plaintiffs, and falsely represented Plaintiffs as having authorized or sponsored Defendants and their publications.

134. Defendants have filed a cancellation proceeding before the PTO, seeking to cancel Engage's registration of VALUE-BASED CANCER CARE.

135. As set forth hereinabove, Defendants have incorrectly and improperly



obtained registrations for some Offending Marks, despite prior usage by Plaintiffs of Plaintiffs' Trademarks, and in some cases the prior application for registration by Plaintiffs, which prior usage, registration or application for registration was usually or always known to Defendants. Additionally, Defendants have applied for registration of Plaintiffs' Trademarks, Offending Marks, or other names that are confusingly similar to Plaintiffs' Trademarks, also with knowledge of Plaintiffs' prior usage of and rights to Plaintiffs' Trademarks.

136. Defendants actions have created an actual controversy between Plaintiffs and Defendants.

137. Pursuant to 28 U.S.C. §2201, Plaintiffs are entitled to declaratory judgment that they enjoy exclusive rights to Plaintiffs' Trademarks, and that Defendants use of Plaintiffs' Trademarks, the Offending Marks, or any confusingly similar trade name, constitutes infringement of Plaintiffs' Trademarks.

138. Plaintiffs are further entitled to a declaration that their registration of VALUE-BASED CANCER CARE as well as the remaining Plaintiffs' Trademarks are valid and have priority over any use by Defendants of Plaintiffs' Trademarks, the Offending Marks, or any confusingly similar trade name, constitutes infringement of the Plaintiffs' Trademarks.

139. Plaintiffs are further entitled to a declaration that any registrations on the principal register or the supplemental register by Defendants or anyone acting in concert with them, of the Offending Marks, Plaintiffs' Trademarks, or any confusingly similar trade name, is and shall be cancelled.

140. As to Defendants' specific registrations and applications of Offending Marks, Plaintiffs are entitled to a declaration that:

(a) Defendants' registrations with serial numbers (i) 77542321 for THE AMERICAN JOURNAL OF PHARMACY BENEFITS, (ii) 85315984 for PEERS & PERSPECTIVES, and (iii) 85518548 for INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, be canceled, and the PTO be directed to cancel said registrations; and

(b) Defendants' applications for registration with serial numbers (i) 85505282 and 85429504 for ONCNURSE; (ii) 85451604, 85465504 and 85527307 for VALUE-BASED ONCOLOGY; (iii) 85471063 for ONCOLOGY BUSINESS MANAGEMENT; (iv) 77487344 for ONCOLOGY PHARMACY NEWS; (v) 85465495 and 85470184 for PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY, (vi) 85505127, 85538934, and 85448275 for INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, (vii) 85535419, 85535421, and 85538940 for INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, (viii) 85532814, 85532879 and 85538362 FOR TARGETED THERAPY NEWS, (ix) 85507070 and 85507071 for BIOMARKERS, PATHWAYS, AND TARGETED THERAPIES, and (x) 85507071 for BIOMARKERS, PATHWAYS, TARGETED THERAPIES, be denied and that the PTO be directed to deny said applications for registration.

#### **COUNT FIVE**

#### **New Jersey Unfair Competition (N.J.S.A. § 56:4-1)**

141. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 140 of this First Amended Complaint as if set forth verbatim herein.

142. The Defendants' aforesaid acts are likely to cause injury to the business reputation of Plaintiffs and to dilute the distinctive quality of Plaintiffs' name, brand, trademark,

trade name, trade dress, reputation and/or good will in violation of N.J.S.A. § 56:4-1 et seq., of the State of New Jersey.

143. Plaintiffs have actually suffered and will continue to suffer monetary damages, in addition to loss of good will which cannot be compensated with monetary damages.

**COUNT SIX**  
**Common Law Unfair Competition**

144. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 143 of this First Amended Complaint as if set forth verbatim herein.

145. Defendants' aforesaid acts constitute unfair competition under the common law of the state of New Jersey and under the common law of other states, and accordingly, Plaintiffs are entitled to damages from Defendants.

**COUNT SEVEN**  
**False Advertising (15 U.S.C. § 1125)**

146. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 145 of this First Amended Complaint as if set forth verbatim herein.

147. Intellisphere markets a publication named Oncology & Biotech News. This publication was recently launched by Intellisphere, and has existed only for a short period of months.

148. On the face of its August 2011, edition of Oncology & Biotech News, Intellisphere designated the publication as Volume 5, Number 8.

149. Upon information and belief, this designation is meant to convey that the edition is the eight edition (i.e., August) in the fifth year of publication.

150. As upon information and belief the publication *Oncology & Biotech News* has not been published by Intellisphere or any predecessor for five years, this designation was literally false.

151. Just three months later, on the face of its November 2011, edition of *Oncology & Biotech News*, Intellisphere designated the publication as Volume 25, Number 11.

152. Upon information and belief, this designation is meant to convey that the edition is the eleventh edition (i.e., November) in the twenty-fifth year of publication.

153. As upon information and belief the publication *Oncology & Biotech News* has not been published by Intellisphere or any predecessor for twenty-five years, and because as of August it was being misrepresented as having been published for five years, this designation was literally false.

154. Additionally, at the bottom right hand corner to the November 2011, edition, Intellisphere inserted a gold multi-point star with the number “25” in the center, again seeking to convey that the publication is in its twenty-fifth year.

155. Upon information and belief, the assertion and or implication that *Oncology & Biotech News* is in its twenty-fifth year of publication is literally false.

156. The length of a publication has meaning in the medical publishing field, as a longer successful period of publication conveys that the publication is authoritative and important, and increases readership and advertising acceptance. Thus, Intellisphere seeks to profit from its false statements.

157. The false statements by Intellisphere were made in interstate commerce, and in competition with Plaintiffs.

158. Plaintiffs have been and will be damaged by the false and misleading statements of Intellisphere.

**COUNT EIGHT**  
**Tortious Interference With Prospective Contractual Relationships**

159. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 158 of this First Amended Complaint as if set forth verbatim herein.

160. In or about January 2012, Engage made a written proposal to a customer for a special, unique advertising project in three phases, using the VALUE-BASED CANCER CARE trademark. Phase one was completed, and Phase two was a Digital e-newsletter series.

161. The specifications for the second phase required use of the VALUE-BASED CANCER CARE trademark.

162. The client provided the specifications to Defendants, and Defendants upon information and belief bid on the second phase using their infringing VALUE BASED ONCOLOGY trademark.

163. Defendants underbid Plaintiffs and were awarded the phase two work.

164. Upon information and belief, Defendants could not and would not have been awarded the phase two work had they not used the infringing VALUE BASED ONCOLOGY trademark as part of their bid.

165. Engage had a reasonable probability of being awarded the job, and would have been awarded the job absent Defendants interference.

166. Defendants' interference was not lawful, as they used an infringing trademark, VALUE-BASED ONCOLOGY, in order to win the bid.

167. Engage has been damaged by the actions of Defendants.

### **PRAYER FOR RELIEF**

WHEREFORE; Plaintiffs Engage Health Care Communications, LLC, Green Hill Healthcare Communications, LLC, and Center of Excellence Media, LLC, demand judgment of Defendants Intellisphere, LLC, Michael J. Hennessy & Associates, Inc., Arc Mesa Educators, LLC, and Michael J. Hennessy, as well as John Does 1 to 5 and Jane Does 1 to 5, jointly and severally, as follows.

A. That the Court find that Defendants infringed the rights of Plaintiffs in and to Plaintiffs' Trademarks, and engaged in unfair competition;

B. For a preliminary and permanent injunction restraining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, from doing, abiding, causing or abetting any of the following:

(1) using, directly or indirectly, Plaintiffs' Trademarks or the Offending Marks, or any name or mark similar to Plaintiffs' Trademarks, as a trade name or mark in connection with any business, publication, or advertising;

(2) engaging in any acts or activities directly or indirectly calculated to trade upon the or reputation or goodwill of Plaintiffs;

(3) competing unfairly with Plaintiffs in any manner whatsoever, including any continuation of its false advertising;

C. For a preliminary and permanent injunction affirmatively requiring Defendants, their officers, agents, servants, employees, and all persons in active concert or

participation with them who receive actual notice of the injunction by personal service or otherwise,

(1) to take all necessary and appropriate steps to recall for destruction all publications and materials using Plaintiffs' Trademarks, the Offending Marks or any confusingly similar trade name;

(2) to communicate in writing to their advertisers and readers that they are not affiliated or associated with Plaintiffs, and that their offending publications and programs are being terminated or renamed; and

(3) to provide an affidavit to Plaintiffs within thirty days of the date hereof attesting to their compliance with this paragraph C;

D. For a declaratory judgment pursuant to 28 U.S.C. §2201, declaring that:

(1) Plaintiffs enjoy exclusive rights to Plaintiffs' Trademarks and that Defendants' use of Plaintiffs' Trademarks, the Offending Marks, or any confusingly similar trade name constitutes infringement of Plaintiffs' Trademarks;

(2) Plaintiffs' registration of VALUE-BASED CANCER CARE as well as the remaining Plaintiffs' Trademarks are valid and have priority over any use by Defendants of Plaintiffs' Trademarks, the Offending Marks, or any confusingly similar trade marks or names;

(3) Any registrations on the principal register or the supplemental register by Defendants or anyone acting in concert with them, of the Offending Marks, Plaintiffs' Trademarks, or any confusingly similar trade mark or name, is and shall be cancelled.

(4) Defendants' registrations with serial numbers (i) 77542321 for THE AMERICAN JOURNAL OF PHARMACY BENEFITS, (ii) 85315984 for PEERS &

PERSPECTIVES, and (iii) 85518548 for INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, be canceled, and the PTO be directed to cancel said registrations; and

(5) Defendants' applications for registration with serial numbers (i) 85505282 and 85429504 for ONCNURSE; (ii) 85451604, 85465504 and 85527307 for VALUE-BASED ONCOLOGY; (iii) 85471063 for ONCOLOGY BUSINESS MANAGEMENT; (iv) 77487344 for ONCOLOGY PHARMACY NEWS; (v) 85465495 and 85470184 for PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY, (vi) 85505127, 85538934, and 85448275 for INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER, (vii) 85535419, 85535421, and 85538940 for INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER, (viii) 85532814, 85532879 and 85538362 FOR TARGETED THERAPY NEWS, (ix) 85507070 and 85507071 for BIOMARKERS, PATHWAYS, AND TARGETED THERAPIES, and (x) 85507071 for BIOMARKERS, PATHWAYS, TARGETED THERAPIES, be denied and that the PTO be directed to deny said applications for registration.

E. That Defendants be required to account for and pay over to Plaintiffs all of the profits obtained by Defendants from their acts as complained of herein;

F. That Defendants be directed to account for and pay over to Plaintiffs all damages suffered by Plaintiffs as a result of Defendants' violation of the Lanham Act, New Jersey law against unfair competition, the common law on unfair competition and/or tortious interference with prospective contractual relationships, as complained of herein, and that such damages be trebled because of Defendants' willful actions;



G. That the Court enter an order placing reasonable but effective restrictions on the future transactions and activities of Defendants so as to prevent fraud on the Court and to prevent a reoccurrence of the actions, infringements and activities complained of herein or actions, infringements and activities similar to the actions, infringements and activities complained of herein, and so as to ensure the capacity of Defendants to pay, and the prompt payment of, any judgment entered against Defendants in this action;

H. That Plaintiffs be awarded compensatory damages;

I. That Plaintiffs be awarded punitive damages for the willful and wanton acts of infringement, unfair competition and other unlawful injurious acts of Defendants complained of herein;

J. That Plaintiffs be awarded their reasonable attorneys' fees and the costs of this action;

K. That Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs Engage Healthcare Communications, LLC, Green Hill Healthcare Communications, LLC, and Center of Excellence Media, LLC, demand a jury for all issues so triable.

DATED: Newark, New Jersey  
February 27, 2012

**LECLAIRRYAN**

A Virginia Professional Corporation

*/s/ David W. Phillips, Esq.*

By: \_\_\_\_\_  
David W. Phillips, Esq. (DP2099)  
Attorneys for Plaintiffs Engage Healthcare  
Communications, LLC, Green Hill Healthcare  
Communications, LLC., and Center of  
Excellence Media, LLC  
One Riverfront Plaza  
1037 Raymond Boulevard, Sixteenth Floor  
Newark, New Jersey 07102  
973.491.3600  
fax 973.491.3555

**1**



December 7, 2011

**VIA HAND DELIVERY**

Mr. Michael J. Hennessy  
 Intellisphere, LLC  
 Michael J. Hennessy and Associates, Inc.  
 Building 300  
 666 Plainsboro Road  
 Plainsboro, New Jersey 08536

**Re: Intentional Infringement of Trademarks/Service Marks**

Dear Mr. Hennessy:

We represent Engage Healthcare Communications, LLC, a Delaware limited liability company ("EHC"), and Green Hill Healthcare Communications, LLC, a Delaware limited liability company ("GHC," together with EHC, "my clients"). EHC and GHC are affiliated companies that provide, among other things, journals, magazines, newsletters and advertising services in traditional print and various other electronic means in various fields of health care and medicine, including, but not limited to, the fields of oncology, cancer, pharmacy, formulary, immunology and rheumatology. My clients are the owners of the following registered and/or pending trademarks/service marks:

| <u>Owner</u> | <u>Mark</u>  | <u>Reg./Serial #</u>                              | <u>File/Reg. Date</u>             |
|--------------|--|---|-----------------------------------|
| EHC          | VALUE-BASED CANCER CARE                                    | 3,942,361; 3,927,315;<br>3,918,282; 3,918,281     | 2/2/11; 3/8/11;<br>2/8/11; 2/8/11 |
| EHC          | VALUE-BASED ONCOLOGY CARE                                  | 85/488,889  | 12/6/11                           |
| EHC          | VALUE-BASED CARE IN RHEUMATOLOGY                           | 85/473,377  | 11/15/2011                        |
| EHC          | VALUE-BASED CARE IN IMMUNOLOGY                             | 85/473,373  | 11/15/2011                        |
| EHC          | ONCOLOGY PRACTICE MANAGEMENT                               | 85/263,789; 85/263,802;<br>85/263,808; 85/263,813 | 3/10/2011                         |
| GHC          | JOURNAL OF PERSONALIZED MEDICINE IN<br>HEMATOLOGY/ONCOLOGY | 85/263,888; 85/263,884;<br>85/263,856; 85/263,848 | 3/10/11                           |
| GHC          | PERSONALIZED MEDICINE IN<br>HEMATOLOGY/ONCOLOGY            | 85/263,894; 85/263,881;<br>85/263,862; 85/263,844 | 3/10/11                           |
| GHC          | PERSONALIZED MEDICINE IN ONCOLOGY                          | 85/473,354  | 11/15/11                          |
| GHC          | PERSONALIZED MEDICINE IN IMMUNOLOGY                        | 85/473,286  | 11/15/11                          |
| GHC          | PERSONALIZED MEDICINE IN RHEUMATOLOGY                      | 85/473,317  | 11/17/11                          |
| GHC          | CLINICAL ONCOLOGY PHARMACY                                 | 77/738,718 and 77/295,684                         | 5/16/09* and 10/3/07              |
| GHC          | CLINICAL ONCOLOGY PHARMACY NEWS                            | 77/738,719 and 77/295,689                         | 5/16/09* and 10/3/07              |
| GHC          | ONCOLOGY PHARMACY NEWS                                     | 77/738,721 and 77/295,691                         | 5-16-09* and 10-3-07              |

\*Replaced a 2007 application that was abandoned.

E-mail: brian.petrequin@leclairryan.com  
 Direct Phone: 973.491.3326  
 Direct Fax: 973.491.3490

One Riverfront Plaza, 1037 Raymond Boulevard, Sixteenth Floor  
 Newark, New Jersey 07102  
 Phone: 973.491.3600 \ Fax: 973.491.3555

CALIFORNIA \ CONNECTICUT \ MASSACHUSETTS \ MICHIGAN \ NEW JERSEY \ NEW YORK \ PENNSYLVANIA \ VIRGINIA \ WASHINGTON, D.C.

Paul D. Drobbin \ Attorney in charge, Newark office \ LeClairRyan is a Virginia professional corporation

ATTORNEYS AT LAW \ WWW.LECLAIRRYAN.COM

Mr. Michael J. Hennessy  
 Intellisphere, LLC  
 Michael J. Hennessy and Associates, Inc.  
 December 7, 2011  
 Page 2

Several of the above marks have been used in commerce for several years and others, although they were filed on an intent to use basis, are in use in commerce.

My clients have learned that you, through Intellisphere, LLC, a Delaware limited liability company ("ISL"), and Michael J. Hennessy and Associates, Inc., a New Jersey corporation ("MJHA," together with ISL, collectively, the "Defendants"): (a) are using and/or intend to use various marks in commerce that are confusingly similar to my client's marks; and (b) have filed applications for such marks subsequent to my clients' filings, registrations, use and/or other steps taken to use their marks. The applications filed by Defendants include, but are not limited to, the following:

| <u>Owner</u> | <u>Mark</u>                                     | <u>Reg./Serial #</u>      | <u>File/Reg. Date</u> |
|--------------|---|---------------------------|-----------------------|
| ISL          | VALUE-BASED ONCOLOGY                            | 85/451,604 and 85/465,504 | 10/19/11 and 11/6/11  |
| ISL          | ONCOLOGY BUSINESS MANAGEMENT                    | 85/471,063                | 11/12/11              |
| ISL          | PERSONALIZED MEDICINE IN<br>HEMATOLOGY/ONCOLOGY | 85/470,184 and 85/465,495 | 11/11/11 and 11/6/11  |
| MJHA         | ONCOLOGY PHARMACY NEWS                          | 77/487,344                | 5/30/08               |

It is clear from, among other things: (i) the applications the Defendants have filed, subject to penalty of perjury; (ii) the materials used in commerce; and (iii) statements from customers that are confused between my clients and the Defendants, that the Defendants' marks are identical or confusingly similar to my clients' family of marks and are and/or will be used in connection with goods and services that are confusingly similar to the goods and services my clients provide under their marks. It is also clear that the Defendants currently market and will market such goods and services to consumers, including, but not limited to, advertisers and sponsors, in direct competition with my clients. Finally, Defendants' current use and intended use of the marks blur, tarnish and otherwise dilute the goodwill of my clients' marks.

As you may be aware, a person shall be liable for infringement if, without the consent of the owner of a registered trademark, he/she uses in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark, which is likely to cause confusion, or to cause mistake, or to deceive.

Based on the foregoing, we have concluded that Defendants' marks: (a) infringe, and upon publication of any proposed magazines, journals, articles, newsletters and the like (print or electronic) and provision of related services will further infringe, the trademark/service mark rights of my clients; and (b) otherwise dilute and/or will dilute the goodwill of my clients' marks.

Mr. Michael J. Hennessy  
Intellisphere, LLC  
Michael J. Hennessy and Associates, Inc.  
December 7, 2011  
Page 3

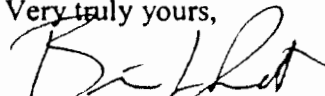
Further, based on your personal knowledge of my clients' prior use of several of their marks and your repeated pattern of submitting identical or confusingly similar filings to the U.S. Patent and Trademark (the "PTO") after my clients have registered marks, or filed for registration of marks, we have concluded that you and the Defendants may be intentionally infringing and diluting my clients' trademark rights.

Accordingly, we demand that you and the Defendants immediately: (i) cease and desist from the use of, and any plans to use, any name, mark or domain name (regardless of the domain name extension) directed toward consumers (which includes, but is not limited to, advertisers and sponsors) containing my clients' marks listed above, or with other words, or any variations thereof, and any confusingly similar marks, names and domain names; and (ii) immediately withdraw the above referenced pending applications from the PTO.

Please contact me no later than Friday, December 16, 2011 to confirm that you and the Defendants will: (a) cease and desist any and all uses and plans to use my clients' marks and names and any related domain names, or any derivations thereof; and (b) withdraw the foregoing pending applications.

Please note that this letter does not constitute a complete statement of my clients' rights and also their rights are reserved without any prejudice to any such rights. Further, we expressly reserve all rights accorded to my clients under federal and state statutory and common law including my clients' right to seek injunctive relief, damages for infringement (including Defendants' profits and statutory damages), attorneys' fees and cancellation of applicable domain names.

Very truly yours,



BRIAN L. PETREQUIN

cc: Shannon Hennessy Pulaski, Esq.  
Mr. John J. Hennessy, II  
Mr. Brian Tyburski  
James P. Anelli, Esq.

**2**

# Oncology

NET GUIDE

BRINGING HEALTHCARE TECHNOLOGY INTO PRACTICE™

## by the Medicine NUMBERS

*How do you explain risk, probability, and other complex concepts to patients?*

Online info often ignores the risks of alternative cancer treatments

New approach to predicting drug responses in cancer patients

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*Always!*

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# Oncology

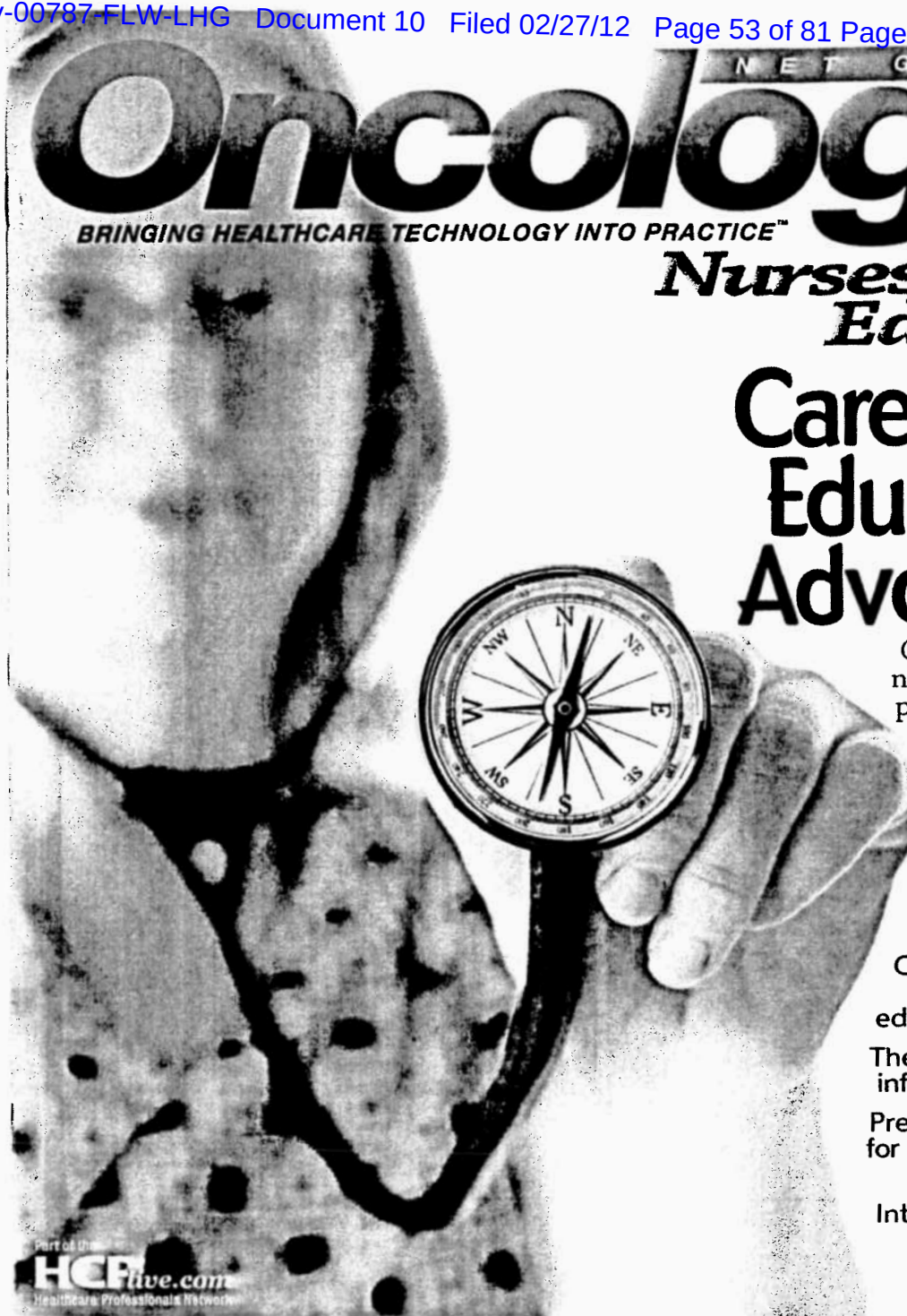
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NET GUIDE

**Nurses  
Edition**

**Caregiver  
Educator  
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Oncology nurse navigators guide patients through the cancer care process



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Cell phones can be powerful educational tools

The nurse's role in informed consent

Precision targeting for prostate cancer radiotherapy

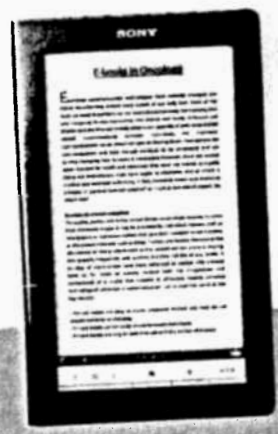
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# OncNurse

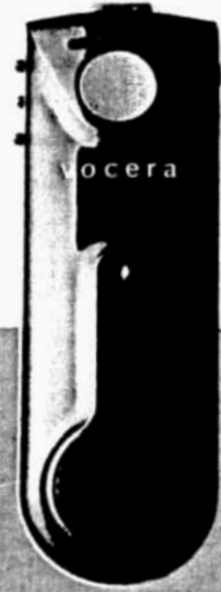
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BRINGING HEALTHCARE TECHNOLOGY INTO PRACTICE™

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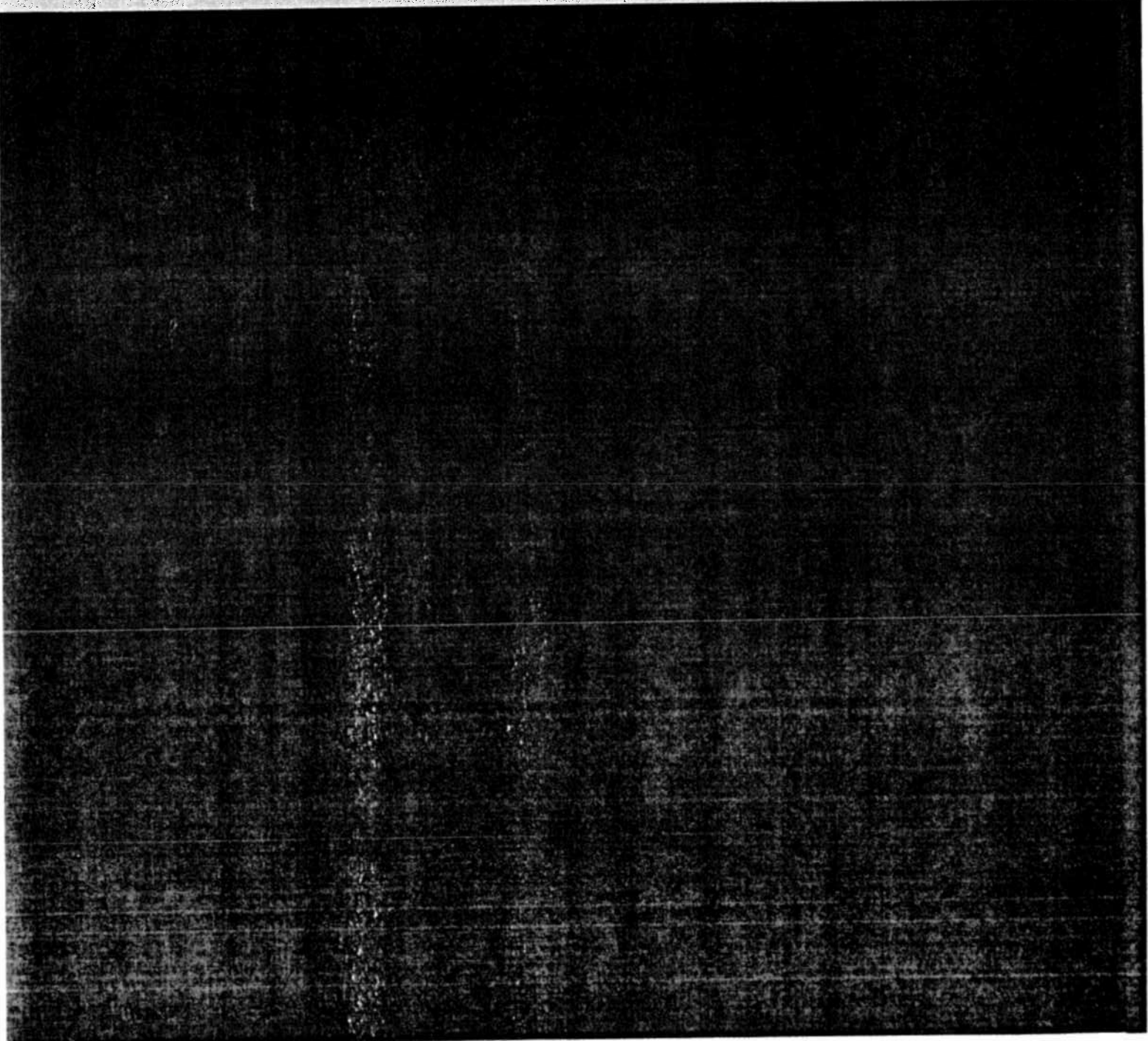


# Value-Based Cancer Care

INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

**AVBCC**  
Association for  
Value-Based Cancer Care

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*Cost and access remain major concerns*

**GPCI, or "GYPSY": Calculated or Covert Cuts to Oncology Reimbursement**

**Dual HER2 Blockade with Pertuzumab Substantially Delays Disease Progression**

*Additional 6-month remission time reported*

**5-Year Analysis of VISTA Confirms Survival Advantage with Bortezomib for Patients with Myeloma**

*Average patient lived 13 months longer with this drug added to the first-line regimen*

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*The economic value of community cancer centers*

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VBCC Perspectives

**Clinical and Economic Impact of Multiple Myeloma**

The clinical and economic impact of multiple myeloma is tremendous. With the onset of novel therapies used in multiple myeloma, as well as the release of new data demonstrating progression-free survival and overall survival, therapy used in multiple myeloma is now on the radar for payers, despite the relatively low incidence of the disease.

**The New Era of Personalized Medicine in Oncology: Novel Biomarkers Ushering in New Approaches to Cancer Therapy**

**The Challenge of Value-Based Care in Oncology: Improving Clinical Outcomes**

**The Potential for Personalized Medicine to Improve the Value of Targeted Therapy**

ASCO Annual Meeting

**Impressive Results with New Drugs for Advanced Prostate Cancer**

The potential of 2 novel agents, alpharadin (radium-223 chloride [R- 223]) and cabozantinib (an inhibitor of tumor growth and metastasis signaling pathways involving MET and vascular endothelial growth factor receptor 2) still in clinical trials, and 1 drug that was recently approved (Abiraterone acetate [Zytiga]), offer new hope to patients with metastatic castrate-resistant prostate cancer (mCRPC)

**The Oncology Drug Pipeline Is Promising**

**Prolonged Treatment with Imatinib for High-Risk GIST Increases Survival, Reduces Recurrence**

**Impressive Results with New Drugs for Advanced Prostate Cancer**

INTRODUCING A NEW RESOURCE CENTER FROM THE PUBLISHERS OF VBCC

**Value-Based Care IN Myeloma**

Developed for Payers, Providers, and the Entire Cancer Care Team

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- Engage Healthcare Communications Announces Launch of "Value-Based Care in Myeloma"
- 10 Steps to Achieve "Meaningful Use"
- Medications Used for the Treatment of Breast Cancer

Recent Issues

October 2011



July 2011



August 2011



## Health Policy

### Medical Staff Members Spend Many Hours Dealing with Insurance Companies

Medical practices in the US spend much more money and time dealing with third-party payers than do Canadian practices, according to a recent report (Morra D, et al. Health Aff. 2011;30:1443-1450).

### US Preventive Services Task Force and the Future of Prostate Cancer Screening

### AACR Urges Congress to Increase Funding for the NIH and NCI

### Accountable Care Organizations: Implications for Cancer-Related Quality Care and Spending

## Value Propositions

### Value of Cost-Effectiveness Analyses for Clinical Practice Outlined by NICE

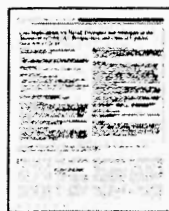
NICE has issued a report explaining the process and value of cost-effectiveness assessments and how these inform recommendations and decisions regarding clinical questions made by the UK National Clinical Guidelines Centre.

### How to Assess the Value of Clinical Interventions

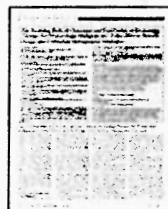
### Diagnosing Melanoma Early May Soon Be Easier: MelaFind Gets Approvable Letter

### PET Imaging an Effective Tool for Tailoring Therapy in Advanced Lung Cancer

## Continuing Education



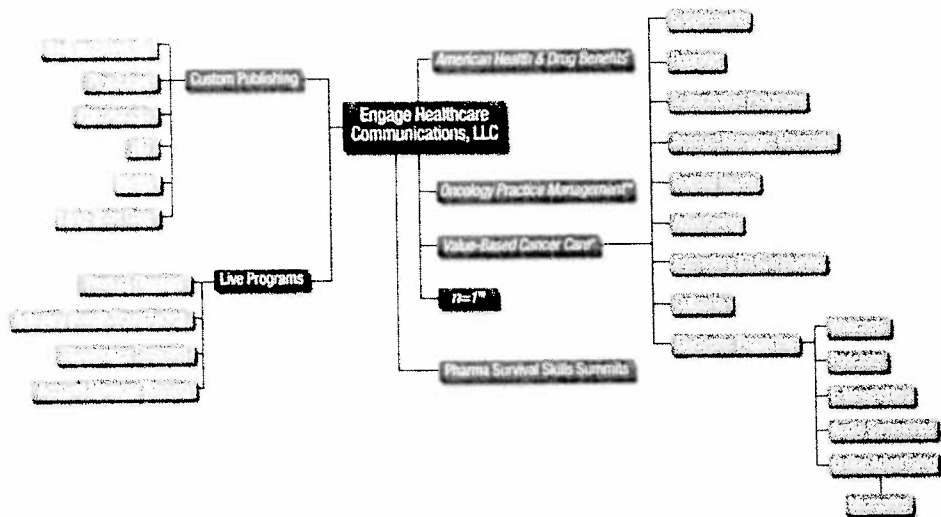
**Cost Implications for Novel Therapies and Strategies in the Treatment of NSCLC: Perspectives and Clinical Updates from ASCO 2011**



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- Empowering payers to make optimal coverage and reimbursement decisions
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### Contact Information

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Engage Healthcare Communications, LLC • 241 Forsgate Drive, Suite 205A • Monroe Twp, NJ 08831  
 www.AHDBonline.com

ABC DocuPac 81311

# Value-Based Cancer Care

INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

www.ValueBasedCancerCare.com



## Integrating Providers, Payers, and the Entire Oncology Team

The Official Publication of the Association for Value-Based Cancer Care

Oncology healthcare remains under pressure to control expenditures while maintaining or improving quality of care and patient outcomes. Oncology spending is growing at an annual rate of 15%, faster than total health spending. The newest and most novel treatments in oncology are among the most costly in medicine.

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- Addresses these issues from multiple stakeholder perspectives, including payers that “write the check” for products; providers that utilize, purchase, and bill for the product; and the entire cancer care team that is involved in advancing patient care and is accountable for cost, quality, and access measures
- The ONLY multiple stakeholder integration model circulating to these audiences
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- Only newspaper allowing industry to articulate their value proposition to multiple stakeholders

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|  |        |
|--|--------|
| <b>CIRCULATION</b>                         |        |
| <b>PROVIDERS</b>                           | 14,206 |
| Medical Oncologists                        |        |
| Hematology Oncologists                     |        |
| Surgical Oncologists                       |        |
| Medical Directors, Cancer Programs         |        |
| Urology Oncologists                        |        |
| Radiation Oncologists                      |        |
| <b>PAYERS</b>                              | 4,731  |
| Commercial payers                          |        |
| Pharmacy benefit managers                  |        |
| Hospitals                                  |        |
| Oncology KOLs                              |        |
| <b>PURCHASERS</b>                          | 424    |
| Medicare/Medicaid                          |        |
| VA/DOD                                     |        |
| Employers                                  |        |
| <b>POLICYMAKERS</b>                        | 716    |
| Senior congressional staff                 |        |
| Food and Drug Administration               |        |
| Agency for Healthcare Research and Quality |        |

|                           |              |             |                |                     |                      |
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|                           |              |             |                |                     | <b>Feature Bonus</b> |
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| February                  | 1/27         | 2/3         | 2/10           | ACCC, NCCN          |                      |
| March                     | 2/24         | 3/2         | 3/9            | AMCP                |                      |
| May                       | 4/27         | 5/4         | 5/11           | ASCO                |                      |
| June                      | 5/25         | 6/1         | 6/8            | Harvey Ad-Q         |                      |
| July                      | 6/29         | 7/6         | 7/13           | AVBCC               |                      |
| September                 | 8/27         | 9/3         | 9/7            |                     |                      |
| October                   | 9/28         | 10/5        | 10/12          |                     |                      |
| November                  | 10/26        | 11/2        | 11/5           | ASH, SABCS          |                      |

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| <b>EDITORIAL</b> |  |
| ▶                | News, highlights from major clinical meetings including ACCC, ASCO, ASH, HOPA, SABCS |
| ▶                | News, highlights from payer meetings: AMCP, AHIP                                     |
| ▶                | Key stakeholder perspectives   |
| ▶                | Original articles addressing issues related to cost and access to cancer care        |
| ▶                | Payer, purchaser, and provider situation analyses and collaboration strategies       |
| ▶                | Coverage of new FDA approvals, NCCN guidelines, health services research, and more   |



**INTEGRATED PACKAGES**

**VBCC INTEGRATED PACKAGE** \$90,000 net

- Print advertisement in 8 consecutive issues
- Web banner advertisement on www.ValueBasedCancerCare.com for 12 months
- Tabletop at the 2012 AVBCC Annual Meeting
- Harvey Research
- Bonus distribution at ACCC, NCCN, ASCO, ASH, AMCP, SABCS, AVBCC
- 2- to 4-page “Stakeholder Perspectives” insert

**ONCOLOGY PRACTICE MANAGEMENT**  
PROVIDER IMPROVEMENTS TO ENHANCE PATIENT CARE

**OPM PACKAGE**  
 + \$30,000

- Print advertisement in 6 consecutive issues of *Oncology Practice Management*
- Web banner advertisement on www.OnePracticeManagement.com for 12 months

**AMERICAN HEALTH & DRUG BENEFITS**  
THE PEDIAN-APPROVED FORUM FOR INSURANCE IN HEALTH CARE

**AHDB PACKAGE**  
 + \$30,000

- Print advertisement in *American Health & Drug Benefits (AHDB)* Special ASCO and ASH issues, AHDB Special Oncology Issue
- Web banner advertisement on www.AHDBonline.com for 12 months

**n=1** PERSONALIZED CARE FOR SPECIFIC PATIENTS

**n=1™ PACKAGE**  
 + \$30,000

- Print advertisement in 4 consecutive issues of n=1
- Web banner advertisement on the publication website for 12 months

The Entire Cancer Care Team Package — \$160,000



# Value-Based Cancer Care

INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

## 2012 RATE CARD

**PUBLISHED BY:**

Engage Healthcare Communications, LLC  
 241 Forsgate Drive, Suite 205A  
 Monroe Twp, NJ 08831  
 Ph: 732.992.1880 Fax: 732.992.1881  
 Official Publication of the Association for  
 Value-Based Cancer Care

Effective Date:  
 January 2012

**ENGAGE HEALTHCARE COMMUNICATIONS, LLC**

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 Maurice@engagehc.com

**Director, Client Services:**  
 Cristopher Pires  
 Ph: 732.992.1896  
 Cris@engagehc.com

**Circulation**

**1. Print 20,077**

|                                    |               |  |            |
|------------------------------------|---------------|--|------------|
| <b>Providers</b>                   | <b>14,206</b> | <b>Purchasers</b>                          | <b>424</b> |
| Medical Oncologists                |               | Medicare/Medicaid                          |            |
| Hematology Oncologists             |               | VA/DOD                                     |            |
| Surgical Oncologists               |               | Employers                                  |            |
| Medical Directors, Cancer Programs |               |  |            |
| Urology Oncologists                |               | <b>Policy makers</b>                       | <b>716</b> |
| Radiation Oncologists              |               | Senior congressional staff                 |            |
|                                    |               | Food and Drug Administration               |            |
| <b>Payers</b>                      | <b>4,731</b>  | Agency for Healthcare Research and Quality |            |
| Commercial payers                  |               |  |            |
| Pharmacy benefit managers          |               |  |            |
| Hospitals                          |               |  |            |
| Oncology KOLs                      |               | E-mail                                     | 22,118     |



**General Information**

**2. Value-Based Cancer Care** distills the clinical, business, and policy forces affecting cancer diagnosis and treatment. The scope of inquiry meets payer and provider information needs to achieve optimal overall resource allocation: guidelines, products, comparative effectiveness research

initiatives, regulatory information, industry news, and meetings summaries. These dynamic cancer care drivers are described in a readable tabloid format, along with their impact on patient outcomes and stakeholder interests: payers, providers, purchasers, distributors, policymakers, and manufacturers. An expert Editorial Board representing this diverse stakeholder universe provides insight into the "Iron Triangle" of value—cost, quality, and access—and partnering opportunities that facilitate progress in the war on cancer.

3. Requirements for Acceptance of Advertising: All advertising is subject to publisher's approval.
4. Policy on Placement of Advertising: Interspersed with articles.
5. Editorial-Advertising Ratio: 55% editorial to 45% advertising.
6. Services: Contact publisher for information regarding belly bands, reprints, or other services.
7. Closing Dates

| Issue     | Space | Film | Inserts |
|-----------|-------|------|---------|
| February  | 1/27  | 2/3  | 2/10    |
| March     | 2/24  | 3/2  | 3/9     |
| May       | 4/27  | 5/4  | 5/11    |
| June      | 5/25  | 6/1  | 6/8     |
| July      | 6/29  | 7/6  | 7/13    |
| September | 8/27  | 9/3  | 9/7     |
| October   | 9/28  | 10/5 | 10/12   |
| November  | 10/26 | 11/2 | 11/5    |

**8. Integrated Packages**

**\$90,000 net**

**Includes:**

- Print Advertisement in 8 consecutive issues
- Banner advertising on [www.ValueBasedCancerCare.com](http://www.ValueBasedCancerCare.com) for 12 months
- Tabletop at the 2012 AVBCC Annual Meeting
- Harvey Research
- Bonus distribution at ACCC, NCCN, ASCO, ASH, AMCP, SABCS, AVBCC
- 2- to 4-page "Stakeholder Perspectives" Insert

9. Black-and-White Rates

| Frequency | King Size | ¾ King Size | Island Size | ½ Island |
|-----------|-----------|-------------|-------------|----------|
| 1x        | \$4,910   | \$4,350     | \$3,710     | \$2,530  |
| 6x        | \$4,810   | \$4,280     | \$3,660     | \$2,470  |
| 12x       | \$4,710   | \$4,220     | \$3,580     | \$2,390  |
| 24x       | \$4,650   | \$4,160     | \$3,530     | \$2,320  |
| 36x       | \$4,580   | \$4,110     | \$3,470     | \$2,270  |
| 48x       | \$4,500   | \$4,040     | \$3,410     | \$2,210  |
| 60x       | \$4,410   | \$3,980     | \$3,340     | \$2,110  |
| 72x       | \$4,370   | \$3,930     | \$3,290     | \$2,010  |
| 96x       | \$4,280   | \$3,860     | \$3,230     | \$1,920  |

10. Color Rates

|                      |         |
|----------------------|---------|
| Three and Four Color | \$2,555 |
| Five Color           | \$4,150 |
| Matched Two Color    | \$2,260 |
| Metallic Color       | \$2,495 |

11. Production Specifications:

**Inserts:**

- Trim size of the publication is 10 7/8" x 13 7/8"
- Maximum finished insert size is 8 1/8" x 11 1/8" (A-Size) or 10 7/8" x 13 7/8" (King) final delivered size plus 1/8" for bleed all around if insert bleeds
- Minimum finished insert = 3 1/2" x 5"
- All bind-in inserts require a 1/8" milling allowance in the gutter
- All bind-in inserts require a 1/8" head trim
- Stock maximum weight 100 lb
- Stock minimum weight 60 lb
- Quantity: 21,125 (4% for spoilage)

12. Shipping: Cartons must be marked **Value-Based Cancer Care**, issue date, and quantity. Ship to: Publishers Press, 100 Frank E. Simon Ave, Shepherdsville, KY 40165

13. Advertising:

- Final trim size must be 10 7/8" x 13 7/8"
- Live matter MUST be kept 1/4" inside the final trim all around. Thus, the maximum live matter area for a full-page ad is 10 3/8" x 13 1/8"
- Bleeds must extend 1/8" past trim lines all around. Thus, bleeds on all four sides mean that the bleeds would extend out to 11 1/8" x 14 1/8"
- A-size ad is 7 1/4" x 9 3/4"

14. Digital Specifications: **High-resolution PDF/X1a files.**

Desktop applications (QuarkXPress and others) must be saved as PostScript (Print to File) and converted to PDF via Acrobat Distiller using the PDF/X1a settings. Only one ad per file. All of the high-resolution images and fonts must be included when the PostScript file is saved.

**Media: CD-ROM or e-mailed**

E-mails must include name of advertiser, publication title, and month of insertion.

Media must include the following:

- Publication name and issue date
- Advertiser, product, and agency name
- Contact name and phone number
- Color proofs are preferred
- All digital data must conform to SWOP specifications (CMYK or grayscale, no RGB colors and no spot colors accepted unless noted on insertion order)

15. Paper Stock: 100 lb cover; 70 lb text  
Pubgloss 87

16. Type of Binding: Saddle stitch

17. Addresses: **Contracts, insertion orders:**

*Value-Based Cancer Care*  
241 Forsgate Drive, Suite 205A  
Monroe Twp, NJ 08831  
Attn: Advertising Coordinator

**Digital files and color proofs:**  
*Value-Based Cancer Care*  
241 Forsgate Drive, Suite 205A  
Monroe Twp, NJ 08831  
Attn: Production Manager

**FTP:**

<http://upload.engagehc.com>  
No login or password required to upload files.

**Inserts:** Publishers Press

100 Frank E. Simon Ave  
Shepherdsville, KY 40165  
Attn: Paula Fountain

All shipments must include packing slip noting count received, publication title, and month of insertion.

18. Engage Healthcare holds both the advertiser and its advertising agency responsible for paying all authorized advertising inserted in or attached to Engage. All overdue payments will be re-invoiced directly to the advertiser, who will be held fully responsible for payment.
19. Payment is due within 30 days of invoice date. Agency commission may be disallowed on overdue invoices. In the event the account is placed in collection, customer agrees to pay the publisher for all collection costs and/or attorney's fees incurred. Customer also agrees to pay finance charges on the unpaid balance of 1.5% per month.
20. An ad may not be cancelled after the ad space closing.
21. Under no circumstances shall the publisher be liable for any indirect, special, or consequential damages of any advertiser. Under no circumstances shall the publisher's direct or indirect liability to any advertiser or advertising agency exceed the invoiced cost of the advertisement.

[www.ValueBasedCancerCare.com](http://www.ValueBasedCancerCare.com)

# ONLINE ADVERTISING

## www.ValueBasedCancerCare.com

### Standard Banners

| Type                             | Dimensions             | Size | Loop                   | Monthly Net Cost |
|----------------------------------|------------------------|------|------------------------|------------------|
| Leaderboard                      | 728 x 90               | 60kB | 3 Loops per 45 seconds | \$2,000          |
| <b>Above the Fold</b>            |                        |      |                        |                  |
| Half Page or<br>Medium Rectangle | 300 x 600<br>300 x 250 | 60kB | 3 Loops per 45 seconds | \$2,500          |
| <b>Below the Fold</b>            |                        |      |                        |                  |
| Medium Rectangle                 | 300 x 250              | 60kB | 3 Loops per 45 seconds | \$1,500          |

**Leaderboard 728 x 90**

The screenshot shows the homepage of Value-Based Cancer Care (VBCC). The website features a navigation menu with links for Home, News, FDA Updates, VBCC Perspectives, Issue Archive, Education, and Editorial Board. The main content area is divided into sections for Current Issue, Featured Articles, VBCC Perspectives, and ASCO Annual Meeting. Two large rectangular boxes are overlaid on the right side of the page, indicating ad placement areas: a 'Half Page 300 x 600' box and a 'Medium Rectangle 300 x 250' box.

#### REQUIRED FILES

.JPG/.GIF/Rich Media, 3rd Party Tag, Click-through URL. If using DART please send redirect tags. All Rich Media is accepted; user-enabled audio streams and only 3rd party serving is allowed.

This ad will appear on all pages.

#### CHANGES AND CANCELLATIONS

All creative materials must be received at least 5 business days prior to the launch of the campaign. If creative is delayed, Engage Healthcare has the right to extend the campaign end date by the same number of days creative was delayed.

#### REJECTING CREATIVE

Engage Healthcare reserves the right to approve all ad creative that will run on AHDBonline.com. Engage Healthcare reserves the right to reject any creative that does not follow Engage Healthcare's specs.

# E-MAIL ADVERTISING CURRENTLY DELIVERED TO 22,118 SUBSCRIBERS


## e-TOC and e-Newsletter Banners

| Type                       | Dimensions | Size | Cost    |
|----------------------------|------------|------|---------|
| Wide Skyscraper (side bar) | 160 x 600  | 45kB | \$3,000 |
| Banner (top)               | 468 x 60   | 45kB | \$2,500 |
| Banner (within content)    | 468 x 60   | 45kB | \$2,000 |

**REQUIRED FILES**  
.JPG/.GIF/.PNG only.

### CUSTOM OPPORTUNITIES

- Digital Edition Sponsorship
- Mobile Site/App Sponsorship
- Video Series Sponsorship
- Payers' Perspectives Blog Sponsorship




**Value-Based Cancer Care**  
INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

---

**Banner 468 x 60**

**VBCC PERSPECTIVE**

The Challenge of Value-Based Care in Oncology: Improving Clinical Outcomes  
*Sponsored by Matthew Mitchell, PharmD, MBA*  
Manager, Pharmacy Services, SelectHealth, Salt Lake City, UT



**ASCO ANNUAL MEETING**

- Dramatic Progress in FmT Against Advanced Metastatic
- Efficacy and Reduced First Invasive Breast Cancer by 89%
- Oral Oncology Advances by Top 10 Patients with Cancer
- Evidence Base Lacking for Almost 1 of 3 Metastatic Colon Cancer Regimens
- Patients' Comfort Level with Discussion of Treatment Costs Decreases That of Oncologists
- The Big Cost Drivers in End-of-Life Support Care Are Not the Ones You'd Think

**VALUE PROPOSITIONS**


- Primary Care: Apathetic Tests for Experimental Cancer Therapies
- Immunology: Discovery 2 Molecules involved in Cancer Metastasis
- Prognostic Cancer Network Adds Web-Based Treatment Plans to Android, iPhone, and Tablets

Share with Colleague

View Digital Edition

**Wide Skyscraper**  
**160 x 600**

Now Available



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**Banner 468 x 60**

- Accurate Care Organization Indicators for Oncologists  
**Rhonda Greenapple, MSPH**
- Humana's First Whole-Genome Cost Savings with the 41 Gene Requirement Score Ready

**FDA UPDATES**

- Sildenafil First Drug Approval for Metastatic Thyroid Cancer
- FDA Approves Abiraterone Approval for Advanced Prostate Cancer
- New Indication for Erythropoiesis-Stimulating Protein in Cancer
- Sildenafil First Drug Approval for Metastatic Thyroid Cancer
- New Formulation of Lipid Emulsion Approved

**FROM THE LITERATURE**

- 2011 Blue Book Reviews for 21 Year Reviews Metastatic Melanoma
- 2011 Blue Book Reviews for 21 Year Reviews Metastatic Melanoma
- 2011 Blue Book Reviews for 21 Year Reviews Metastatic Melanoma

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# Value-Based Cancer Care

INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

**AVBCC**  
Association for  
Value-Based Cancer Care

- [HOME](#)
- [NEWS](#)
- [FDA UPDATES](#)
- [PERSPECTIVES](#)
- [ISSUE ARCHIVE](#)
- [EDUCATION](#)
- [EDITORIAL BOARD](#)
- [SUBSCRIBE](#)



## Author Bios

**Lee Goldberg, Senior Manager, and Tracey Ryan, Senior Analyst, The Zitter Group**

### ARTICLES BY THIS AUTHOR:

#### The Pace of Change in Oncology Management Greater than the Sum of Its Parts

Innovative medications target the molecular structure of cancer cells with increasing precision, resulting in reduced adverse effects. Novel therapies enlist the patients' own immune systems to defeat cancer. At the same time, as personalized medicine comes of age, improved diagnostic tests match the right patients to these new treatments. The accelerating pace of these developments is improving expectations of patient survivability and the total number of survivors.

By: Lee Goldberg, Senior Manager, and Tracey Ryan, Senior Analyst, The Zitter Group

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SECOND ANNUAL ASSOCIATION FOR VALUE-BASED CANCER CARE  
CONFERENCE STRATEGIES FOR OPTIMIZING VALUE IN  
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### Recent Blog Posts

**Noise-Canceling Informatics: A New Framework for Personalized Medicine**  
By Ron Ribitzky, MD | January 11, 2012

INTRODUCING A NEW RESOURCE CENTER  
FROM THE PUBLISHERS OF VBCC

**Value-Based Care  
IN Myeloma**

Developed for Payers, Providers,  
and the Entire Cancer Care Team

[CLICK HERE](#)

### Top 5 Most Read Articles

- Introducing THE LYNX GROUP™: A Global, Strategic Alliance Providing Pivotal and Contemporary Medical Information and Education for All Stakeholders in Healthcare
- Engage Healthcare Communications Announces Launch of "Value-Based Care in Myeloma"
- 10 Steps to Achieve "Meaningful Use"
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INTEGRATING PROVIDERS, PAYERS, AND THE ENTIRE ONCOLOGY TEAM

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# AVBCC

Association for  
Value-Based Cancer Care

HOME

NEWS

FDA UPDATES

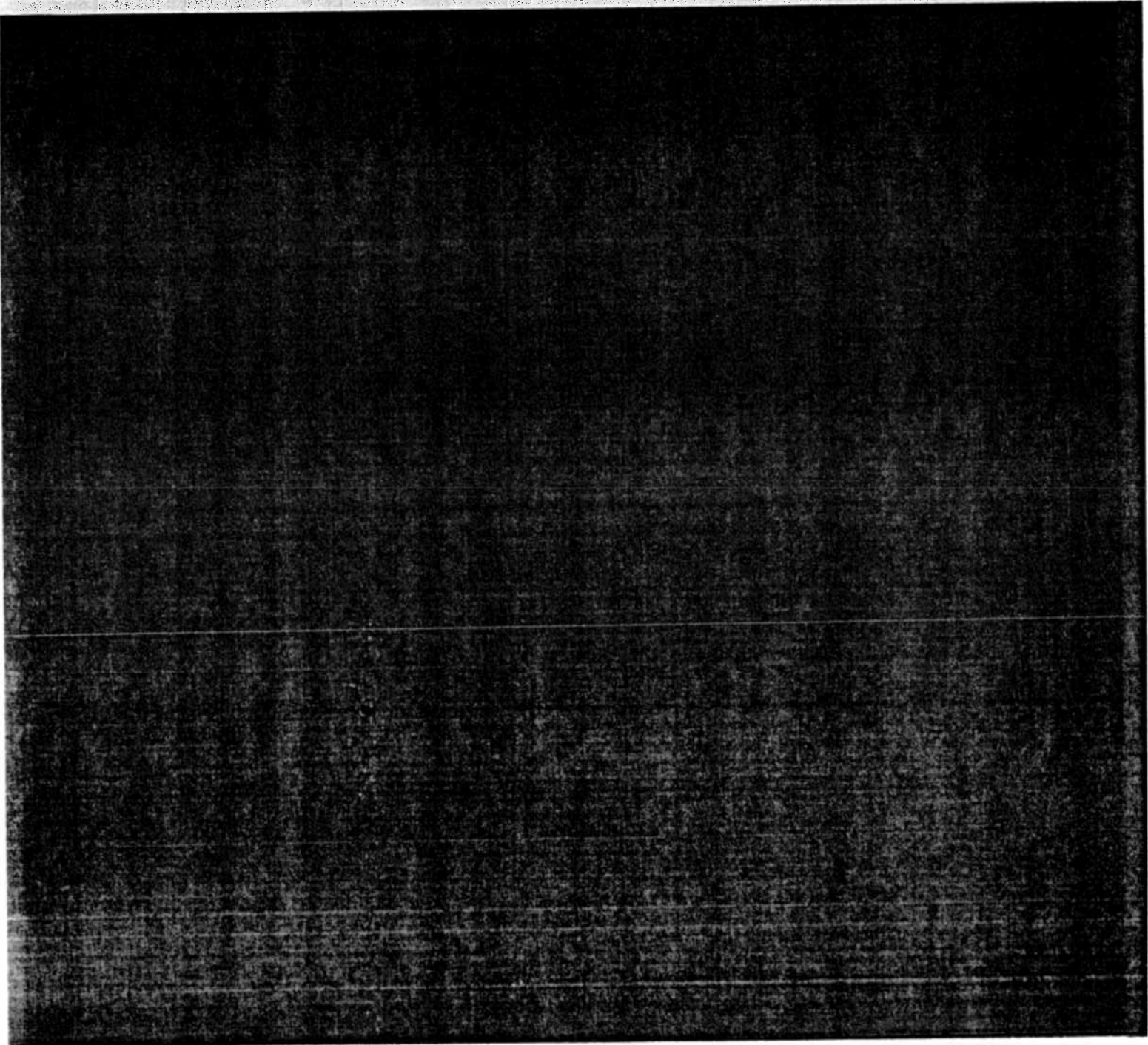
PERSPECTIVES

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## Value-Based Cancer Care

Submitted by Website Admin on Thu, 02/02/2012 - 6:47pm

### News and Announcements

- Engage Healthcare Communications Announces Launch of "Value-Based Care in Myeloma™"
- Introducing THE LYNX GROUP™: A Global, Strategic Alliance Providing Pivotal and Contemporary Medical Information and Education for All Stakeholders in Healthcare

### Mission Statement

Value-Based Cancer Care provides a forum for payers, providers, and the entire oncology team to consider the cost-value issues particular to cancer treatments. This unique focus is achieved through news coverage from major hematology/oncology meetings and the cancer literature, supplemented with commentaries and perspectives from those involved in evaluating therapies, treating patients, and paying for care.

### A Letter to Our Readers

Welcome to this, the first issue of *Value-Based Cancer Care*! What sort of publication is this, why have we decided to create it, and what can you expect to see as you review this and future issues?

The title expresses it clearly and succinctly. This publication will focus relentlessly on matters of value in cancer through news reporting, feature writing, and commentary from clinicians, payers, and policymakers. Many publications already cover policy, pharmacoeconomics, and/or clinical medicine as part of their editorial focus, so how is *Value-Based Cancer Care* different?

Value is often defined by the equation  $\text{value} = \text{quality} / \text{cost}$ , and in this era of steadily increasing costs—of medications, of new technologies, and of health insurance premiums—a careful and consistent look at the benefits of new therapies and their costs is, we believe, helpful to all stakeholders.

With the cost of bringing a new medication to the market now past the \$1-billion mark, it is not surprising that drug therapies cost more than ever before. And with many cancer medications being developed for particular subsets of patients, or being found efficacious only in smaller, genotypically similar groups, the day of the universally applicable cancer drug may well be over.

In addition, the results offered by some of these drugs, often measured in weeks or months of additional life, have led some to raise an issue previously unspeakable when it came to medical treatment—is it worth it?

That difficult question, and more general conversations involving access, costs, and outcomes are what *Value-Based Cancer Care* will address by drawing together coverage of medicine, policy, economics, business practice, and regulatory matters. Comparative effectiveness research, which addresses value in a very basic way and that will become more familiar as healthcare reform kicks in, will also be covered in this publication. And the real-world implications and application of these developments will be considered in analytical, insightful perspectives provided by our editorial board.

That editorial board reflects the diversity of our readership, with members drawn from the spectrum of cancer care payers, purchasers, policymakers, and providers. Our panel of experts possesses a broad background in clinical medicine, benefit design, law, pharmacy, and practice management, allowing for the topical analysis from a number of perspectives that will be a cornerstone of the publication. We will continue to grow this board as the publication matures, but please look at the facing page to see our present roster of experts.

This first issue contains coverage from a number of recent meetings at which the economics of cancer care were addressed; clearly this is a topic on the minds of many right now. We envision *Value-Based Cancer Care* as a place where timely coverage and discussion of such important topics will occur regularly, and where all parties in today's cancer care will find not just news but insight.

We hope this is the case for you, and we welcome your thoughts on this publication.

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 SECOND ANNUAL ASSOCIATION FOR VALUE-BASED CANCER CARE  
 CONFERENCE STRATEGIES FOR OPTIMIZING VALUE IN  
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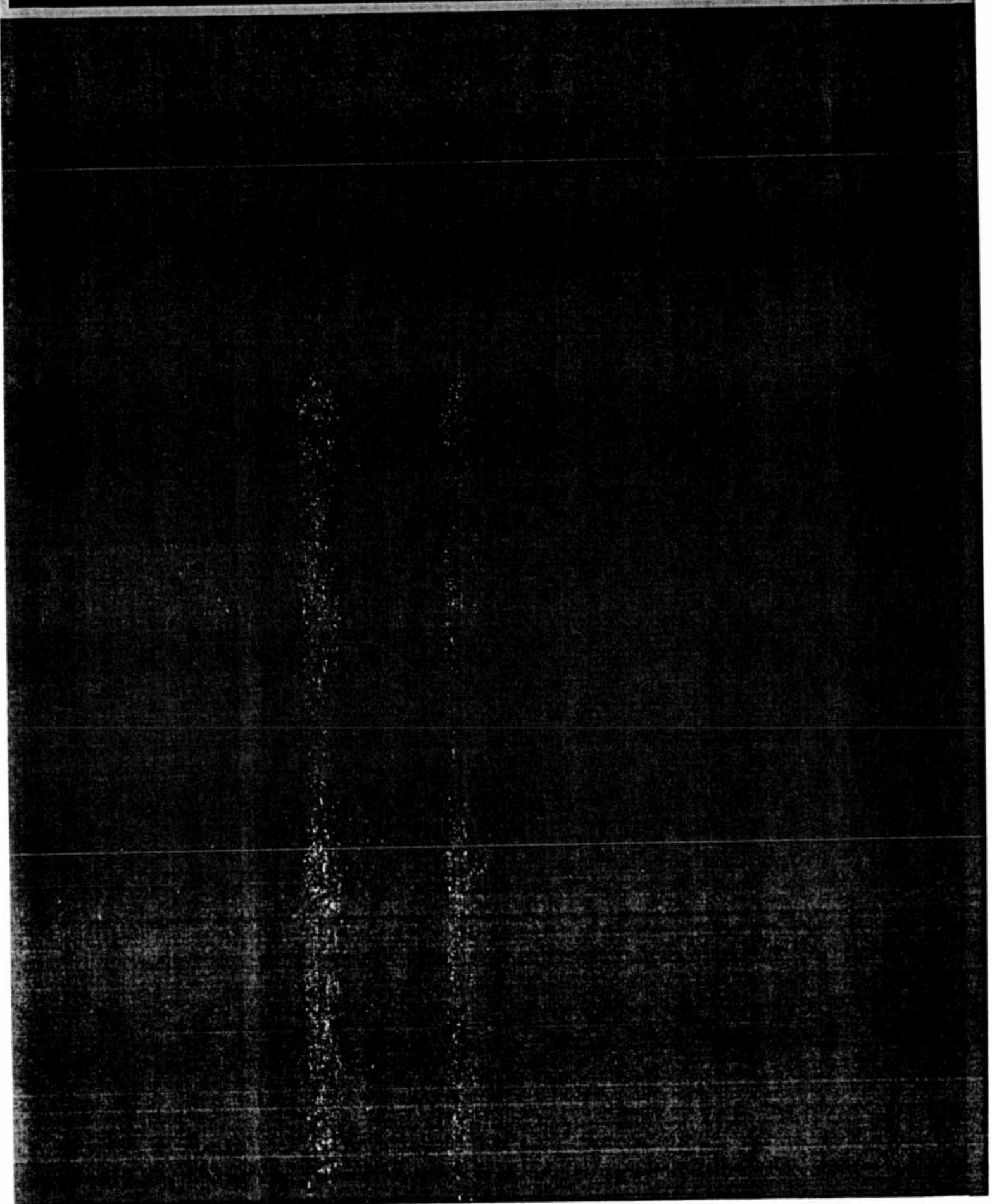
INTRODUCING A NEW RESOURCE CENTER  
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**4**

Reaching the Key Decision Makers  
through

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THE AMERICAN JOURNAL OF  
**MANAGED CARE**

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**Value-Based**



## **EDITORIAL MISSION**

***“To present policy makers, payers, and providers with the latest clinical and pharmacoeconomic information to enable value-based decision-making to improve efficiency and outcomes in cancer care.”***



# CIRCULATION

19,384 (controlled)

## Providers – 12,000

|                   |       |
|-------------------|-------|
| Hem/Onc           | 5,316 |
| Med/Onc           | 3,966 |
| Onc Pharmacists   | 619   |
| Onc Practice Mgrs | 2,100 |

## Payers - 7,384

### HMO/PPO

|                          |       |
|--------------------------|-------|
| Medical Directors        | 1,185 |
| Medicaid Directors       | 538   |
| Formulary Directors      | 513   |
| Pharmacy Directors       | 1,074 |
| Utilization Review Mgrs. | 271   |
| Quality Assurance Dir.   | 1,357 |

### GOV'T.

|                   |       |
|-------------------|-------|
| Medical Directors | 1,716 |
|-------------------|-------|

### EMPLOYERS

|                   |     |
|-------------------|-----|
| Benefits Managers | 730 |
|-------------------|-----|

THE AMERICAN JOURNAL OF  
MANAGED CARE

# Value-Based Oncology™

UNDERSTANDING THE DIVERGENT PERSPECTIVES OF PAYERS AND PROVIDERS TO IMPROVE  
EFFICIENCY AND OUTCOMES IN CANCER CARE

Volume 1  
Number 2  
November 2011

# EDITORIAL EXCELLENCE

## Clinical Pathways:

“A look at best practices in oncology pathways in the nation’s top cancer institutes”

The Duke University Health System

### A Vehicle for Hope

The Duke Cancer Institute by Laura Bruhl



FOR MORE THAN 75 YEARS, the cancer program of Duke University Medical Center in Durham, North Carolina, has been at the forefront of research and patient care, with more than 800 researchers, physicians, and clinical staff serving nearly 6000 new patients each year from the United States and abroad. In 1973, Duke's cancer program was designated as one of the nation's 8 original comprehensive cancer centers by the National Cancer Institute (NCI), and is today one of only six such centers nationwide ranked as one of the top cancer hospitals in the United States for nearly 20 years by US News & World Report. Duke remains the best cancer (clinical and academic) team across the country and around the world, and maintains clinical and research partnerships throughout the United States, as well as in India, China, and Singapore.

These facilities with Duke's stellar reputation are well aware of the accolades, honors, and achievements credited to its cancer researchers, clinicians, and administrators, but few institutions have captured the kind of endorsement being generated by the November 2011 formation of the new Duke Cancer Institute (DCI). The DCI brings together clinical researchers, and education from across Duke's hospital, medical school, and health system under a single administrative umbrella. This is how, Duke's DCI stands apart in a crowded market. A new cancer center building is scheduled to open in February 2012, and a new leader, Michael S. Friedman, MD, PhD, was named to the institution's helm in May.

Already, DCI promises to have a profound impact on both cancer research and patient care. It provides unprecedented and unique opportunities for treatment, between Duke's scientists and caregivers, the recognition that in some cases DCI will provide second thoughts from health care providers and to optimize all aspects of patient care. The most important of its goals is to provide patients with a first thought but equally critical tool in the battle against their cancer: hope. The Preston Robert Tisch Brain Tumor Center and the Duke Prostatae Center (DPC) were so 2 prime examples.

Using the words "brain cancer" and "hope" in the same sentence may seem contradictory, but neuro-oncologist James S. Friedman, MD, co-director of the Preston Robert Tisch Brain Tumor Center, does so routinely and authoritatively. "Everything we do for our patients is driven to help them be able to return their hope," he said, "and the formation of the new institute is helping to translate hope from nebulous concept to concrete reality."

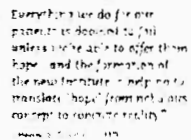
Established in 1997 as one of the nation's first brain tumor research and clinical programs, the DCI program was renamed the Preston Robert Tisch Brain Tumor Center in 2005 in recognition of a \$30 million gift from the Tisch family. Today, the Center is one of the world's leading adult and pediatric neuro-oncology centers, and has received the NCI's highest rating of "outstanding" for each of the last 5 years.

The Center's 200-plus scientific physicians, nurses, and other staff have at their disposal the resources of a leading research hub in the cutting edge of translational research, providing them with the context to offer patients the latest treatment advances in

and to access to a range of clinical trials, including those concerning the efficacy of new cell therapy and cancer vaccines. Equally important is the Center's recognition for providing the comprehensive support needed by patients and their families living with brain and spinal cancers.

"The philosophy of hope has always been the foundation for the care we provide at the Center," said Friedman, who counsels brain and spinal cancer patients and their families living with brain and spinal cancers. "The DCI means hope with an emphasis on hope and research, but also with the goal of providing a more holistic and coordinated approach to patient care. We will continue to work with our colleagues in the DCI to ensure that we are providing the best care possible to our patients."

Michael S. Friedman, MD, PhD, is the co-director of the Preston Robert Tisch Brain Tumor Center and the Duke Prostatae Center (DPC). He is a leading expert in the field of brain tumor research and clinical care. He has published numerous papers in the field of brain tumor research and clinical care. He is also a member of the American Society of Neuro-Oncology and the American Society of Clinical Oncology.



Every time we do for our patients is driven to help them be able to return their hope, and the formation of the new institute is helping to translate hope from nebulous concept to concrete reality."

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THE AMERICAN JOURNAL OF  
MANAGED CARE

# Value-Based Oncology™

UNDERSTANDING THE DIVERGENT PERSPECTIVES OF PAYERS AND PROVIDERS TO IMPROVE  
EFFICIENCY AND OUTCOMES IN CANCER CARE

Volume 1  
Number 1  
November 2011

# EDITORIAL EXCELLENCE

## Clinical Pipeline:

"In-depth overviews of clinical pipelines by tumor type and the impact of how these potential new therapies will shape the oncology landscape"

## Melanoma

### Melanoma Pipeline: Targeted Products Yield Most Promising Results

Jennifer Klein, PhD, Stanton R. Mehr, and Manjiv Patel Zimmerman, BS Pharm

Melanoma is one of the most frequent cancers, with more than 2 million Americans diagnosed for skin cancer annually. More than 80 million people in the United States have skin on the surface of the skin and therefore are at risk for melanoma, skin cancer. The incidence of melanoma has increased in the United States, and other high-income countries, and is expected to continue to rise. The incidence of melanoma is expected to rise because of the increase in the number of people who are exposed to ultraviolet radiation (UVR) from the sun and tanning beds. The incidence of melanoma is also expected to rise because of the increase in the number of people who are exposed to UVR from the sun and tanning beds.

**Targeted Therapy** The most recent phase III clinical trial in melanoma was the BRAF inhibitor vemurafenib (Zincor BioPharma). This drug was approved in June 2011 for the treatment of melanoma with a BRAF V600E mutation. The drug was approved for the treatment of melanoma with a BRAF V600E mutation because of the results of a phase III clinical trial that showed that vemurafenib significantly improved overall survival compared with placebo in patients with melanoma with a BRAF V600E mutation. The drug was approved for the treatment of melanoma with a BRAF V600E mutation because of the results of a phase III clinical trial that showed that vemurafenib significantly improved overall survival compared with placebo in patients with melanoma with a BRAF V600E mutation.

Other drugs in development include trametinib (Genentech), which is a MEK inhibitor, and ipilimumab (Bristol-Myers Squibb), which is a CTLA-4 inhibitor. These drugs are being tested in phase III clinical trials for the treatment of melanoma.

**Immunotherapy** Immunotherapy is a type of cancer treatment that uses the body's immune system to fight cancer. Immunotherapy can be used to treat melanoma. Immunotherapy can be used to treat melanoma because the immune system can recognize and kill cancer cells. Immunotherapy can be used to treat melanoma because the immune system can recognize and kill cancer cells. Immunotherapy can be used to treat melanoma because the immune system can recognize and kill cancer cells.

**Adjuvant Therapy** Adjuvant therapy is a type of cancer treatment that is given after the primary treatment. Adjuvant therapy can be used to treat melanoma. Adjuvant therapy can be used to treat melanoma because it can help to prevent the cancer from coming back. Adjuvant therapy can be used to treat melanoma because it can help to prevent the cancer from coming back. Adjuvant therapy can be used to treat melanoma because it can help to prevent the cancer from coming back.

**Metastatic Disease** Metastatic disease is a type of cancer that has spread to other parts of the body. Metastatic disease can be treated with a variety of different treatments. Metastatic disease can be treated with a variety of different treatments. Metastatic disease can be treated with a variety of different treatments.

### The Economic Burden of Melanoma

In 2011, over 70,000 Americans are expected to be diagnosed with melanoma, and nearly 20,000 will die of the disease. Melanoma is the most common form of skin cancer, and it is the leading cause of cancer death among young adults. The economic burden of melanoma is substantial. One recent study estimated the annual direct costs of caring for melanoma patients in the United States who were at least 45 years of age, reporting the annual cost to be \$2.4 billion. However, this study only underestimates the actual economic burden of the disease because (1) only direct costs were measured (indirect costs were ignored), and (2) the patient population was restricted to those 45 years of age, which accounts for only 4% of the total melanoma patient population. A study published in 2008 used a comprehensive model of melanoma-related expenses to describe the total cost of the disease, including the cost of diagnostic, medical, and hospital expenditures. Using this model to quantify the average melanoma healthcare costs per person for the 5 years after melanoma diagnosis at each metastatic stage, the authors reported that total healthcare costs increase significantly with the stage of disease. They demonstrated that, for the earliest stage disease (stage I), total healthcare costs were only \$1,886. This increased substantially with each later stage of disease. For example, patients with stage II disease incurred costs of \$13,115, and those with stage III disease had 5-year costs totaling \$27,620. For patients with stage IV disease, however, average healthcare costs in the 5-year post-diagnosis period increased nearly 40 times to over \$150,000. Not surprisingly, the relative distribution of costs among healthcare intermediaries varied significantly by stage. Patients who die after melanoma spend the bulk of their expenditures on treatment of the primary tumor (75%) and surveillance care (17%). In contrast, patients with metastatic melanoma spend only 3% of their total healthcare costs on the treatment of the primary tumor and nothing on surveillance, but they spend 75% on workup and treatment for metastatic disease and 9% on terminal care costs. When costs were divided by metastatic stage, the treatment of a metastatic tumor was by far the most expensive activity, costing \$146,294. However, adjusted charges with interrelationships for high-risk melanoma were also quite expensive, with a cost of \$23,955. Among the most expensive

single-year expenditures were radiation therapy (\$2,939), surgical removal of a skin tumor (\$2,739), and hospitalization for chemotherapy (\$2,426, \$3,880 per day). Another way to measure economic burden of a disease is to measure productivity loss as a result of a disease. The Centers for Disease Control and Prevention (CDC) has published a study quantifying the economic burden of melanoma. The authors reported that, on average, a person with melanoma loses 22.3 years of potential life as a result of the disease, which is about 4 years more than the life expectancy of a person with a melanoma. The average melanoma patient will experience a lifetime earnings loss of \$413,173 caused by his or her cancer diagnosis. This translates into an estimated annual US productivity loss due to melanoma of \$2.5 billion to \$2.6 billion. Productivity losses were not limited solely to direct expenditures, however, being productivity losses per person were valued, among other things, at \$409,218 and highest among females (\$445,799). There were also gender differences in work status. Having lower per person productivity losses (\$409,218) than men (\$445,799). Taken together, these data demonstrate that melanoma is not only a physically disabling disease, but that it can also place a heavy burden both on the patients and society at large.

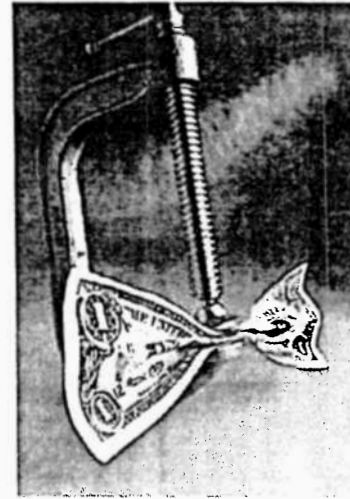
1. American Cancer Society, Cancer Facts & Figures 2011, Atlanta, GA: American Cancer Society; 2011. 2. Seidman AM, Penner AB, Winkler L, Collier SD, Clark SC. Economic burden of melanoma in the elderly population: population-based analysis of the Surveillance Epidemiology and End Results (SEER) 99 cancer registry. *J Am Geriatr Soc*. 2006;54(10):1452-1459. 3. National Cancer Institute. SEER and the cancer statistics program. <http://www.cancer.gov/> 4. <http://www.cdc.gov/> 5. <http://www.bls.gov/> 6. <http://www.bls.gov/> 7. <http://www.bls.gov/> 8. <http://www.bls.gov/> 9. <http://www.bls.gov/> 10. <http://www.bls.gov/> 11. <http://www.bls.gov/> 12. <http://www.bls.gov/> 13. <http://www.bls.gov/> 14. <http://www.bls.gov/> 15. <http://www.bls.gov/> 16. <http://www.bls.gov/> 17. <http://www.bls.gov/> 18. <http://www.bls.gov/> 19. <http://www.bls.gov/> 20. <http://www.bls.gov/> 21. <http://www.bls.gov/> 22. <http://www.bls.gov/> 23. <http://www.bls.gov/> 24. <http://www.bls.gov/> 25. <http://www.bls.gov/> 26. <http://www.bls.gov/> 27. <http://www.bls.gov/> 28. <http://www.bls.gov/> 29. <http://www.bls.gov/> 30. <http://www.bls.gov/> 31. <http://www.bls.gov/> 32. <http://www.bls.gov/> 33. <http://www.bls.gov/> 34. <http://www.bls.gov/> 35. <http://www.bls.gov/> 36. <http://www.bls.gov/> 37. <http://www.bls.gov/> 38. <http://www.bls.gov/> 39. <http://www.bls.gov/> 40. 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# EDITORIAL EXCELLENCE

## Payer Panel Discussion:

“Experts in access and reimbursement will provide in-depth analysis and commentary on the most pressing issues affecting the oncology segment in managed care”

Payer Management of Oncology Gets Serious  
Michael Snyder, Lee Goldberg, and Tracy Ryan



**About the Authors**  
Michael Snyder is a sales and marketing executive at The Clow Group and can be reached at msnyder@clow.com. He is based in San Francisco, California.  
Lee Goldberg, senior manager of operational research at The Clow Group, can be reached at lgoldberg@clow.com and is based in Atlanta, Georgia.  
Tracy Ryan, senior analyst at The Clow Group, can be reached at tracy@clow.com and is based in Illinois.

All figures and numbers in the article are based on the findings of the 2011 survey of The Clow Group's Managed Care Oncology Index (MCOI). The MCOI is a confidential, multi-center study, currently across nearly 100 experts, 100 oncologists, and 100 oncology practice managers. Started in 2004, the survey examines a wide range of issues including management issues, including impact on reimbursement, payer policy changes, contract performance, specialty, primary care of care delivery, practice performance, and shared practices.

Panel approaches in 2011, whereas only 21% of payers say they will have highly aggressive management practices in place by then. Oncologists also perceive the current degree of payer oncology management to be significantly more aggressive than payers report. Overall, only 1% of payers report having highly aggressive oncology management practices, whereas 20% of oncologists feel the level of payer management is highly aggressive (Figure 1).

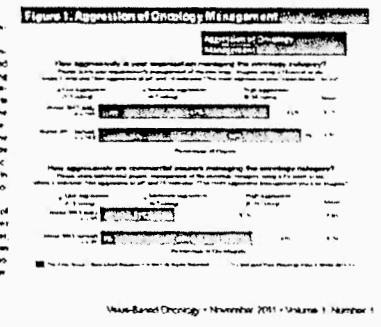
**Waste and Excess Cost**  
As the use of oncology care continues to rise, increases in management of costs by payers appear to be inevitable. In fact, payers believe that nearly 20% of current costs could be eliminated from the delivery of cancer care without negatively impacting health outcomes. Oncologists and practice managers share similar sentiments, but not to the degree expressed by payers. Oncologists and 50% of payers can be shared, whereas practice managers see their number slightly lower, at 10% before 10% of payers have seen the greatest degree of increased spending resulting from its review and its review and cost management strategies. Oncologists

**IMPROVING PAYER MANAGEMENT** of oncology over the past few years, a similar trend has emerged—payers intend to increase their management of the cancer health plans continue to seek multiple ways to control the costs associated with cancer care without diminishing the quality of that care. Indeed, both payers and oncologists anticipate a significant increase in the aggressiveness of payer oncology management over the next 2 years.

According to the data reported in the most recent edition of The Clow Group's Managed Care Oncology Index, the vast majority of payers currently lack confidence in their representative ability to effectively manage oncology. Although this sentiment represents a significant increase from the 20% who reported such confidence 2 months ago, it is clear that payers have a long way to go to meet expectations around cancer care.

In anticipation of the expected management increases, oncologists and practice managers indicate a growing realization to payer influence on oncology practice. However, oncologists also perceive a slight decrease in the level of payer management aggressiveness over 8 months ago. This decline is reported, nevertheless, may be due to adaptation by oncologists and practice managers to the policies already in place as payers do not offer any contributing changes in policy.

All stakeholders report the degree of management increases in rates by next year. Oncologists, however, expect a more dramatic increase than do payers. Still, the percent of oncologists report a high degree of management



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# Value-Based Oncology™

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Volume 1  
Number 1  
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# EDITORIAL EXCELLENCE

## Payer Insights:

“Review and commentary on the latest outcomes and pharmacoeconomic data driving payer decision-making on coverage and reimbursement”

### 2 Payer Panel Discussion

Figure 2. Payer-Preferred Distribution Channels for Infused Oncology Therapies

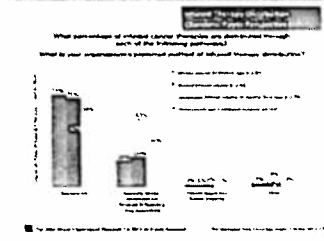
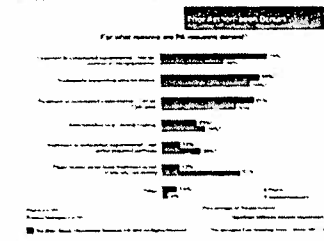


Figure 3. Reasons for Prior Authorization Denials



The reality remains that payers are indeed taking a more direct role in oncology management.

percent of payers believe (supplemental Fig. 1) that payers have a direct role in the majority of payer drug stoppage decisions. In fact, 50% of payers believe a comprehensive list of reasons for drug stoppage is needed to improve care, and 40% of payers believe a list of reasons for drug stoppage is needed to improve care. Furthermore, 40% of payers see sub-optimal distribution of prescription drugs as a barrier to care, and 30% of payers believe a list of reasons for drug stoppage is needed to improve care.

Through a third party vendor, the number of infusions per patient per month for the top 10 oncology drugs increased 10% in 2011 compared to 2010. This increase in infusions per patient per month is consistent with the increase in the number of infusions per patient per month for the top 10 oncology drugs in 2011 compared to 2010.

Over the past year, 40% of payers have implemented a formulary review process. This process involves reviewing the list of drugs on the formulary and determining which drugs should be included on the formulary. This process is ongoing, and 40% of payers expect to implement a formulary review process in the next year.

While payers take a more direct role in oncology management, the reality remains that payers are indeed taking a more direct role in oncology management. The reality remains that payers are indeed taking a more direct role in oncology management.

In their efforts to decrease costs, payers will continue to increase their use of PA requirements, preferred distribution channels, treatment guidelines, clinical pathways, and companion diagnostics.

THE AMERICAN JOURNAL OF  
MANAGED CARE

# Value-Based Oncology™

UNDERSTANDING THE DIVERGENT PERSPECTIVES OF PAYERS AND PROVIDERS TO IMPROVE EFFICIENCY AND OUTCOMES IN CANCER CARE

Volume 11  
Number 1  
November 2011

# EDITORIAL EXCELLENCE

## Reports from the Field:

“Community based oncologists providing insight to real-world challenges in practice ”

### Trying Something New: Episode Payments for Cancer Therapy

Lee H. Newcomer, MD, MHA

UPON RECENT PUBLICATION, numerous articles have been written by health care providers about the challenges of the current reimbursement environment. Many of these articles focus on the impact of the Affordable Care Act (ACA) on the current reimbursement environment. The ACA has introduced significant changes to the way that health care providers are reimbursed for their services. One of the most significant changes is the move from a fee-for-service model to a capitated model. This change has led to a shift in the way that health care providers think about their business and the way that they deliver care to their patients.

The current system does have benefits. The predictability of a capitated payment allows for better financial planning and risk management. It also encourages providers to focus on the quality of care and the overall health of their patients. However, there are also challenges associated with this model. One of the most significant challenges is the need for providers to invest in their infrastructure and staff to ensure that they can deliver high-quality care in a capitated environment. This investment can be significant, particularly for smaller practices that may not have the resources of larger hospitals or health systems.

One of the ways that providers can manage these challenges is by exploring alternative payment models. One such model is episode payments. Episode payments are a form of capitated payment that is based on a specific episode of care, such as a surgical procedure or a course of chemotherapy. This model allows providers to receive a fixed payment for each episode of care, regardless of the actual cost of the care. This can provide a more predictable revenue stream and encourage providers to focus on the quality of care and the overall health of their patients.

There are several challenges associated with episode payments. One of the most significant challenges is the need for providers to invest in their infrastructure and staff to ensure that they can deliver high-quality care in an episode payment environment. This investment can be significant, particularly for smaller practices that may not have the resources of larger hospitals or health systems. Another challenge is the need for providers to have a strong understanding of their patients' needs and preferences. This is because episode payments are based on a specific episode of care, and providers need to ensure that they are providing the best possible care for their patients.

Despite these challenges, episode payments can be a valuable tool for providers. They can provide a more predictable revenue stream and encourage providers to focus on the quality of care and the overall health of their patients. Providers who are considering episode payments should carefully evaluate their own resources and capabilities to ensure that they are prepared to deliver high-quality care in an episode payment environment.

episode. This model does not address the issue of long-term care or the need for ongoing care. Providers who are considering episode payments should carefully evaluate their own resources and capabilities to ensure that they are prepared to deliver high-quality care in an episode payment environment.

Another challenge is the need for providers to have a strong understanding of their patients' needs and preferences. This is because episode payments are based on a specific episode of care, and providers need to ensure that they are providing the best possible care for their patients. Providers who are considering episode payments should carefully evaluate their own resources and capabilities to ensure that they are prepared to deliver high-quality care in an episode payment environment.

Despite these challenges, episode payments can be a valuable tool for providers. They can provide a more predictable revenue stream and encourage providers to focus on the quality of care and the overall health of their patients. Providers who are considering episode payments should carefully evaluate their own resources and capabilities to ensure that they are prepared to deliver high-quality care in an episode payment environment.

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Volume 1, Number 1, November 2011

# Value-Based

Quarterly Distribution: Jan / April / July (ASCO Recap Issue) / October

Circulation – 19,384

Bonus Distribution – AMCP, AHIP, PCMA, ASCO, ASH, SABCS, ONS



# Digital Reach in the Oncology Universe

## Managed Markets

| Segment                      | Verified eMail List |
|------------------------------|---------------------|
| Health Plans                 | 5,672               |
| Employers                    | 1,300               |
| Hospitals                    | 14,500              |
| Government                   | 8,650               |
| Long Term Care               | 2,550               |
| Other                        | 8,500               |
| P&T Society                  | 5,000               |
| <b>Total Managed Markets</b> | <b>45,500+</b>      |

## Oncology

| Segment               | Verified eMail List |
|-----------------------|---------------------|
| Hematology            | 4,030 -             |
| Medical Oncology      | 5,223               |
| Oncology Nurses       | 6,048 -             |
| Oncology Pharmacists  | 1,103 -             |
| Specialized Oncology  | 1,942 -             |
| Unspecified Oncology  | 978 -               |
| <b>Total Oncology</b> | <b>19,000+</b>      |

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# Value-Based

**Jakafi Ad Unit:** 2 pages (2p 4C Advertorial)

**Circulation:** AJMC (Digital) - 40,000+ ; VBO - 19,384 ; AJMC/ASCO Partnership – 65,462 (payers & providers)

| <b>Frequency: 48x</b>                 | <b>VBO</b>         |
|---------------------------------------|--------------------|
| B&W - 2pp                             | \$8,300.00         |
| Color Charge – 2p                     | \$4,300.00         |
| <b>Net Cost (15% agency discount)</b> | <b>\$10,710.00</b> |

**Program includes:**

- 3 ROB Insertions of VBO - \$32,130.00
- 2 Custom eBlasts- \$15,000
- AMCP Recap Issue - \$17,395
- ASCO ROB Ad Unit - \$22,000

| Advertising Schedule |     |     |       |       |     |      |      |     |      |     |     |     |
|----------------------|-----|-----|-------|-------|-----|------|------|-----|------|-----|-----|-----|
|                      | Jan | Feb | March | April | May | June | July | Aug | Sept | Oct | Nov | Dec |
| VBO (ROB)            |     |     |       | X     |     |      | X*** |     |      | X   |     |     |
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| ASCO (ROB)           |     |     |       |       | X   |      |      |     |      |     |     |     |
| Custom eBlasts       |     |     |       | X     |     |      | X    |     |      |     |     |     |

*\*With commitment to full program, VBO will include a product spotlight article on Jakafi in issue of choice.\**

**Total Net Program Cost: \$ 86,525.00\***

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ENGAGE HEALTHCARE  
COMMUNICATIONS, LLC, GREEN HILL  
HEALTHCARE COMMUNICATIONS, LLC,  
and CENTER OF EXCELLENCE MEDIA,  
LLC,

Plaintiffs,

vs.

INTELLISPHERE, LLC, MICHAEL J.  
HENNESSY & ASSOCIATES, LLC, ARC  
MESA EDUCATORS, LLC, MICHAEL J.  
HENNESSY, JOHN DOES 1 TO 5, and JANE  
DOES 1 TO 5,

Defendants.

Honorable Freda L. Wolfson, U.S.D.J.  
Honorable Lois H. Goodman, U.S.M.J.

Civil Action No. 3:12-cv-00787

**SECOND AMENDED ANSWER TO FIRST  
AMENDED COMPLAINT, SEPARATE DEFENSES,  
AND  
SECOND AMENDED COUNTERCLAIM**

The Defendants, Intellisphere, LLC, Michael J. Hennessy & Associates, Inc., ARC Mesa Educators, LLC, and Michael J. Hennessy, by way of Answer to Plaintiffs' First Amended Complaint, say:

**STATEMENT OF THE CASE**

1. Admitted to the extent that Plaintiffs and their affiliated companies are in the business of medical publishing. Denied to the extent that some of the titles of the publications and programs listed were in fact created by Plaintiffs. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

4. Admitted to the extent that Plaintiffs' Chairman is John J. "Jack" Hennessy, II and that he sold his interest in Medical World Communications, Inc., in 2005. Upon information and belief, a lawsuit was instituted by the United States Postal Service (hereinafter "USPS") against Jack Hennessy and Medical World Communications for mail fraud. Upon information and belief, this lawsuit stemmed from a whistleblower case alleging padding of circulation numbers for eleven (11) magazine titles, thus resulting in those publications improperly paying the lower bulk postage rates. It is Intellisphere's belief that Jack Hennessy's sale of Medical World Communications was related to the settlement in that matter. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

5. Admitted to the extent that Defendants Intellisphere, MJH & Associates and Arc Mesa are medical publishers. Intellisphere is owned by MJH Healthcare Holdings, LLC (hereinafter "MJH Healthcare"). MJH Healthcare is, in turn, owned by Michael J. Hennessy & Associates, Inc. (hereinafter "MJH & Associates"). Intellisphere, MJH Healthcare, and MJH & Associates are each solid, stable, and lasting companies in the medical publishing industry. In 2005, Intellisphere acquired the assets of Arc Mesa Educators, Inc. Intellisphere subsequently

formed Arc Mesa Educators, LLC (hereinafter “Arc Mesa”), to hold title to the assets acquired from Arc Mesa Educators, Inc. Over the years, each of these companies have gained significant source credibility and each have established significant business relationships with renowned organizations. To the extent that Paragraph 5 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is deemed denied.

6. Admitted to the extent that some of the names listed as “Name Adopted by Defendants” and “Offending Titles” were used by Defendants. Denied that Intellisphere, MJH & Associates and Arc Mesa have copied a number of trade names utilized by Plaintiffs. Most, if not all, of the alleged “trade names” are merely descriptive terms that carry no source indicating function or secondary meaning, and many of the alleged trade names listed were used by Defendants (or entities whose rights were acquired by Defendants) prior to Plaintiffs’ use of the listed alleged “Plaintiffs’ Trade Name” titles. To the extent that Paragraph 6 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

7. Paragraph 7 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied in its entirety.

8. Paragraph 8 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied in its entirety.

9. Paragraph 9 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied in its entirety.

10. Denied. Most, if not all, of the alleged “trade names” are merely descriptive terms that carry no source indicating function or secondary meaning, and others were used by



Defendants (or entities whose rights were acquired by Defendants) prior to Plaintiffs' use of the listed alleged "Plaintiffs' Trade Name" titles.

11. Admitted to the extent that a letter was sent to Intellisphere and MJH & Associates and admitted to the extent that Intellisphere filed a Cancellation Proceeding before the Trademark Trial and Appeal Board ("TTAB") of the United States Patent and Trade Office (the "PTO"). As referenced in Defendants' Counter-Claim, *infra*, during the time that The American Journal of Managed Care ("AJMC") was owned by Medical World Communications ("MWC"), the phrase "Value Based" was first used in print by the physician editor of AJMC, Dr. A. Mark Fendrick. Thus, Jack Hennessy first became aware of the concept of "Value Based" medicine only by virtue of his interest in AJMC through MWC. Dr. Fendrick, after becoming Defendants' physician editor, later spoke at a conference sponsored by Engage. (Dr. Fendrick was invited to speak at this conference *after* Intellisphere acquired the assets of Ascend.) Upon information and belief, at that conference Dr. Fendrick elaborated on the idea of "Value Based" medicine in the oncology field. Jack Hennessy sold the intellectual property of MWC, including AJMC and its content to Ascend Media (hereinafter "Ascend"). The assets and properties of Ascend were acquired by Intellisphere in 2008. Despite the fact such rights are now owned by Intellisphere, Jack Hennessy is attempting to obtain "ownership" of this concept of "Value Based" medicine by appending to it such descriptive words as "Oncology" and "Cancer Care". This attempt is improper and without legal merit. To the extent that Paragraph 11 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

12. Denied. Most, if not all, of the alleged "Plaintiffs' Trademarks" are merely descriptive terms that carry no source indicating function or secondary meaning, and other

alleged “Plaintiffs’ Trademarks” were used prior to Plaintiffs by Defendants. To the extent that Paragraph 12 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

13. Denied. Most, if not all, of the alleged “Plaintiffs’ Trademarks” are merely descriptive terms that carry no source indicating function or secondary meaning, and other alleged “Plaintiffs’ Trademarks” were used prior to Plaintiffs by Defendants. To the extent that Paragraph 13 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

14. Denied. Most, if not all, of the alleged “Plaintiffs’ Trademarks” are merely descriptive terms that carry no source indicating function or secondary meaning, and other alleged “Plaintiffs’ Trademarks” were used prior to Plaintiffs by Defendants. To the extent that Paragraph 14 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

15. Denied. To the contrary, the actions of Plaintiffs have caused and, unless restrained and enjoined by the Court, will continue to cause irreparable damage, loss and injury to Defendants, for which Defendants have no adequate remedy at law. To the extent that Paragraph 15 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

16. Denied. To the extent that Paragraph 16 of the First Amended Complaint contains conclusions of law and allegations of wrongdoing by Defendants, it is denied.

**SUBJECT MATTER JURISDICTION**

17. Paragraph 17 of the First Amended Complaint contains conclusions of law to which no response is required.

18. Paragraph 18 of the First Amended Complaint contains conclusions of law to which no response is required.

19. To the extent that Paragraph 19 of the First Amended Complaint contains conclusions of law and allegations of wrongdoing by Defendants, it is denied.

20. To the extent that Paragraph 20 of the First Amended Complaint contains conclusions of law and allegations of wrongdoing by Defendants, it is denied.

**VENUE**

21. To the extent that Paragraph 21 of the First Amended Complaint contains conclusions of law and allegations of wrongdoing by Defendants, it is denied.

**THE PARTIES**

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

**FACTUAL ALLEGATIONS**

**THE PLAINTIFFS**

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

**THE MARKET**

33. Paragraph 33 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied.

34. Paragraph 34 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied.

35. Paragraph 35 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied.

36. Paragraph 36 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied.

37. Paragraph 37 of the First Amended Complaint contains conclusions of law and conclusory statements to which no response is required, and as such, it is denied.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

**THE DEFENDANTS**

39. Admitted. Further, Intellisphere is publisher and provider of specialized healthcare content for physicians, pharmacists, managed care executives, and other healthcare professionals seeking tools, techniques, and information that can help them provide better care. Intellisphere is a solid, stable, and lasting company in the medical publishing industry. Over the years, Intellisphere has gained significant source credibility and has established significant business relationships with renowned organizations.

40. Admitted.

41. Admitted.

42. Defendants admit only that they operate in the medical publishing industry. To the extent that Paragraph 42 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

43. Admitted to the extent that Defendants are highly sophisticated in the areas of trademarks and the laws related thereto, that Intellisphere has filed at least 116 applications for registration of trademarks with the PTO, that currently Intellisphere has at least 34 trademarks registered on either the Principal Register or the Supplemental Register, and that Arc Mesa has filed at least eight applications for registration with the PTO. To the extent that Paragraph 43 of

the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

44. Admitted to the extent that Intellisphere has filed the named three actions to enforce registrations on the Principal Register. To the extent that Paragraph 44 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

45. Admitted to the extent that Intellisphere has filed the Cancellation Proceeding before the TTAB. To the extent that Paragraph 45 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

46. Admitted to the extent that MJH & Associates has filed at least 42 applications for registration of trademarks with the PTO, and currently has at least 10 trademarks registered on either the Principal Register or the Supplemental Register. To the extent that Paragraph 46 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

47. To the extent that Paragraph 47 of the First Amended Complaint contains factual allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 47 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied. Furthermore, Plaintiffs are and at all times relevant have been well aware of the protections afforded to Defendants for Defendants' trademarks under the Lanham Act, under state statutes and under common law. Plaintiffs have at all times relevant clearly had at their disposal sophisticated intellectual property

counsel and the ability to search the PTO and internet for existing trade mark registrations and uses prior to their adoption of new trade marks, or their filing of new applications for registration with the PTO.

48. Denied. To the contrary, Plaintiffs have had actual knowledge of Defendants' use of, registration of and/or application for registration of each of Defendants' trademarks, prior to Plaintiffs' use of each of the corresponding Plaintiffs' alleged trademarks. To the extent that Paragraph 48 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

49. To the extent that Paragraph 49 of the First Amended Complaint contains factual allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 49 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

50. To the extent that Paragraph 50 of the First Amended Complaint contains factual allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 50 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

51. Admitted to the extent that Michael Hennessy is the Chairman and Chief Executive Officer of both Intellisphere and MJH & Associates. To the extent that Paragraph 51 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

**PLAINTIFFS' ALLEGED TRADEMARKS BEING INFRINGED**

**(1) PERSONALIZED MEDICINE IN ONCOLOGY  
PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY**

52. Admitted.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 53 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 53 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is deemed denied.

54. Admitted.

55. Admitted to the extent that Intellisphere has filed an application for PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY and that the information relating to that application is correct; otherwise, to the extent that Paragraph 55 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

56. Admitted to the extent that Intellisphere filed a protest with the PTO regarding Green Hill's application for PERSONALIZED MEDICINE IN ONCOLOGY, serial number 85483354, and that the protest has been accepted by the PTO. To the extent that Paragraph 56 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

**(2) THE ONCOLOGY NURSE  
THE ONCOLOGY NURSE – APN/PA**

57. Admitted.

58. Admitted.



59. Admitted to the extent that Intellisphere published journals called “Oncology Net Guide” and “ONCNURSE”. Intellisphere also published a journal called “Oncology Net Guide ONCNG: Oncology Nurses Edition” in November 2007. To the extent that Plaintiffs claim trademark rights in THE ONCOLOGY NURSE, denied. To the extent that Paragraph 59 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

60. Admitted.

(3) **VALUE-BASED CANCER CARE**

61. To the extent Plaintiffs claim trademark rights in VALUE-BASED, denied; otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 61 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 61 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

62. To the extent Plaintiffs claim trademark rights in VALUE-BASED, denied; otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 62 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 62 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 63 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 63 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

64. Admitted.

65. Admitted with respect to the first two sentences; the application was initially refused registration on March 8, 2012, because VALUE-BASED ONCOLOGY CARE was determined to be merely descriptive of Defendants' goods and services.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 66 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations.

67. Admitted with respect to the first three sentences. Application No. 85,451,604 had been initially refused registration on the grounds that the mark is merely descriptive and that the mark is confusingly similar with Plaintiffs' VALUE-BASED CANCER CARE.

68. Admitted to the extent that a letter was sent to Intellisphere. To the extent that Paragraph 68 of the First Amended Complaint contains conclusions of law and allegations of wrongdoing by Defendants, it is denied.

69. Admitted.

70. Admitted to the extent that Intellisphere argues in the Cancellation Proceeding that Engage's mark VALUE-BASED CANCER CARE is descriptive, and not entitled to be registered.

71. Admitted.

72. Admitted that Exhibit 4 is a copy of a presentation Intellisphere has used; otherwise, to the extent that Paragraph 72 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

(4) **ONCOLOGY PHARMACY NEWS**

73. Admitted.

74. Admitted.

75. Admitted with respect to the allegation that MJH & Associates filed an intent-to-use application for ONCOLOGY PHARMACY NEWS, Serial No. 77/487,344 on May 30, 2008; otherwise, denied.

**(5) ONCOLOGY PRACTICE MANAGEMENT**

76. Admitted.

77. Admitted, except the date the allegations of use were accepted was January 10, 2012.

78. Admitted, but Application Serial No. 85/471,063 has been suspended because of Plaintiffs' pending applications for ONCOLOGY PRACTICE MANAGEMENT.

**(6) AMERICAN HEALTH & DRUG BENEFITS**

79. Admitted.

80. Admitted.

**(7) PEER-SPECTIVES**

81. Admitted.

82. Admitted.

**(8) TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY;  
TARGETED THERAPIES IN ONCOLOGY;  
TARGETED THERAPIES IN BREAST CANCER;  
TARGETED THERAPIES IN LUNG CANCER; AND  
TARGETED THERAPIES IN NON-HODGKIN LYMPHOMA**

83. Admitted with respect to the first sentence of Paragraph 83; otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 83 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 83 of the First

Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

84. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 84 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 84 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

85. Admitted as to the first two sentences of Paragraph 85; otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 85 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 85 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

86. Admitted; the subject mark was published for opposition purposes on April 17, 2012.

87. Admitted.

88. Admitted; the subject mark was registered on April 3, 2012.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

**DEFENDANTS' WRONGFUL ACTS**

98. Defendants deny that Plaintiffs have trademark rights in the terms Plaintiffs have used in connection with their journals and publications, that there is widespread and favorable public recognition and acceptance of Plaintiffs' publications and programs and that the alleged trademarks of Plaintiffs have become assets of substantial value or reflect any goodwill; otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 98 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 98 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Paragraph 103 of the First Amended Complaint contains conclusions of law to which no response is required, and as such, it is denied. To the extent that Paragraph 103 of the First Amended Complaint contains conclusory statements and allegations of wrongdoing by Defendants, it is denied.

**COUNT ONE**  
**TRADEMARK INFRINGEMENT (15 U.S.C. §1125(A))**

104. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

105. Paragraph 105 of the First Amended Complaint contains conclusions of law to which no response is required, and as such, it is denied.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 106 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 106 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

107. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 107 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 107 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

**COUNT TWO**  
**TRADEMARK INFRINGEMENT - UNFAIR COMPETITION (15 U.S.C. §1125(A))**

112. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

113. Paragraph 113 of the First Amended Complaint contains conclusions of law to which no response is required, and as such, it is denied.

114. Denied.

115. Denied.

**COUNT THREE**

**FALSE DESIGNATION OF ORIGIN UNDER LANHAM ACT (15 U.S.C. §1125(A))**

116. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

117. Denied.

118. Denied.

119. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 119 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 119 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

120. Denied.

121. Denied.

122. Denied.

123. Admitted to the extent that a letter was sent to Intellisphere and MJH & Associates. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations contained in Paragraph 123 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 123 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Paragraph 128 of the First Amended Complaint contains conclusions of law to which no response is required, and as such, it is denied.

**COUNT FOUR**  
**DECLARATORY JUDGMENT (28 U.S.C. §2201 ET SEQ.)**

129. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

130. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 130 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 130 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

131. Denied.

132. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 132 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 132 of the First Amended Complaint contains conclusions of law and conclusory statements, it is denied.

133. Denied.

134. Admitted, except said Cancellation Proceeding has, upon agreement of the parties, been stayed pending the outcome of this litigation.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.



140. Denied as to both Paragraphs 140(a) and 140(b).

**COUNT FIVE**  
**NEW JERSEY UNFAIR COMPETITION (N.J.S.A. § 56:4-1)**

141. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

142. Denied.

143. Denied.

**COUNT SIX**  
**COMMON LAW UNFAIR COMPETITION**

144. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

145. Denied.

**COUNT SEVEN**  
**FALSE ADVERTISING (15 U.S.C. § 1125)**

146. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

147. Admitted to the extent that Intellisphere markets a publication named Oncology & Biotech News. To the extent that Paragraph 147 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

148. Defendants deny the allegations contained in Paragraph 148 of the First Amended Complaint, and refer to the cover of the August 2011 edition of Oncology & Biotech News, which speaks for itself.

149. Denied.

150. Denied.

151. Defendants deny the allegations contained in Paragraph 151 of the First Amended Complaint, and refer to the cover of the November 2011 edition of Oncology & Biotech News, which speaks for itself.

152. Denied.

153. Denied.

154. Defendants deny the allegations contained in Paragraph 148 of the First Amended Complaint, and refer to the cover of the November 2011 edition of Oncology & Biotech News, which speaks for itself.

155. Denied.

156. To the extent that Paragraph 156 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

157. Denied.

158. Denied.

**COUNT EIGHT**  
**TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONSHIPS**

159. Defendants repeat and reiterate each and every response to the prior allegations as if same were set forth herein at length.

160. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 160 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 160 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

161. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 161 of the First Amended Complaint and leave Plaintiffs to their proofs of those allegations. To the extent that Paragraph 161 of the First Amended Complaint contains conclusions of law, conclusory statements and allegations of wrongdoing by Defendants, it is denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

#### **RELIEF REQUESTED**

WHEREFORE, Defendants, Intellisphere, LLC, Michael J. Hennessy & Associates, Inc., ARC Mesa Educators, LLC, and Michael J. Hennessy, demand judgment dismissing the First Amended Complaint, together with costs and counsel fees.

#### **SEPARATE DEFENSES**

##### **FIRST SEPARATE DEFENSE**

Defendants have not infringed any valid enforceable trademark, directly, indirectly, or by way of inducement.

##### **SECOND SEPARATE DEFENSE**

On the basis of the prosecution histories of the alleged trademarks, Plaintiffs' claims are barred, in whole or in part, by the doctrine of prosecution history estoppel.

**THIRD SEPARATE DEFENSE**

Each of the alleged trademarks asserted by Plaintiffs is invalid and unenforceable for failure to comply with one or more provisions of the trademark laws and regulations of the United States.

**FOURTH SEPARATE DEFENSE**

Plaintiffs' claims against Defendants are barred by the doctrine of equitable estoppel.

**FIFTH SEPARATE DEFENSE**

Plaintiffs' First Amended Complaint fails to state a cause of action upon which relief can be granted.

**SIXTH SEPARATE DEFENSE**

The Plaintiffs' First Amended Complaint is barred in whole or in part by the applicable Statute of Limitations and/or Repose.

**SEVENTH SEPARATE DEFENSE**

These Defendants did not violate any duty owed to the Plaintiffs under common law, statute, regulations or standards.

**EIGHTH SEPARATE DEFENSE**

The Plaintiffs' First Amended Complaint is barred in whole or in part because Plaintiffs have abandoned the trademarks asserted against Defendants.

**NINTH SEPARATE DEFENSE**

Plaintiffs' claims are barred in whole or in part because Plaintiffs acquiesced to Defendants' use of the alleged trademarks.

**TENTH SEPARATE DEFENSE**

Plaintiffs' claims are barred in whole or in part under the doctrine of unclean hands.

**ELEVENTH SEPARATE DEFENSE**

Plaintiffs' alleged trademarks and service marks are common descriptive terms for the products and services with which they are used, have no source identifying significance, and thus cannot be the basis of any claim against Defendants.

**TWELFTH SEPARATE DEFENSE**

Plaintiffs' alleged trademarks and service marks are merely descriptive terms for the products and services with which they are used, have no source identifying significance, have not become distinctive or developed secondary meaning, and thus cannot be the basis of any claim against Defendants.

**THIRTEENTH SEPARATE DEFENSE**

Plaintiffs' alleged trademarks and service marks are being used by Defendants, other than as marks, as terms which are descriptive of and used fairly and in good faith only to describe the goods or services of Defendants.

**FOURTEENTH SEPARATE DEFENSE**

Any registrations obtained by Plaintiff for Plaintiffs' alleged trademarks and service marks have been obtained fraudulently.

**FIFTEENTH SEPARATE DEFENSE**

Plaintiffs' claims are barred in whole or in part because Defendants have not infringed the asserted trademarks

**SIXTEENTH SEPARATE DEFENSE**

Plaintiffs' claims are barred in whole or in part on the ground that Plaintiffs have not been sufficiently damaged to obtain any requested relief.

### **SEVENTEENTH SEPARATE DEFENSE**

The names, trademarks, service marks and terms used by Defendants are not likely to cause confusion, mistake, or deception with any of the alleged trademarks or service marks of Plaintiffs.

Defendants' reserve the right to raise, assert, rely upon, or add any new or additional defenses that may exist or in the future be applicable based on discovery and further factual investigation of this matter, and reserve the right to amend any and all defenses set forth above as discovery proceeds.

### **COUNTERCLAIMS**

Defendants-Counterclaim Plaintiffs, Intellisphere, LLC ("Intellisphere"), Michael J. Hennessy & Associates, Inc. ("MJH&A"), and Arc Mesa Educators, LLC ("Arc Mesa") (collectively the "Intellisphere Entities"), by and through their attorneys, bring this action for declaratory judgment against Plaintiffs-Counterclaim Defendants, Engage Healthcare Communications, LLC ("Engage"), Green Hill Healthcare Communications, LLC ("Green Hill"), and Center of Excellence Media, LLC ("Center") (collectively the "Engage Entities") as follows:

### **NATURE OF THE ACTION**

This is an action seeking a declaration that the Intellisphere Entities' use of a number of highly descriptive terms, words that are necessary in the everyday lexicon of modern healthcare, in connection with their national medical publications, does not infringe any rights of the Engage Entities. The Intellisphere Entities' claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Trademark Act of July 5, 1946, as amended, commonly known as the Lanham Act, 15 U.S.C. § 1501, *et seq.*, and New Jersey statutory and common law. The Engage

Entities are asserting unfounded and unlawful alleged proprietary rights over words that are not associated with any trademark significance, attempting to prevent the Intellisphere Entities' use of certain terms in connection with their medical publications. The Engage Entities make the baseless claim that the Intellisphere Entities' use of common, highly descriptive words in connection with titles of medical publications is likely to cause consumer confusion. As a result, a declaratory ruling is necessary to confirm the Intellisphere Entities' right to continue using the words as described herein in connection with their medical publications going forward and that no liability arises from any past use.

#### **THE PARTIES**

1. Defendant-Counterclaim Plaintiff, Intellisphere is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business at 666 Plainsboro Road, Plainsboro, NJ 08536.

2. Defendant-Counterclaim Plaintiff, MJH&A is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business at 666 Plainsboro Road, Plainsboro, NJ 08536.

3. Defendant-Counterclaim Plaintiff, Arc Mesa is a limited liability company organized and existing under the laws of the State of New Jersey with a principal place of business at 666 Plainsboro Road, Plainsboro, NJ 08536.

4. Plaintiff-Counterclaim Defendant, Engage is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business at 241 Forsgate Drive, Suite 205A, Jamesburg, NJ 08831.

5. Plaintiff-Counterclaim Defendant, Green Hill is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business at 241 Forsgate Drive, Suite 205C, Jamesburg, NJ 08831.

6. Plaintiff-Counterclaim Defendant, Center is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business at 241 Forsgate Drive, Suite 205B, Jamesburg, NJ 08831.

#### **JURISDICTION & VENUE**

7. This action arises and is brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Trademark Act of July 5, 1946, as amended, commonly known as the Lanham Act, 15 U.S.C. § 1501 *et seq.*, and New Jersey statutory and common law.

8. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 2201-2202.

9. This Court possesses personal jurisdiction over Plaintiffs-Counterclaim Defendants because they regularly and continuously transact business in the State of New Jersey and are registered to do business in New Jersey.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Plaintiffs-Counterclaim Defendants conduct business in this District, have regularly and continuously transacted business within the State of New Jersey, and have principal places of business in Jamesburg, New Jersey.

#### **GENERAL ALLEGATIONS**

##### **A. THE MEDICAL PUBLISHING INDUSTRY**

11. The medical publishing industry is a highly competitive \$25 Billion dollar industry that delivers relevant content on healthcare, medical technology and clinical research to



hundreds of thousands of healthcare providers, researchers, and administrators, including general practitioners, specialists, nurses, pharmacists, and managed care professionals.

12. The medical publishing industry publishes in both traditional print and digital media channels, both of which primarily rely on advertising revenue for sustainability.

13. In addition to producing medical journals, publishers in the industry provide a suite of other products and services, including but not limited to live conferences, continuing medical education seminars, clinical symposia, custom publications, and webinars that extend and expand upon materials that may be present in the journals.

14. The medical publishing industry serves an important role in keeping medical providers, medical researchers, and healthcare administrators up to date with topics in research, technology, regulation, and practice administration, such as insurance and billing matters.

15. The current trend in medical publishing is to identify and target individual practitioners and researchers in highly specific areas of care.

16. Because medical providers', medical researchers', and healthcare administrators' time is limited and valuable, the medical publishing industry aims to provide its materials in a concise, direct, and accessible manner; this has led to the industry-wide proliferation and adoption of titles that are highly descriptive of the content contained therein.

17. Because the titles are often merely descriptive of the contents of the journal, the reputation of the publisher, composition of the journals' boards, and trustworthiness of the content is paramount in establishing goodwill, readership, and interest from advertisers.

18. It is common practice in the medical publishing industry to adopt descriptive titles with the hope and anticipation that the many years of use, advertising, and investment will result

in a “brand” that has gained credibility and recognition and could possibly operate as a trademark.

19. While many publication titles are not initially capable of serving as a source identifier and have no trademark significance, there is an industry practice of seeking trademark registration, even on the Supplemental Register, in order to begin the process of creating a viable brand.

20. There are a large number of journals and titles, comprised of hot-topic terms, that cease to remain relevant or never rise above the volume of similar uses to acquire trademark significance.

21. Medical publications are typically ordered either directly by the ultimate consumer or through subscription services that maintain and manage customer distribution lists.

22. The Intellisphere Entities enjoy partnerships with a large number of healthcare organizations that have subscribed on behalf of their members to receive publications.

23. Many of the published materials, print, digital or otherwise, are provided free of charge or at little cost to the consumer.

24. Medical journals are typically comprised of an editorial staff and advisory boards, composed of industry insiders, that are responsible for the direction and content of the publication. The medical journals will often solicit articles and insights from healthcare industry professionals.

25. Medical publishers operate in two primary channels of trade; provision of content to readers and attraction of advertisers to maintain profitability.

26. Pharmaceutical companies are the primary base of advertisers for medical publications.

27. The composition of the readership, breadth and nature of the editorial coverage, and the targeted medical specialties will all figure into the desirability of advertising in any particular journal.

28. Medical publishers issue rate cards that contain the prices and descriptions for the various advertisement options available, including the audience data for a specific publication.

29. Pharmaceutical companies rely on the rate cards when choosing to place an advertisement in a particular medical publication.

30. For many years, the medical publishing industry operated on an “honor system” with regard to the veracity of circulation and publication numbers to establish advertising rates; a high-profile government-supported whistleblower action that began in 1999 drastically changed the landscape leading to the more regulated and controlled landscape that is currently in place.

31. The current industry practice is for medical publishers to ensure that their publications are audited. The failure to have compliance and assurance auditing will impact the ability to attract advertisers and attain profitability.

32. Medical publishers seek membership in BPA Worldwide (“BPA”), which is an independent non-profit assurance service provider. BPA’s Board of Directors and members promulgate best practices, standards, and rules that govern the medical publishing industry.

33. BPA is a trusted resource for compliance and assurance services in the medical publishing industry. As a condition of membership in BPA, medical publishers must pass an audit. BPA conducts over 3,800 audits annually in over 20 countries.

34. BPA’s audits verify the circulation numbers of medical publications (including print and digital editions). Among other information reviewed and analyzed by BPA in connection with its audits are print invoices, postal receipts, and media kits.

35. BPA issues a Brand Report at the conclusion of its audit that medical publishers provide to current and prospective advertisers showing verified circulation numbers and demographics.

36. Medical publishers typically refer to BPA Membership in the masthead of their publication as a basis for establishing credibility with their subscribers and advertisers. The pharmaceutical industry rarely, if ever, chooses to advertise in any medical publication that does not pass BPA audits.

**B. THE HENNESSY FAMILY AND THE MEDICAL PUBLISHING INDUSTRY**

37. The Hennessy family is a long time participant in the medical publishing industry, beginning with John J. Hennessy, Sr. who founded a series of medical publishing companies beginning in 1975 and oversaw the same until his retirement in 1988.

38. John J. Hennessy, Sr. has five (5) children: four (4) of his children worked for him in some capacity, and three (3) of his children went on to start their own competing medical publishing businesses.

39. The individual principals of the parties in this case, John J. Hennessy, II (“Jack”) and Michael J. Hennessy (“Mike”) are brothers.

40. At various times, up to fifteen (15) different members of John J. Hennessy, Sr.’s extended family, *i.e.*, children and grandchildren, have worked in the medical publishing industry as owners, publishers, advertising sales people, and other roles.

41. The members of the Hennessy family have worked for each other’s companies in cooperative roles as well as operated as competitors and owners of independent companies.

42. For example, Mike began his career in the medical publishing business in 1976, working for his father. Mike later worked for his brother Jack before leaving in 1993 to form his own competing business.

43. While the overall value of the medical publishing industry may be large, the number of providers and size of the pool of content creators is much smaller than the \$25 Billion dollar number would suggest.

44. With many members of the Hennessy family competing in the same small industry, the family name earns its share of attention, both in weight and scrutiny.

**C. THE ENGAGE ENTITIES' LEGACY IN FALSIFYING CIRCULATION NUMBERS**

45. Prior to establishing the present Plaintiff entities, in 1985 Jack formed Medical World Communications, Inc. ("MWC"), a company that published approximately eleven (11) medical journals concerning, among other things, chiropractic medicine, physical therapy, and plastic surgery. MWC's publications were disseminated to its readers through the United States Postal Service.

46. On November 24, 1999, MWC's former Chief Operating Officer, Peter Sprague, filed a whistleblower action against MWC, Jack, Chris Gaffney and others in the United States District Court for the District of New Jersey captioned as *United States of America ex rel. Peter F. Sprague vs. Medical World Communications, Inc.*, Civil Action No. 3:99-cv-5571-GEB (the "*Qui Tam* Action").

47. The *Qui Tam* Action Complaint alleged, among other things, that from 1994 to 2000, MWC and Jack knowingly falsified the circulation numbers for its journals in order to fraudulently obtain lower postage rates from United States Postal Service. By falsifying its circulation numbers, MWC and Jack were able to obtain postage rates for its journals that were

approximately 30-40% less than the published bulk rate. MWC's fraudulent conduct allegedly saved the company \$2.0 Million in postage and gave MWC a false competitive edge in the medical publishing industry.

48. Upon information and belief, after the Government conducted a thorough investigation of Mr. Sprague's claims, MWC, Jack, and the Government agreed to enter into a settlement that required MWC to, among other things, pay the Government \$3.7 Million (the "MWC Settlement"). The MWC Settlement was entered into on or about July 2, 2003.

49. Soon after the MWC Settlement was entered into with the Government, Jack turned over the day-to-day operations of MWC to Daniel Perkins, who was President of MWC's Medical Division. Upon information and belief, the terms of the MWC Settlement also required that a postal employee be present at MWC's offices to monitor its operations for a three (3) year period starting in June 2003.

50. As the Relator in the *Qui Tam* Action against MWC, the Government awarded Mr. Sprague \$777,000.00 (the "*Qui Tam* Award") against MWC and Jack. *See Sprague v. Peter Van Schaick et al.*, D.N.J. Civil Action No. 3:07-cv-137-GEB-TJB, Dkt Entry # 8-5.

51. In addition, on January 16, 2004, the U.S. District Court awarded Mr. Sprague an additional \$240,625.38 in attorneys' fees against MWC and Jack for services rendered by Mr. Sprague's counsel in recovering the *Qui Tam* Award. *Id.*

52. Upon information and belief, Mr. Sprague was paid an additional \$3.5 Million by MWC and Jack in connection with the settlement of the *Qui Tam* Action.

53. The fallout of Jack and MWC's actions have left an indelible scar on the medical publishing industry with increased scrutiny in regard to circulation numbers and postal regulation

and further reliance by advertisers on the results of independent auditing agencies, such as the BPA.

54. Approximately fifteen (15) months after entering into the MWC Settlement with the Government in the *Qui Tam* Action, MWC was sold to Ascend Media, LLC (“Ascend”). As a part of that sale, Ascend acquired all right and title to the medical publications of MWC and its affiliates, including all of its trademarks, copyrights, and other intellectual property.

55. As a part of the Ascend acquisition, Jack entered into a non-compete agreement dated December 15, 2004 that precluded him from competing in the medical publishing industry from January 31, 2005 to January 31, 2007. That same agreement precluded Jack from soliciting MWC employees, consultants, directors, and officers from January 31, 2005 to January 31, 2008.

56. Ascend subsequently sold a number of the MWC publications to the Intellisphere Entities in or around January 2008.

**D. JACK’S BRAZEN VIOLATION OF THE NON-COMPETE AGREEMENT**

57. On or about April 11, 2006, U.S. Healthcare Communications, LLC (“USHC”) was formed, with Jack as a substantial owner thereof along with Brian Tyburski (“Tyburski”) as a key executive.

58. On May 16, 2006 – more than seven (7) months prior to the expiration of the non-compete, USHC acquired several trademarks through a Trademark Assignment Agreement from one of Tyburski’s side companies, Tywin Communications, LLC (“Tywin”), which was filed with the United States Patent and Trademark Office (“USPTO”).

59. The address of record for USHC on the Tywin Trademark Assignment was Jack’s home address at the time, *i.e.*, 4 Forman Avenue, Monroe, NJ 08831.

60. The trademarks assigned to USHC included various marks used in connection with medical publishing journals and related services.

61. Jack formed USHC to directly compete in the medical publishing industry. USHC filed for trademark applications for clearly descriptive titles of medical publications that would solicit advertising dollars during the non-compete period. Many of those applications were signed by Jack, personally.

**E. THE ENGAGE ENTITIES AND THE CONTINUED FALSIFYING OF CIRCULATION NUMBERS**

62. While Jack has been active in the medical publishing industry for many years, the Plaintiffs in this case are all recently formed companies that arrive after a history of questionable, and continuing, actions by Jack that have sent shockwaves through the field and tarnished the Hennessy family name.

63. Jack formed Engage on December 2, 2009. Jack formed Green Hill on December 7, 2009. Jack formed Center on December 7, 2009. Each of the Plaintiff entities have struggled to garner brand recognition and legitimacy in the medical publishing community.

64. As of June 2015, Engage maintained a 0.2% market share in the medical publishing industry with gross annual revenues estimated to be \$549,000.00. Since 2013, Engage has consistently ranked at the bottom of the medical publishing industry by distribution.

65. Similarly, as of June 2015, Green Hill maintained a 0.1% market share in the medical publishing industry with gross annual revenues estimated to be \$215,000.00. Since 2013, Green Hill has barely held on to its 0.1% market share and has consistently remained at the bottom of the medical publishing industry by distribution.

66. In or about November 2012, Green Hill forfeited the BPA audits for its publications entitled, The Oncology Nurse APN/PA and The Oncology Pharmacist, because,



upon information and belief, its circulation numbers were false and not capable of being verified by BPA standards.

67. Despite forfeiting the audits, Green Hill continued to improperly make use of the statement “BPA Worldwide membership applied for April 2011” in the masthead of The Oncology Nurse APN/PA and The Oncology Pharmacist. The December 2012 issue of The Oncology Nurse used the phrase “BPA Worldwide Membership applied for November 2012.” This statement was false and was used again in the February 2013, May 2013, June 2013, July 2013, August 2013, and September 2013 issues of The Oncology Nurse.

68. On November 7, 2013, BPA concluded that Green Hill’s use of such language in The Oncology Nurse and The Oncology Pharmacist violated BPA Worldwide Rule 3-8 506, which restricts individuals from publicizing membership in BPA after an application for membership has been rejected.

69. BPA reasoned that since Green Hill forfeited the audits for both The Oncology Nurse and The Oncology Pharmacist in May 2012, Green Hill’s promotion of membership in BPA was false, misleading, and violated BPA rules.

70. BPA issued a ruling that contemplated the posting of a violation notice for publicity violations against Green Hill on BPA’s website for period of 30 days.

71. BPA later discovered additional information that led it to enhance the penalties assessed against Green Hill. Specifically, on November 21, 2013, BPA issued a Revised Ruling to Green Hill, which required that Green Hill distribute a notice of correction to all of its advertisers and prospects for both The Oncology Nurse APN/PA and The Oncology Pharmacist.

72. Green Hill’s deceptive promotion of BPA Worldwide Membership in connection with its publications provided a false impression with advertisers and subscribers that its

circulation numbers for its publications were audited and verified by BPA when it had in fact forfeited the audits. Green Hill's false promotion of BPA Membership was designed to obtain an unfair competitive edge in connection with soliciting advertising revenue for its publications.

73. The Engage Entities have a history of engaging in unlawful and unfair actions in an attempt to gain credibility or secure a competitive advantage, all of which have resulted in further damage to the industry as a whole because advertisers and readers have become distrustful or wary of publications.

74. Moreover, Jack's actions have harmed the goodwill, history and trust that was created in the Hennessy name and the family's long history of involvement in the medical publishing industry.

75. Jack and the Engage Entities have persisted in this pattern of anticompetitive activity and now attempt to monopolize and take exclusive ownership of words, under the guise of the trademark laws, that are not only common, descriptive terms, but are necessary and widely used in the lexicon of modern healthcare.

**F. THE INTELLISPHERE ENTITIES AND THEIR DOMINANCE IN THE MEDICAL PUBLISHING INDUSTRY**

76. Beginning in 1993, Mike has created and operated a series of successful, well-regarded medical publishing companies. His first medical publishing company was Multimedia HealthCare, Inc. ("Multimedia"), which rapidly grew into a profitable and desirable company and was sold in 2003 to Freedom Communications, Inc. Multimedia produced peer-reviewed, indexed journals that focused on geriatrics and long-term care.

77. Mike founded and formed Michael J. Hennessy & Associates, Inc., in February 1993, Intellisphere, LLC in August 1999, and MJH Healthcare Holdings, LLC in January 2008. Mike has also acquired assets from other publishers such as Ascend in January 2008. Mike

founded and formed a series of other companies, including Clinical Care Targeted Communications, LLC (“CCTC”) and Pharmacy Healthcare Communications, LLC, and has created and acquired the suite of medical journals, publications, trademarks, goodwill and other intellectual property owned by each of those companies (the “Intellisphere Entities”).

78. In contrast to the string of formed and abandoned companies by Jack and the newly formed Engage Entities, the Intellisphere Entities have long-established track records of stability and success in the medical publishing industry.

79. Over the past 20 years, the Intellisphere Entities have grown to be successful enterprises in the medical publishing industry that have gained significant source credibility. The Intellisphere Entities have well-established business relationships with renowned organizations, including the American Geriatric Society, American Medical Directors Association, American Society of Clinical Oncologists, and the American College of Cardiology.

80. As of June 2015, Intellisphere was ranked as owning a 4.0% share of the medical publishing market, a significant portion among the small number of providers. Since 2013, its gross revenues ranked Intellisphere among the top 5 medical publishers in the United States.

81. During the term of his non-compete, Jack sought out and hired ex-employees from Ascend to gain their experience and insight into the journals and operations that were now owned by the Intellisphere Entities. This ruthless type of behavior is further evidenced by threatening e-mails from Jack to Mike claiming that he has “eyes and ears” in Mike’s businesses.

82. Despite this admitted corporate surveillance and poaching of institutional knowledge from Mike’s prior employees, Jack now falsely claims in this litigation that Mike is copying him.

83. Jack has a long history of starting publications with the same targeted content and readership as those of which he was formerly an insider or owner, using the same type of highly descriptive titles. The following are examples of Jack's pattern of behavior through his various publishing entities:

| <b><u>Original Title:</u></b>               | <b><u>Competing title later created by Jack:</u></b> |
|---|--|
| Oncology Nursing News                       | The Oncology Nurse                                   |
| American Journal of Hematology and Oncology | Journal of Hematology/Oncology Pharmacy              |
| Pharmacy Times                              | Oncology Pharmacy Times                              |
| Generic RX Pharmacy Report                  | Generic RX Profiler                                  |
| Surgical Rounds                             | Oncology Rounds                                      |
| OTC Guide                                   | OTC Profiler   |

84. In creating subsequent competing titles, Jack is attempting to unfairly recover rights in trademarks and goodwill he transferred while, at the same time, abusing the trademark process in an attempt to deny the Intellisphere Entities and others the right to use merely descriptive, common terms.

**G. THE NATURE OF THE ALLEGED TRADEMARKS AT ISSUE**

85. Trademarks are generally terms, phrases, slogans or symbols that serve to identify and distinguish goods and services to consumers. Trademark rights are based on exclusivity of use and signify to consumers that all the goods and services bearing the mark come from or are associated with a common source, and they engender the goodwill associated with the source.

86. Trademarks are evaluated on a spectrum of distinctiveness that begins with the strongest (coined or arbitrary terms), then the next level of inherently distinctive terms (suggestive), followed by words that do not function as a trademark without establishing acquired distinctiveness or secondary meaning (descriptive), and ending with terms that can never have or have lost trademark significance (generic).

87. The USPTO will register marks that are coined, arbitrary or suggestive as inherently distinctive on the Principal Register. The USPTO will register marks that are merely descriptive on the Principal Register only upon a showing of acquired distinctiveness.

88. A *prima facie* showing of secondary meaning to the USPTO includes at least five-years of continuous use and may require further evidence of consumer recognition, such as significant sales, market share or advertising expenditures.

89. The USPTO also maintains a second register, the Supplemental Register, for marks that are merely descriptive without secondary meaning. Registration on the Supplemental Register operates as an admission that the mark is merely descriptive without any secondary meaning at the time of registration. Registrations on the Supplemental Register are not yet trademarks, *per se*, but are deemed merely capable of becoming sole-source indicators.

90. In the United States, common law trademark rights exist, but are not given any presumption of distinction and the strength thereof, *i.e.*, whether inherently distinctive or descriptive with secondary meaning, must be established by the evidence.

91. In any claim of infringement of highly descriptive marks, the threshold inquiry is whether there is a protectable right in the terms, and only if that hurdle is passed does the likelihood of confusion analysis begin.

92. Through this litigation, the Engage Entities are trying to remove terms from the public domain of descriptive language, claiming trademark rights in the same to prevent competitors from using these necessary words to communicate with relevant consumers.

93. Notably, the Engage Entities began this litigation within only a few short years after their formation in 2009; many of the Plaintiffs' claimed trademark rights were in use for barely a year at the time the Complaint was filed.

94. The Engage Entities have no history of enforcement activity against the myriad third-parties using the same descriptive terms at issue in this case.

95. The Engage Entities' alleged trademarks comprise highly descriptive terms that do not rise to the level of trademark protectability absent a showing of secondary meaning.

96. There is a greater evidentiary burden to demonstrate that descriptive terms have acquired secondary meaning.

97. Use of the same terms by third-parties is evidence that there is no secondary meaning, as the terms have little exclusivity or ability to operate as a source identifier in a crowded field of use.

98. Because the Engage Entities cannot establish secondary meaning for their merely descriptive title(s), there is no enforceable right and there can be no likelihood of confusion and no infringement.

99. To attain secondary meaning for any of the merely descriptive titles, the Engage Entities bear the burden to establish evidence that consumers have come to associate those terms with the Plaintiffs' goods and services; this standard cannot be met.

100. Evidence of secondary meaning can be established through a number of factors, such as the length and exclusivity of use, significant investments in advertising, marketing and consumer awareness for the marks, survey evidence that consumers have come to associate the titles as source identifiers for Plaintiffs, or significant market share or sales.

101. The Engage Entities consistently rank at the bottom for market share and sales in the relevant medical publishing industry, with Green Hill averaging 0.1% and Engage averaging 0.4% at best.

102. With only a few short years in business and limited use and market share for the titles at issue, the Engage Entities cannot establish any secondary meaning.

103. The lack of sales, advertising and recognition for the Engage Entities and products is in sharp contrast to Intellisphere, among the top five companies with an average of 4% market share.

104. At the time the Engage Entities adopted any one of the titles at issue in this case, they had no exclusivity in use, as the titles all comprise merely descriptive terms that indicate to the reader the contents therein, and all of the complained-of titles are not trademarks, but common words used throughout the publishing industry on these topics.

#### **1. THE CATEGORIZATION OF THE DISPUTED TITLES**

105. The titles at issue in this litigation comprise eight categories with allegedly similar formatives.

106. The goods and services at issue in this matter include downloadable electronic publications in Class 9, publication of printed goods in Class 16, and the provision of information on websites and educational services in Class 41.

107. The Engage Entities have also applied for and have secured registrations for services that include the provision of advertising space in Class 35. A proprietor cannot register a mark for services provided only for the benefit of itself.

108. The Engage Entities have made only a portion of the potential titles at issue part of their affirmative claims; the field of use and variety of titles that are implicated are, in fact, much broader.

109. The Intellisphere Entities have developed titles that incorporate common descriptive terms in the targeted medical and healthcare fields, with an intent to quickly and immediately convey to potential readers the nature of the materials therein.

110. In developing new publications, it is typical practice to look for and use common, descriptive industry buzzwords to draw the readers' and advertisers' interest in those trending topics.

111. The Intellisphere Entities have adopted a number of publication titles that are knowingly devoid of any distinctiveness, with the hope that many years of investment may result in generation of protectable right. To enforce the same at this time, without secondary meaning, would be premature.

112. To establish priority in certain non-distinctive titles and to signal to the industry that no trademark exclusivity or right existed yet, The Intellisphere Entities often apply directly to the Supplemental Register for their titles and have secured registrations on the Supplemental Register, knowing that such marks are admittedly descriptive and that the registration means only that the marks may be capable of being a source identifier some day in the future if secondary meaning is acquired.

113. To generate some level of source recognition among consumers, the Intellisphere Entities will often pair less distinctive titles with a strong house mark and the unique trade-dress of the publication to help distinguish their use of these common descriptive terms from any use of the same terms by competitors.

114. There are a number of hot-topics in medical and healthcare research and administration and the Intellisphere Entities, along with many other third-parties, have begun to incorporate the new lexicon of terms into their publications.



115. It is the Intellisphere Entities' belief that by attempting to secure a form of monopoly on certain descriptive words, the Engage Entities are seeking an unfair competitive advantage by denying Intellisphere's use of common industry terms.

116. The Engage Entities are targeting their anticompetitive actions only against the Intellisphere Entities in this litigation and have not opposed, threatened or sued any other third-party users of similar titles with the same descriptive terms such as "Value Based Care News," "Value Based Oncology Management," or "Personalized Medicine Universe," all of which are titles for publications owned by various third-parties.

#### I. THE VALUE-BASED FORMATIVE TITLES

117. The Engage Entities have created a series of publications, and alleged infringement of the titles thereof, that begin with the common term "VALUE-BASED" and have sought to register or have registered the same (the "Engage Value-Based Titles").

118. The Engage Entities' alleged first use of any of the Engage Value-Based Titles began in or around February 2009 with VALUE BASED ONCOLOGY BENEFIT DESIGN.

119. A summary of the subject Engage Value-Based Titles is below:

| <u>Title</u>                         | <u>Application No. /<br/>Registration No.</u>   | <u>Owner</u> |
|--------------------------------------|---|--------------|
| VALUE BASED ONCOLOGY BENEFIT DESIGN  | 85504970  | Engage       |
| VALUE-BASED CANCER CARE              | 3918281 – <i>Supplemental</i><br>3918282 – <i>Supplemental</i><br>3942361 – <i>Supplemental</i><br>3927515 – <i>Principal</i> | Engage       |
| VALUE-BASED CARE IN MULTIPLE MYELOMA | 85519131  | Engage       |
| VALUE-BASED ONCOLOGY CARE            | 85488889  | Engage       |
| VALUE-BASED BREAST CANCER            | 85538925<br>85538918<br>85538915<br>85538912  | Engage       |

|                                      |  |        |
|--------------------------------------|--|--------|
| PERSONALIZED VALUE-BASED CANCER CARE | 85539880<br>85539885<br>85539888<br>85539909 | Engage |
| VALUE-BASED CARE IN RHEUMATOLOGY     | 85473377                                     | Engage |

120. VALUE-BASED CANCER CARE is registered on the Principal Register, Reg. No. 3927515, for advertising services. This registration is the subject of a cancellation action by Intellisphere on the basis that, *inter alia*, a proprietor cannot register for services provided only for the benefit of itself.

121. The term “Value-Based” has been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs’ first use and attempt to corral rights in the same.

122. “Value-Based” is a form of medical billing and reimbursement that has resulted in new means and methods of providing healthcare to consumers as contrasted to the traditional fee-for-service model.

123. The Affordable Care Act, signed into law on March 23, 2010, contains approximately eighty-one (81) references to “value-based” care, billing and payment system reforms.

124. All of the Engage Value-Based Titles are merely descriptive of the contents of the goods and services.

125. All of the Engage Value-Based Titles lack secondary meaning.

126. Consistent with his practice of creating products to compete with his former interests, Jack is no stranger to prior use of “Value-Based” by publications he was previously involved in, but no longer owns.

127. During Jack’s ownership of MWC, the phrase value-based was in use by Dr. A. Mark Fendrick, the physician editor of The American Journal of Managed Care, a publication that traces its beginnings to September 1995. Dr. Fendrick subsequently spoke at a number of conferences sponsored by Engage regarding the use of value-based care principles in oncology.

128. The American Journal of Managed Care, along with a number of other properties and their associated intellectual property rights and goodwill were acquired by Intellisphere and its related company CCTC in January 2008.

129. It was not until long after the uses of “value-based” began in The American Journal of Managed Care, and after Jack sold those rights to Ascend which transferred the same to CCTC, that Engage began to create and assert rights in the Engage Value-Based Titles.

130. Intellisphere and CCTC presently own the following US trademark registrations or pending applications for titles that contain the term “value-based” (the “Intellisphere Value-Based Titles”):

| <b><u>Title</u></b>  | <b><u>Application No. / Registration No.</u></b>                    | <b><u>Owner</u></b> |
|--|---|---------------------|
| TRANSLATING EVIDENCE-BASED RESEARCH INTO VALUE-BASED DECISIONS | 4190812 – <i>Principal</i><br>4194758 – <i>Principal</i>            | CCTC                |
| INSTITUTE FOR VALUE-BASED MEDICINE                             | 4680196 – <i>Supplemental</i>                                       | CCTC                |
| VALUE-BASED CARDIOLOGY CARE                                    | 85431241  | Intellisphere       |
| VALUE-BASED DESIGN   | 4123325 – <i>Supplemental</i>                                       | Intellisphere       |
| VALUE-BASED INSURANCE DESIGN                                   | 4123324 – <i>Supplemental</i>                                       | Intellisphere       |
| VALUE-BASED CARDIOLOGY   | 85470952 – <i>Application for Supplemental Register</i>             | Intellisphere       |
| VALUE-BASED DESIGN   | 4123328 – <i>Supplemental</i>                                       | Intellisphere       |
| VALUE-BASED INSURANCE DESIGN                                   | 4123327 – <i>Supplemental</i>                                       | Intellisphere       |
| VALUE BASED CARDIOLOGY   | 85505237  | Intellisphere       |
| VALUE-BASED ONCOLOGY   | 85527307 – <i>Application for Supplemental Register</i><br>85451604 | Intellisphere       |

|  |   |  |
|--|---|--|
|  | 85465504 – <i>Application for Supplemental Register</i> |  |
|--|---|--|

131. Intellisphere has secured registration on both the Principal and Supplemental registers for titles containing the term “value-based,” without any objection from the USPTO that such registration would cause confusion with any prior rights holder.

132. The overall use and appearance of the Intellisphere Value-Based Titles is distinguishable from any use being made of the same common descriptive terms by Engage and no confusion is likely.

133. The Intellisphere Value-Based Titles and Engage Value-Based Titles are not confusingly similar in appearance, sound or meaning, apart from sharing certain unprotected, descriptive terms.

134. Engage is erroneously dissecting the Intellisphere Value-Based Titles, focusing only on the weak, descriptive shared term to assert the baseless claim of infringement.

135. Notwithstanding the prior use of “value-based” made in *The American Journal of Managed Care*, to which CCTC now holds all right and interest, CCTC has long owned and circulated the publication titled “*Translating Evidence-Based Research into Value-Based Decisions*” which began using the “value-based” term in its title in April 2009.

136. Engage cannot demonstrate prior use, let alone any modicum of exclusivity, sufficient to establish any trademark rights in “value-based” formatives to deny Intellisphere or others the use of the descriptive term “value-based” when addressing topics relating to this theory of medical care.

137. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Value-Based Titles and the Engage Value-Based Titles.

## II. THE TARGETED THERAPIES FORMATIVE TITLES

138. The Engage Entities have alleged that they have created a series of publications, and alleged infringement of the titles thereof, that begin with the common term “Targeted Therapies” and have sought to register the same (the “Engage Targeted Therapies Titles”).

139. The Engage Entities’ alleged first use of any of the Targeted Therapies Formative Titles began in or around January 2011. Many of the claimed rights in this litigation are based on constructive priority dates and intent-to-use trademark applications that have been refused on the basis of being merely descriptive.

140. The Engage Entities ignore the fact that the terms “Targeted Therapies” have been in use in journal titles for well over a decade, notably by PER Group LP beginning in 2002 with its title TARGETED THERAPIES IN ONCOLOGY.

141. A summary of the subject Engage Targeted Therapies Titles is below:

| <b>Title</b>                                  | <b>Application No. /<br/>Registration No.</b> | <b>Owner</b> |
|---|---|--------------|
| TARGETED THERAPIES IN BREAST<br>CANCER        | n/a   | Green Hill   |
| TARGETED THERAPIES IN LUNG CANCER             | n/a   | Green Hill   |
| TARGETED THERAPIES IN NON-HODGKIN<br>LYMPHOMA | n/a   | Green Hill   |
| TARGETED THERAPIES IN<br>HEMATOLOGY/ONCOLOGY  | 85473323                                      | Green Hill   |
| TARGETED THERAPIES IN ONCOLOGY                | 85473337                                      | Green Hill   |

142. The two pending intent-to-use applications for TARGETED THERAPIES IN HEMATOLOGY/ONCOLOGY and TARGETED THERAPIES IN ONCOLOGY have been refused registration by the USPTO on the basis that such marks are merely descriptive.

143. Plaintiffs’ have only common law rights in the TARGETED THERAPIES IN BREAST CANCER, TARGETED THERAPIES IN LUNG CANCER, and TARGETED

THERAPIES IN NON-HODGKIN LYMPHOMA journal titles and it is not clear that any modicum of use has been made.

144. Plaintiffs' common law rights in any Targeted Therapies-Formative Titles are not entitled to presumptions of distinctiveness nor national scope of use.

145. The Targeted Therapies Formative Titles are weak, using combined terms that are in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs' first use and attempt to corral rights in the same.

146. "Targeted Therapy" is a form of precision cancer treatment using molecularly targeted drugs that interfere with the growth, progression and spread of cancer.

147. All of the Engage Entities' Targeted Therapies Formative Titles are merely descriptive of the contents of the goods and services.

148. All of the Engage Entities' Targeted Therapies Formative Titles lack secondary meaning.

149. The Engage Entities have undertaken a course of action in which they seek to gain market share by usurping common language and seeking to reclaim titles that Jack previously disposed of.

150. Consistent with his practice of creating products to compete with his former interests, Jack is no stranger to prior use of Targeted-Therapies by publications he was previously involved in, but no longer owns.

151. Beginning in August 2006, USHC began using TARGETED TREATMENT UPDATE, Registration No. 3332951, and subsequently assigned all right, title, interest and goodwill in the intellectual property associated with TARGETED TREATMENT UPDATE to Intellisphere in September 2012.

152. Intellisphere is the successor in interest to Arc Mesa Educators, Inc. (having purchased the same in 2005) and PER Group LP (having purchased the same in 2011) and is the owner of all right, title, interest and goodwill associated with the trademarks and intellectual property transferred from these entities including INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER (first use in August 2003) and TARGETED THERAPIES IN ONCOLOGY (first use in 2002).

153. Intellisphere and its Arc Mesa entity, began to distribute a number of related journals and titles that contain the term “Targeted Therapy” (the “Intellisphere Targeted Therapies Titles”):

| <b><u>Title</u></b>                                    | <b><u>Application No. /<br/>Registration No.</u></b>   | <b><u>Owner</u></b> |
|--|--|---------------------|
| TARGETED THERAPIES IN ONCOLOGY                         | n/a  | Arc Mesa            |
| INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER | 4167116<br>4257812<br>85538934 – <i>Application for Supplemental Register</i><br>85505127                                      | Arc Mesa            |
| INTERNATIONAL CONGRESS ON TARGETED THERAPIES IN CANCER | 4123331 – <i>Supplemental</i><br>85538934 – <i>Application for Supplemental Register</i><br>85505127                           | Intellisphere       |
| TARGETED TREATMENT UPDATE                              | 3332951 – <i>Supplemental</i>  | Intellisphere       |
| BIOMARKERS, PATHWAYS, AND TARGETED THERAPIES           | 4208042 – <i>Supplemental</i><br>4156060 – <i>Supplemental</i>   | Intellisphere       |
| TARGETED THERAPY NEWS                                  | 85532814 – <i>Application for Supplemental Register</i><br>85532879<br>85538362 – <i>Application for Supplemental Register</i> | Intellisphere       |
| INTERNATIONAL JOURNAL OF TARGETED THERAPIES IN CANCER  | 85535419 - <i>Application for Supplemental Register</i><br>85535421<br>85538940 - <i>Application for Supplemental Register</i> | Intellisphere       |

154. Intellisphere and Arc Mesa have secured registration on both the Principal and Supplemental registers for marks containing the term “Targeted Therapy” or “Targeted Therapies” without any objection from the USPTO that such marks would cause confusion with any prior rights holder.

155. The overall use and appearance of the Intellisphere Targeted Therapies Titles is distinguishable from any use being made of the same common descriptive terms by Engage and no confusion is likely.

156. The Intellisphere Targeted Therapies Titles and Engage Targeted Therapies Titles are not confusingly similar in appearance, sound or meaning, apart from sharing certain unprotected, descriptive terms.

157. Engage is erroneously dissecting the Intellisphere Targeted Therapies Titles, focusing only on the descriptive shared term to assert the baseless claim of infringement.

158. Engage cannot demonstrate prior use, let alone any modicum of exclusivity, sufficient to establish any trademark rights in “Targeted Therapies” formatives to deny Intellisphere or others the use of the descriptive term “Targeted Therapy” or “Targeted Therapies” when addressing topics relating to this theory of medical care.

159. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Targeted Therapies Titles and the Engage Targeted Therapies Titles.

### **III. THE ONCOLOGY NURSE FORMATIVE TITLES**

160. The Engage Entities have created a series of publications, and alleged infringement of the titles thereof, that contain the common terms “ONCOLOGY NURSE” and have registered the same with the USPTO on the Supplemental Register (the “Engage Oncology Nurse Titles”).



161. The Engage Entities' alleged first use of any of the Oncology Nurse-Formative Titles began in or around May 2008 with THE ONCOLOGY NURSE.

162. A summary of the subject Engage Entities' Oncology Nurse Titles is below:

| <u>Title</u>              | <u>Registration No.</u>  | <u>Owner</u> |
|---------------------------|--|--------------|
| THE ONCOLOGY NURSE        | 3624945 – <i>Supplemental</i><br>3621208 – <i>Supplemental</i>   | Green Hill   |
| THE ONCOLOGY NURSE-APN/PA | 4014148 – <i>Supplemental</i><br>4017379 – <i>Supplemental</i><br>4017380 – <i>Supplemental</i><br>4017381 – <i>Supplemental</i> | Green Hill   |

163. The Engage Oncology Nurse Titles are all registered on the Supplemental Register, an admission that as of that date, the marks were merely descriptive and lacked secondary meaning.

164. The term “Oncology Nurse” is understood by relevant consumers as referring to a nursing professional who specializes in caring for people with cancer.

165. The term “Oncology Nurse” has been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs' first use and attempt to corral rights in the same.

166. All of the Engage Entities' Oncology Nurse-Formative Titles are merely descriptive of the contents of the goods and services.

167. All of the Engage Entities' Oncology Nurse-Formative Titles lack secondary meaning.

168. The Intellisphere Entities have had a long history of preparing specialty publications for oncology nursing professionals, who must keep up to date with the rapidly changing world of cancer care, treatments and research.

169. Since 2007, Intellisphere has published an on-line journal and website under the title ONCLIVE, for oncology care professionals, including nurses. As part of the natural growth and specialization of its periodicals, Intellisphere planned and launched the related title ONCOLOGY NET GUIDE: ONCOLOGY NURSES EDITION in November 2007. The closely related title, ONCNURSE was launched in October 2010 as a resource specifically for the oncology nurses who were frequenting its ONCLIVE website and the ONCOLOGY NET GUIDE: ONCOLOGY NURSES EDITION.

170. Intellisphere is now the owner of the publication, trademark, copyright and all associated goodwill for ONCOLOGY NURSING NEWS, having taken an assignment of same from USHC on September 30, 2012.

171. ONCOLOGY NURSING NEWS has been a recognized publication and presence in the medical publishing industry since its launch in April 2007.

172. The prior owner of ONCOLOGY NURSING NEWS, USHC, was managed by Jack and Tyburski. After USHC defaulted on a bank loan, Jack and Tyburski resigned from USHC. Jack later created THE ONCOLOGY NURSE through Green Hill to compete with his former publication.

173. Intellisphere's publications and related services that contain some variation of NURSE and ONCOLOGY (or an abbreviation thereof) are summarized below (the "Intellisphere Oncology Nurse Titles"):

| <b><u>Title</u></b>   | <b><u>Registration No./<br/>Application No.</u></b>  | <b><u>Owner</u></b> |
|-----------------------|--|---------------------|
| ONCOLOGY NURSING NEWS | 3455975 – <i>Supplemental</i><br>3422002 - <i>Principal</i><br>3387130 – <i>Supplemental</i> | Intellisphere       |
| ONCNURSE              | 85429504<br>85505282   | Intellisphere       |

174. The overall use and appearance of the Intellisphere Oncology Nurse Titles is distinguishable from any use being made of the same common descriptive terms by Engage and no confusion is likely.

175. The Intellisphere Oncology Nurse Titles and Engage Oncology Nurse Titles are not confusingly similar in appearance, sound or meaning, apart from sharing certain unprotected, descriptive terms.

176. Engage is erroneously dissecting the Intellisphere Oncology Nurse Titles, focusing only on the weak shared term to assert the baseless claim of infringement.

177. Based on its acquisition of ONCOLOGY NURSING NEWS from USHC, Intellisphere has prior use and registration of marks containing “Oncology” and “Nurse” formatives.

178. Engage is attempting to deny Intellisphere the benefit of its bargain and purchase of the intellectual property and goodwill associated with ONCOLOGY NURSING NEWS and is preventing Intellisphere from making legal use of its marks through threats of ownership and baseless proprietary rights to the common formative terms “Oncology” and “Nurse.”

179. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Oncology Nurse Titles and the Engage Oncology Nurse Titles.

#### **IV. THE PERSONALIZED FORMATIVE TITLES**

180. The Engage Entities have created a series of publications, and alleged infringement of the titles thereof, that utilize other descriptive terms with the common term “Personalized” and have filed applications to register the same (the “Engage Personalized Titles”).

181. The Engage Entities' alleged first use of any of the Engage Personalized Titles began in or around January 2011 with PERSONALIZED CANCER CARE and PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY.

182. A summary of the subject Engage Personalized Titles is below:

| <b><u>Title</u></b>                                     | <b><u>Application No.</u></b>                | <b><u>Owner</u></b> |
|---|--|---------------------|
| PERSONALIZED VALUE-BASED CANCER CARE                    | 85539880<br>85539885<br>85539888<br>85539909 | Engage              |
| PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY            | 85263844<br>85263881<br>85263894             | Green Hill          |
| PERSONALIZED CANCER CARE                                | 85263835<br>85263871<br>85263877<br>85263897 | Green Hill          |
| JOURNAL OF PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY | 85263888<br>85263884<br>85263856<br>85263848 | Green Hill          |
| PERSONALIZED MEDICINE IN IMMUNOLOGY                     | 85473286                                     | Green Hill          |
| PERSONALIZED MEDICINE IN ONCOLOGY                       | 85473354                                     | Green Hill          |
| PERSONALIZED MEDICINE IN RHEUMATOLOGY                   | 85473317                                     | Green Hill          |
| PERSONALIZED BREAST CANCER                              | 85538946<br>85538947<br>85538948<br>85538950 | Green Hill          |

183. Intellisphere began using the phrase "Personalized Medicine" in 2007 in its widely-read on-line cancer care and treatment publication ONCLIVE; "personalized medicine" became a common topic in the cancer treatment field.

184. The term “Personalized” in healthcare is understood by relevant consumers as referring to use of an individual’s genetic profile to guide decisions made in regard to the prevention, diagnosis, and treatment of disease.

185. The term “Personalized” has been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs’ first use and attempt to corral rights in the same.

186. All of the Engage Entities’ Personalized-Formative Titles are merely descriptive of the contents of the goods and services.

187. All of the Engage Entities’ Personalized-Formative Titles lack secondary meaning.

188. Like the Engage Entities, beginning in January 2011, Intellisphere launched a series of publications and related services beginning with the descriptive term “Personalized” and have sought to register the same (the “Intellisphere Personalized Titles”).

189. A summary of the subject Intellisphere Personalized Titles is below:

| <b><u>Title</u></b>                          | <b><u>Application No.</u></b>  | <b><u>Owner</u></b> |
|--|--|---------------------|
| PERSONALIZED CANCER CARE                     | 85465493 – <i>Application for Supplemental Register</i><br>85470171 – <i>Application for Supplemental Register</i> | Intellisphere       |
| PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY | 85465495 – <i>Application for Supplemental Register</i><br>85470184 – <i>Application for Supplemental Register</i> | Intellisphere       |

190. Intellisphere filed its applications for PERSONALIZED CANCER CARE, App. Nos. 85465493 and 85470171 in November 2011, directly to the Supplemental Register, an admission that the marks are merely descriptive with no secondary meaning at that time.

191. Intellisphere has used the phrase PERSONALIZED CANCER CARE in a descriptive manner to identify the topic of special reports released by its highly regarded ONCLIVE journal.

192. The overall use and appearance of PERSONALIZED CANCER CARE by Intellisphere is distinguishable from any use being made of the same common descriptive phrase by Engage and no confusion is likely.

193. Intellisphere filed its PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY applications, App. Nos. 85465495 and 85470184, in November 2011 after having begun use of the same in the months prior.

194. Intellisphere has used the phrase PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY in a descriptive manner to identify the topic of special reports released by its highly regarded ONCLIVE journal.

195. The overall use and appearance of PERSONALIZED MEDICINE IN HEMATOLOGY/ONCOLOGY by Intellisphere is distinguishable from any use being made of the same common descriptive phrase by Engage and no confusion is likely.

196. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Personalized Titles and the Engage Personalized Titles.

#### **V. THE PHARMACY FORMATIVE TITLES**

197. The Engage Entities have created a series of publications, and alleged infringement of the titles thereof, that contain the common terms “PHARMACY” or “PHARMACY NEWS” and have sought to register the same with the USPTO (the “Engage Pharmacy Titles”).

198. The Engage Entities' alleged first use of any of the Engage Pharmacy Titles began in or around January 2008 with CLINICAL ONCOLOGY PHARMACY and ONCOLOGY PHARMACY NEWS.

199. A summary of the subject Engage Pharmacy Titles is below:

| <b><u>Title</u></b>             | <b><u>Application Nos.</u></b> | <b><u>Owner</u></b> |
|---------------------------------|--------------------------------|---------------------|
| CLINICAL ONCOLOGY PHARMACY      | 77295684                       | Green Hill          |
| ONCOLOGY PHARMACY NEWS          | 77295691<br>77738721           | Green Hill          |
| CLINICAL ONCOLOGY PHARMACY NEWS | 77295689<br>77738719           | Green Hill          |

200. All of the Engage Pharmacy Titles have been amended to the Supplemental Register, an admission that as of that date, the marks were merely descriptive and lacked secondary meaning.

201. The term "Oncology Pharmacy" is understood by relevant consumers as referring to a specialized pharmacy that is actively engaged in all aspects of cancer care, including chemotherapy dose preparation, educating patients about side effects, and drug development research.

202. The term "Oncology Pharmacy" has been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs' first use and attempt to corral rights in the same.

203. All of the Engage Pharmacy Titles are merely descriptive of the contents of the goods and services.

204. All of the Engage Pharmacy Titles lack secondary meaning.

205. Intellisphere launched a publication and related services beginning with the descriptive title ONCOLOGY PHARMACY NEWS and applied to register the same (the “Intellisphere Pharmacy Title”).

206. A summary of the subject Intellisphere Pharmacy Title is below:

| <u>Title</u>           | <u>Application No.</u>                                  | <u>Owner</u>  |
|------------------------|---|---------------|
| ONCOLOGY PHARMACY NEWS | 77487344 – <i>Application for Supplemental Register</i> | Intellisphere |

207. Intellisphere’s Pharmacy Title has been amended to the Supplemental Register, an admission that the mark is merely descriptive with no secondary meaning at that time.

208. Intellisphere has used the phrase ONCOLOGY PHARMACY NEWS in a descriptive manner to identify the topic of special reports released by its highly regarded PHARMACY TIMES journal.

209. The overall use and appearance of ONCOLOGY PHARMACY NEWS by Intellisphere is distinguishable from any use being made of the same common descriptive phrase by Engage and no confusion is likely.

210. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Pharmacy Titles and the Engage Pharmacy Titles

#### VI. THE MANAGEMENT FORMATIVE TITLES

211. The Engage Entities have created a series of publications, and alleged infringement of the titles thereof, that contain the common terms “PRACTICE MANAGEMENT” or “BUSINESS MANAGEMENT” and have sought to register the same with the USPTO (the “Engage Management Titles”).

212. The Engage Entities’ alleged first use of any of the Engage Management Titles began in or around August 2010 with ONCOLOGY PRACTICE MANAGEMENT. The Engage



Entities' later filed intent-to-use applications that contain the terms "business management" have not had any use alleged or made.

213. A summary of the subject Engage Management Titles is below:

| <b><u>Title</u></b>                 | <b><u>Registration No.</u></b>               | <b><u>Owner</u></b> |
|-------------------------------------|--|---------------------|
| ONCOLOGY PRACTICE<br>MANAGEMENT     | 85263789<br>85263802<br>85263808<br>85263813 | Engage              |
| RHEUMATOLOGY BUSINESS<br>MANAGEMENT | 85504699<br>85504706<br>85504709<br>85504726 | Engage              |
| DERMATOLOGY BUSINESS<br>MANAGEMENT  | 85504734<br>85504739<br>85504742<br>85504746 | Engage              |
| DIABETES BUSINESS<br>MANAGEMENT     | 85504619<br>85504621<br>85504623<br>85504626 | Engage              |

214. All of the Engage Management Titles have been denied registration by the USPTO on the basis that such marks are merely descriptive and not entitled to registration on the Principal Register.

215. The terms "Practice Management" and "Business Management" in the context of Plaintiffs' journals are merely descriptive terms that refer to the administrative and managerial components of a modern healthcare practice.

216. The terms "Practice Management" and "Business Management" have been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs' first use and attempt to corral rights in the same.

217. All of the Engage Management Titles are merely descriptive of the contents of the goods and services.

218. All of the Engage Management Titles lack secondary meaning.

219. Notwithstanding the denial of registration by the USPTO on the basis that the marks are merely descriptive, and the common use in the Industry of the terms “business management” or “practice management,” Engage is attempting to prevent Intellisphere, and by extension any other competitor, from using words that are so descriptive and integral to modern healthcare administration, namely “practice management” or “business management.”

220. To meet the needs of its readers, and to further specialize its publications, beginning in October 2011, Intellisphere began using the following title using the common terms “business management” (the “Intellisphere Business Management Title”):

| <b><u>Title</u></b>          | <b><u>Registration No.</u></b>                          | <b><u>Owner</u></b> |
|------------------------------|---|---------------------|
| ONCOLOGY BUSINESS MANAGEMENT | 85471063 – <i>Application for Supplemental Register</i> | Intellisphere       |

221. Intellisphere filed its application for ONCOLOGY BUSINESS MANAGEMENT directly to the Supplemental Register, an admission that the mark is merely descriptive with no secondary meaning at that time.

222. Intellisphere filed its application for its Intellisphere Business Management Title prior to any application or use of the terms “business management” by Engage.

223. Engage has alleged that ONCOLOGY PRACTICE MANAGEMENT and ONCOLOGY BUSINESS MANAGEMENT are confusingly similar.

224. The overall use and appearance of the Intellisphere Business Management Title is distinguishable from any use being made of the same common descriptive terms “oncology” and “management” by Engage and no confusion is likely.

225. The Intellisphere Business Management Title and Engage Management Titles are not confusingly similar in appearance, sound or meaning, apart from sharing certain unprotected, descriptive terms, namely “management” and “oncology”.

226. Engage is erroneously dissecting the Intellisphere Business Management Title, focusing only on the descriptive shared terms, “Oncology” and “management” to assert the baseless claim of infringement.

227. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Business Management Title and the Engage Management Titles.

**VII. THE BENEFITS FORMATIVE TITLES**

228. The Engage Entities have created a publication, and alleged infringement of the title thereof, that contains the descriptive terms “American” and “Benefits” and have registered the same with the USPTO on the Supplemental Register (the “Engage Benefits Title”).

229. The Engage Entities’ alleged first use of any of the Engage Benefits Title began in or around August 2007.

230. A summary of the subject Engage Benefits Title is below:

| <b><u>Title</u></b>             | <b><u>Registration No.</u></b>                                 | <b><u>Owner</u></b> |
|---------------------------------|--|---------------------|
| AMERICAN HEALTH & DRUG BENEFITS | 3503239 - <i>Supplemental</i><br>3529391 - <i>Supplemental</i> | Engage              |

231. The Engage Benefits Title registered on the Supplemental Register, an admission that as of that date, the mark was merely descriptive and lacked secondary meaning.

232. The “American Health & Drug Benefits” journal comprises a title that is merely descriptive of the geographical scope and contents and topics in the journal, described to the relevant consumers as providing “benefit design makers the integrated information they need to devise benefit designs and make coverage decisions.”

233. The terms comprising Engage's journal title have all been in common use in the medical, medical research, and medical administration industries prior to and after Plaintiffs' first use and attempt to corral rights in the same.

234. The Engage Benefits Title is merely descriptive of the contents of the goods and services.

235. The Engage Benefits Title lacks secondary meaning.

236. In July 2008, MJH began using the following title and subsequently assigned all rights in same to CCTC (the "CCTC Benefits Title"):

| <b><u>Title</u></b>                       | <b><u>Registration No.</u></b> | <b><u>Owner</u></b> |
|---|--------------------------------|---------------------|
| THE AMERICAN JOURNAL OF PHARMACY BENEFITS | 4652356                        | CCTC                |
| THE AMERICAN JOURNAL OF PHARMACY BENEFITS | 3552374 - Cancelled            | CCTC                |

237. CCTC's Registration No. 3552374 was allowed to lapse.

238. The USPTO did not deny registration of either of the CCTC applications for the CCTC Benefits Title on the basis of any prior rights holders, nor was any Opposition asserted against the same.

239. Engage has incorrectly asserted that MJH is the owner of the CCTC Benefits Title, which is incorrect.

240. Engage has alleged that AMERICAN HEALTH & DRUG BENEFITS and THE AMERICAN JOURNAL OF PHARMACY BENEFITS are confusingly similar, where the only shared terms are the highly descriptive components "American" and "Benefits".

241. CCTC and Intellisphere as well as numerous third-parties have a series of journals and publications that begin with the common component, THE AMERICAN JOURNAL,

including “The American Journal of Managed Care”, “The American Journal of Hematology/Oncology”.

242. The term AMERICAN is a common geographical descriptor used by many third-parties in connection with publications relating to healthcare and medicine in America; Engage cannot claim any level of exclusivity or rights in this term.

243. The overall use and appearance of the CCTC Benefits Title is distinguishable from any use being made of the same common descriptive terms by Engage and no confusion is likely.

244. The CCTC Benefits Title and Engage Benefits Title are not confusingly similar in appearance, sound or meaning, apart from sharing certain unprotected, descriptive terms.

245. At no time have there been any instances of consumer or advertiser confusion between the CCTC Benefits Title and the Engage Benefits Title.

**VIII. THE PEER FORMATIVE TITLES**

246. The Engage Entities have created a publication, and alleged infringement of the title thereof, with the title PEER-SPECTIVES and have alleged that the Intellisphere Entities have infringed the same (the “Engage Peer Title”).

247. The Engage Entities’ alleged first use of the Engage Peer Title began in or around February 2008.

248. A summary of the subject Engage Peer Title is below:

| <b><u>Title</u></b> | <b><u>Registration No.</u></b> | <b><u>Owner</u></b>        |
|---------------------|--------------------------------|----------------------------|
| PEER-SPECTIVES      | cancelled                      | Center of Excellence Media |

249. The Plaintiffs have permitted the registration for PEER-SPECTIVES to lapse and thus may rely only on common law rights.

250. Plaintiffs' common law rights in the Engage Peer Title are not entitled to presumptions of distinctiveness nor national scope of use.

251. The Engage Peer Title lacks any secondary meaning and does not function as a source indicator to consumers.

252. In June 2011, Intellisphere began using the following title (the "Intellisphere Peer Title"):

| <u>Title</u>         | <u>Registration No.</u> | <u>Owner</u>  |
|----------------------|-------------------------|---------------|
| PEERS & PERSPECTIVES | 4089139                 | Intellisphere |

253. The USPTO did not deny registration of the Intellisphere Peer Title on the basis of any prior rights holders, nor was any Opposition asserted against the same.

254. The overall use and appearance of the Intellisphere Peer Title is distinguishable from any use being made by Engage and no confusion is likely.

255. The Intellisphere Peer Title and Engage Peer Title are not confusingly similar in appearance, sound or meaning.

256. The Intellisphere Peer Title and Engage Peer Title are used in connection with different goods and services.

257. At no time have there been any instances of consumer or advertiser confusion between the Intellisphere Peer Title and the Engage Peer Title.

#### **H. NO INFRINGEMENT EXISTS**

258. Where the terms that comprise the alleged trademarks at issue are merely descriptive, common law or registered on the Supplemental Register, the threshold inquiry is whether any of the titles have acquired distinctiveness sufficient to rise to the level of being protectable intellectual property.

259. If no secondary meaning is established, further inquiry into the likelihood of confusion is moot, as there are no rights to protect or infringe.

260. The Engage Entities cannot establish secondary meaning for any of the titles or rights they claim are infringed by the Intellisphere Entities.

261. Even if Plaintiffs were to overcome the initial hurdle of establishing some protectable trademark right in any of the titles, establishing a likelihood of confusion is implausible.

262. Confusion is less likely when the marks being enforced are conceptually and factually weak.

263. All titles being asserted by Plaintiffs are weak, comprised of highly descriptive terms operating within a highly crowded field of third-party use.

264. Even with secondary meaning, the scope of protection for descriptive marks within a highly crowded field of third-party use is very narrow. Any differences in the marks themselves, as well as the overall impression of use to the consumer, will be sufficient to defeat a likelihood of confusion.

265. The Defendants' use of any of their allegedly infringing titles is coupled with the overall trade dress and house marks associated with Intellisphere, which further reduces any potential for confusion.

266. Advertisers, along with highly educated healthcare practitioners, are highly sophisticated and educated consumers. The advertising rates are expensive and require a considerable amount of thought, research and communication before any advertisements are placed. These factors also reduce any potential for confusion.

267. No actual confusion has occurred between any of the Plaintiffs' marks and the Defendants' marks, despite concurrent use between the parties for a number of years.

**FIRST COUNTERCLAIM**  
**Declaratory Judgment of Non-Infringement**

268. Defendants repeat and incorporate the allegations of the foregoing paragraphs as if set forth fully herein.

269. As demonstrated by Plaintiffs' First Amended Complaint, the Engage Entities have asserted trademark infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) against the Defendants concerning descriptive terms commonly used in the medical and healthcare fields.

270. Defendants are not infringing and have not infringed, either directly or indirectly or by inducing or contributing to infringement by others, any valid trademark of Plaintiffs.

271. A valid and justiciable controversy exists between Plaintiffs and Defendants as to whether Defendants have infringed any valid trademark right of Plaintiffs.

272. Plaintiffs' alleged trademarks are merely descriptive and have not acquired secondary meaning sufficient to rise to the level of providing Plaintiffs with protectable rights.

273. There is no likelihood of confusion between any of the Plaintiffs' titles and the Defendants' titles as listed herein.

274. The Plaintiffs' allegations of infringement pose a threat to the Defendants' businesses and have and will continue to harm Defendants until such claims are resolved.

275. Defendants have no adequate remedy at law and, as a result, seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02, that their past and continued use of common descriptive terms in the medical and healthcare fields does not infringe Plaintiffs' asserted trademarks.



276. Defendants also seek any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**SECOND COUNTERCLAIM**  
**Common Law Unfair Competition**

277. Defendants repeat and incorporate the allegations of the foregoing paragraphs as if set forth fully herein.

278. In or about November 2012, Green Hill forfeited the BPA audits for its publications entitled The Oncology Nurse APN/PA and The Oncology Pharmacist, because upon information and belief, its circulation numbers were false and not capable of being verified by BPA standards.

279. Despite forfeiting the audits, Green Hill continued to improperly make use of the statement “BPA Worldwide membership applied for April 2011” in the masthead of The Oncology Nurse APN/PA and The Oncology Pharmacist. The December 2012 issue of The Oncology Nurse used the phrase “BPA Worldwide Membership applied for November 2012.” This statement was false and was used again in the February 2013, May 2013, June 2013, July 2013, August 2013, and September 2013 issues of The Oncology Nurse.

280. On November 7, 2013, BPA concluded that Green Hill’s use of such language in The Oncology Nurse and The Oncology Pharmacist violated BPA Worldwide Rule 3-8 506.

281. Green Hill’s false and deceptive promotion of BPA Worldwide Membership in connection with its publications was intended to provide a false impression with advertisers and subscribers that its circulation numbers for its publications were audited and verified by BPA when it had in fact forfeited the audits.

282. Green Hill’s false promotion of BPA Membership was designed to obtain an unfair competitive edge in connection with soliciting advertising revenue for its publications.

283. Green Hill's false statements were made in interstate commerce, and in competition with Defendants.

284. Defendants have been and will be damaged by the false and misleading statements of Green Hill.

**THIRD COUNTERCLAIM**  
**Unfair Competition – N.J. Fair Trade Act (N.J.S.A. § 56:4-1)**

285. Defendants repeat and incorporate the allegations of the foregoing paragraphs as if set forth fully herein.

286. Plaintiffs' aforesaid conduct constitutes false advertising under the New Jersey Fair Trade Act, N.J.S.A. § 56:4-1.

287. Plaintiffs' statements concerning its membership in BPA Worldwide were false and misleading.

288. Plaintiffs' statements were made to deceive a substantial portion of the subscribers and advertisers of Plaintiffs' purported publications, The Oncology Nurse APN/PA and The Oncology Pharmacist.

289. Membership in BPA Worldwide is a material factor evaluated by advertisers when deciding to advertise in any publication.

290. The false and misleading statements concerning Plaintiffs' membership in BPA Worldwide were made in interstate commerce and published in, among others, the December 2012, February 2013, May 2013, June 2013, July 2013, August 2013, and September 2013 issues The Oncology Nurse APN/PA and The Oncology Pharmacist.

291. Plaintiffs' false and misleading statements concerning its membership in BPA Worldwide were made in competition with Defendants.

292. Plaintiffs' false and misleading statements have caused damage to Defendants.

**DEFENDANTS' PRAYER FOR RELIEF**

WHEREFORE, Defendants-Counterclaim Plaintiffs, Intellisphere, LLC (“Intellisphere”), Michael J. Hennessy & Associates, Inc. (“MJH&A”), and Arc Mesa Educators, LLC (“Arc Mesa”) (collectively the “Intellisphere Entities”), pray that judgment be entered in their favor and against Plaintiffs-Counterclaim Defendants, Engage Healthcare Communications, LLC (“Engage”), Green Hill Healthcare Communications, LLC (“Green Hill”), and Center of Excellence Media, LLC (“Center”) (collectively the “Engage Entities”) as follows:

1. Plaintiffs’ First Amended Complaint be dismissed in its entirety with prejudice, and judgment be entered in Defendants’ favor;
2. The Court declare that Defendants have not infringed, either directly or indirectly, any valid trademark of Plaintiffs;
3. A declaration that Plaintiffs are not entitled to any preclusive rights in and to the asserted trademarks;
4. Money damages in an amount to be proven at trial;
5. Pre- and post-judgment interest;
6. Attorneys’ fees and costs;
7. Such other and further relief as the Court deems just and proper under the circumstances.

**JURY DEMAND**

Defendants hereby demand a trial by jury on all issues so triable.

Date: May 18, 2016

Respectfully submitted,

DAY PITNEY LLP

*Attorneys for Defendants / Counterclaim  
Plaintiffs, Intellisphere, LLC, Michael J.  
Hennessy & Associates, Inc., and Arc Mesa  
Educators, LLC*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing Amended Answer was filed electronically via the Court's Electronic Case Filing ("ECF") and was served on counsel of record via ECF.

Date: May 18, 2016

By: Mark Salah Morgan  
Mark Salah Morgan